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Research | 2019

Asia Pacific Property Investment Guide

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Joint foreword to the Asia Pacific Property Investment Guide 2019

Published jointly by Jones Lang LaSalle and Ashurst, the seventh edition of the Asia Pacific Property Investment Guide provides practical information on the laws in each of the countries in the region relevant to real estate investors, together with an overview of the principle issues that investors need to consider when investing in real estate.

The guide includes the most up to date information available for investors, covering issues from property tenure to foreign investment incentives, transactional tax costs to real estate investment trusts.

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For further information, visit http://www.ashurst.com.

We trust you will find this guide an informative and invaluable business tool.

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Table of Content

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This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at acm@ap.jll.com or email@ashurst.com.
The information in this guide is current as at 1 September 2018.

Australia

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How can Property be owned or controlled?

In Australia, there are three main types of legal estate in property:

- Freehold
  - Freehold land (also known as an "estate in fee simple") is the well-known form of land ownership in Australia. Most of the developed, privately-held land in Australia (other than the Australian Capital Territory (ACT)) is freehold.
- Crown land
  - Crown land is land that is still owned by the government. The government may give another person the ability to manage or control that land, generally with a lease.
- Leasehold
  - Leasehold land is land that is leased to a person either by the government or by the freehold owner. All land in the ACT is leasehold from the government.

All rights to the minerals which may be found in land are reserved to the Crown. The terms of those reservations differ from State to State.

How is property ownership managed?

The policy in Australia is for land to be registered under the Torrens Title System where possible. However, there are still two primary systems under which property ownership is managed in Australia:

- Torrens Title System
  - A state-guaranteed title, where a certificate of title contains the owner's details and the various dealings with that land (e.g. leases, mortgages, easements, etc) are registered in a central register. It can detail land above and below the surface either to a certain height limit or without a limit.
  - Torrens Title System has largely replaced the Old Title System.
  - Torrens Title System is the most common form of title in Australia.

Strata or Community Title is a type of Torrens Title that allows for the subdivision of land or a building through the creation of a strata or community title scheme plan.

The main difference is that an owner owns a particular parcel of land or part of a building in the strata or community title scheme together with a share in common property that is shared with the other owners in the strata or community title scheme.

  - Strata or Community Title is most commonly used in the case of multi-unit buildings, but retail and commercial developments may also be titled on this basis.
- Old Title System (also known as general law land)
  - Title is established from a series of instruments by means of which the ownership of the title can be traced.
  - There is no government guarantee to title.
  - The onus is on the owner to prove ownership of title.
  - This is less common.

Major Property Legislation

Property law in Australia is State and Territory based. There is no uniform property legislation in Australia although concepts are largely consistent across the States and Territories. Each State and Territory has individual pieces of legislation covering key areas such as:

- local government, town planning and building;
- environment;
- real estate practises;
- land titles and conveyancing;
- property taxation; and
- leasing.

There is also a range of other legislation that indirectly affects the property.

Operational Requirements for Foreign Companies

All foreign companies that wish to carry on business in Australia for this purpose if it has a place of business in Australia must register with the Australian Securities and Investments Commission (ASIC). Some foreign companies choose instead to form a subsidiary company that is incorporated in Australia which carries on the business in Australia.

Foreign Company

A foreign company is taken to be carrying on business in Australia for this purpose if it has a place of business in Australia. In particular, carrying on a business in Australia includes a reference to the company administering, managing, or otherwise dealing with property in Australia as an agent or trustee.

However, a foreign company will not be taken to be carrying on business in Australia merely because the company:

- conducts an isolated transaction in Australia that is completed within a period of 31 days (and that transaction is not one of a number of similar transactions repeated from time to time); or
- invests any of its funds or holds any property in Australia.

A registered foreign company must appoint a local resident (either a natural person or a company) as its local agent for various purposes, including the service of legal process. The registered foreign company must, along with other regulatory requirements, lodge financial statements with ASIC each calendar year.

A registered foreign company must lodge notice of various administrative changes with ASIC. There are also additional requirements regarding documents published or signed in Australia.

Company Incorporated in Australia

A private subsidiary company established in Australia is required to have at least one director resident in Australia (or two directors resident in Australia if incorporated as a public company) and must have a registered office in the country. It is required to set out on all public documents and negotiable instruments its name and its Australian Company Number (ACN), or its Australian Business Number (ABN) if the last nine numbers are the same as those of its ACN.

A private subsidiary company must lodge notice of certain changes with ASIC, and is also required to confirm annually its details (and pay a fee). It must maintain financial accounts and, depending on the nature of the company that has been established, it may also be required to file accounts periodically with ASIC.

Foreign Investment Regulation

Foreign investment in Australia is regulated primarily through a regime established under the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA), the Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth) and the Register of Foreign Ownership of Water or Agricultural Land Act 2015 (Cth) (and their associated rules and regulations). Foreign investment may also be regulated under other Federal, State and Territory laws applicable to Australian and foreign investors because of the particular investment activity (for example, foreign ownership in the banking sector must be consistent with the Banking Act 1959 (Cth) and other applicable legislation).

The FATA regime is administered by the Australian Treasurer through the Foreign Investment Review Board (FIRB) and supported by the Australian Taxation Office (ATO). The ATO administers foreign investment into residential real estate, non-sensitive commercial real estate and internal reorganisations.

Under FATA and the regulations:

- Notification to and prior approval by FIRB is compulsory for the proposed acquisition by a foreign person of (in broad terms):
  - a direct interest in an Australian entity or business that is an agribusiness,
  - a substantial interest in an Australian entity, or
  - an interest in Australian land,

where the acquisition meets the relevant threshold test (which relates to value).

- The Treasurer has the power to impose conditions on the approval of the proposed acquisition by a foreign person (for example, conditions relating to compliance with Australian tax laws: https://firb.gov.au/files/2016/05/Tax_conditions.pdf).
- The Treasurer has powers to prohibit the whole or part of a foreign investment proposals (including a proposal that is not notifiable but is a “significant action” as defined in FATA) and, to order divestiture or unwinding of foreign investment arrangements, if they are considered contrary to the national interest or if conditions on the approval of the acquisition are breached.
- Foreign persons who do not comply with the framework may be subject to civil and criminal penalties and infringement notices issued by the ATO.

Foreign persons are subject to the provisions of FATA. A foreign person is generally:

- an individual person not ordinarily resident in Australia; or
- a corporation, trustee of a trust or general partner of a limited partnership where an individual not ordinarily resident in Australia, foreign corporation or foreign government holds a substantial interest of at least 20 per cent; or

- a corporation, trustee of a trust or general partner of a limited partnership in which two or more foreign persons hold an aggregate substantial interest of at least 40 per cent; or
- a foreign government or foreign government investor.

A "foreign government investor" is:

- a foreign government or separate government entity:
- a corporation or trustee of a trust, or a general partner of a limited partnership in which:
- a foreign government or separate government entity, alone or together with associates holds a substantial interest of at least 20 per cent; or
- foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country) together with any one or more associates, hold an aggregate substantial interest of at least 40 per cent.

Notification requirements vary and are based on a number of factors including whether the investor is a foreign government or non-government investor, the type of acquisition, whether the acquisition is subject to monetary thresholds, whether the land to be acquired is sensitive land and Free Trade Agreement (FTA) commitments.

Australia's entry into international agreements with a number of countries has the effect of relaxing the notification and approval thresholds for eligible investors from those countries.

- On January 1, 2005 the Free Trade Agreement between Australia and the United States of America came into force and had the effect of relaxing the notification and approval thresholds for eligible United States investors.
- On February 16, 2011, Australia signed an Investment Protocol with New Zealand. The Investment Protocol was implemented on 1 March 2013, making New Zealand investors subject to the same thresholds that applied to United States investors.
- On December 12, 2014 the South Korea-Australia Free Trade Agreement entered into force, making eligible investors from South Korea subject to the same thresholds that applied to New Zealand and United States investors. Reflecting the most-favoured nation commitment Australia provided to Chile as part of the Australia-Chile Free Trade Agreement, from the same date Chilean investors are subject to the same thresholds that applied to New Zealand, South Korean, and United States investors.
- On January 15, 2015 the Japan-Australia Economic Partnership Agreement between Australia and Japan entered into force and had the effect of making eligible Japanese investors subject to the same thresholds that apply to the above investors.
- On December 20, 2015 the China Australia Free Trade Agreement (ChAFTA) came into force.
- On 13 October 2016, the Singapore-Australia Free Trade Agreement was amended to increase the monetary threshold for Singaporean investment in non-sensitive sectors from AUD 252 million to AUD 1094 million, consistent with the position under the Trans-Pacific Partnership Agreement. This amount has now been indexed to AUD 1.134 million.

Under FIRB policy the general approval framework, including thresholds, is as follows.

- Business acquisitions: Foreign persons must get approval before acquiring a substantial interest (20 per cent or more) in an Australian entity or business that is valued above the general threshold - currently AUD 261 million but indexed annually.
  - Under the FTA commitments noted above, that threshold is increased to AUD 1,134 million for investors from Chile, China, Japan, Korea, New Zealand and the United States ("FTA country investors"). However, the AUD 261 million threshold applies to these investors if investing in sensitive businesses.
  - Sensitive businesses include media; telecommunications; transport; defence and military related industries; encryption and securities technologies and communications systems; and the extraction of uranium or plutonium or the operation of nuclear facilities.
  - All foreign persons, including FTA country investors, must get approval to make investments of 5 per cent or more in an Australian media business, regardless of the value of the investment.
- Agribusiness: Foreign persons must get approval before acquiring a direct interest (generally at least 10 per cent, or the ability to influence, participate in or control) in an agribusiness where the value of the investment is more than AUD 57 million, regardless of the value of the agribusiness. The AUD 1,134 million threshold applies to Chilean, New Zealand and United States investors acquiring a substantial interest in an agribusiness
- Agricultural land: Foreign persons must get approval for a proposed acquisition of an interest in agricultural land where the cumulative value of agricultural land owned by the foreign person (and any associates), including the proposed purchase, is more than AUD 15 million. An AUD 1,134 million threshold applies to Chilean, New Zealand and United States investors, and an AUD 50

million threshold applies to Thai investors who propose to acquire land to use it wholly and exclusively for a primary production business. New guidelines released in February 2018 state that generally, approval will not be granted for any acquisition of agricultural land that was not offered for sale publicly and 'marketed widely' for a minimum of 30 days. There are exceptions (eg where the applicant has a substantial Australian ownership share (ie 50per cent or more) or is acquiring an interest in an ASX listed company or a leasehold interest for a wind or solar farm development).

- Commercial land: there are different rules for vacant and developed land:
  - All foreign persons must get approval for a proposed acquisition of vacant commercial land, regardless of the value of the land. Such acquisitions are normally approved subject to development conditions.
  - Generally foreign persons must get approval for a proposed acquisition of an interest in developed commercial land if the value of the interest is likely to exceed the AUD 261 million threshold, unless the land meets the conditions for the lower threshold of AUD 57 million. Low threshold developed commercial land includes for example, mines (with exceptions), public infrastructure (for example, an airport or a port) land fitted out specifically for business that stores bulk data, land that will be leased to the Commonwealth or a state or territory (with exceptions)). FTA country investors only need to apply for approval for developed commercial land where the value of the interest is more than the AUD 1,134 million threshold. There were changes to the treatment of wind and solar farms from 1 July 2017. Developed wind and solar farms are generally treated as developed commercial land (rather than possibly vacant commercial land and agricultural land).
  - Land on which the only dwellings are commercial residential premises (like aged care facilities, retirement villages and certain forms of student accommodation) is considered developed commercial land.
- Land that includes public infrastructure:
  - Foreign persons must get approval to acquire interests in land that includes public infrastructure.
- Residential land:
  - Foreign persons must get approval to acquire an interest in residential real estate regardless of value.
  - Foreign persons can apply to purchase vacant land for residential development with few restrictions and purchase newly constructed dwellings, whereas approvals for established dwellings are generally limited and will normally be subject to conditions.
- Mining & production tenements: Foreign persons must get approval to acquire an interest in a mining or production tenement, regardless of value.
- Indirect real estate interests: Foreign persons must also get approval before acquiring certain indirect real estate interests including securities in land corporations and trusts that have a majority of their assets in land.
- Foreign government investors:
  - All foreign government investors must get approval before acquiring a direct interest in Australia (generally at least 10 per cent, or the ability to influence, participate in or control), starting a new business or acquiring an interest in Australian land regardless of the value of the investment, and
  - Foreign government investors also require approval to acquire a legal or equitable interest in a tenement or an interest of at least 10 per cent in securities in a mining, production or exploration entity.
  - All acquisitions of any interest in land by foreign government investors requires approval.
- Security interests: Generally, taking a security interest will be an acquisition and may require foreign investment approval but there is an exemption for security interests taken by a lender in the ordinary course of its moneylending business.

Certain acquisitions from the Commonwealth, a State or Territory or local government body (or an entity wholly owned by one of them) do not require approval.

Applications for approval should be lodged in advance of a transaction, and transactions should be made conditional on receiving FIRB approval. Applicants must pay a substantial non-refundable fee before their application is considered (the amount of the fee varies for different transactions). If an application falls into a number of categories the highest fee applies. Approval will be granted where the investment is not contrary to the national interest and the grant of approval may be subject to conditions (such as the tax conditions described above). The Treasurer has a wide discretion in this regard. Although a number of recent high profile investments have been rejected for being contrary to the national interest (for example, the sale of S.Kidman & Co), intervention on national interest grounds has historically been infrequent.

Decisions are to be made within 30 days from payment of the fee. There are however provisions for extension of this period by a further 90 days, by interim order or voluntary extension by the applicant.

Threshold values are indexed annually on 1 January (except for the $15 million agricultural land threshold and the $50m land threshold for Thai investors) so the applicable thresholds and policy considerations should be checked each year.

Foreign Investment Incentives

Assistance for foreign investors is available through the Australian Trade Commission (Austrade). Austrade is a Commonwealth agency established to, among other things, promote inward investment in Australia. Austrade assists international companies in establishing and building their business in Australia. The assistance provided is free and can include services such as:

- Initial coordination of all investment enquiries and assistance
- Information on the Australian business and regulatory environment
- Market intelligence and investment opportunities
- Identification of suitable investment locations and partners in Australia
- Advice on Australian government programs and approval processes

Austrade has investment advisory specialists in locations around the world.

Restrictions on Foreign Property Ownership and Leasing

As indicated above, foreign companies, individuals and governments may require consent from FIRB to purchase or lease land in Australia.

This requirement does not apply in respect of acquisitions by the following, who do not need approval before purchasing:

- Australian citizens living overseas purchasing either in their own name or through an Australian corporation or trust
- Foreign nationals purchasing residential real estate (as joint tenants) with their Australian citizen spouse, New Zealand citizen spouse, or Australian permanent resident spouse
- Foreign nationals holding permanent visas purchasing residential real estate either in their own name or through an Australian corporation or trust

In addition, no approval is required for:

- Interests in time share schemes that allow for use of no more than four weeks per year
- New or near-new dwellings bought from a developer who has a FIRB new or near-new dwelling exemption certificate (interest in new dwellings up to a total of AUD 3 million in a specified development). Any applications for a New Dwelling Exemption Certificate received from 10 May 2017 and which are approved will be subject to a condition that a maximum of 50% of the total dwelling in the development can be sold to foreign persons.

The thresholds for investing in Australian land are set out above.

Under the Register of Foreign Ownership of Water or Agricultural Land Act 2015 (Cth), foreign persons (including foreign government investors) holding interests in agricultural land or water entitlements or contractual water rights must register those interests with the ATO. New interests must be registered within 30 days of the date of purchase of agricultural land or for water interests within 30 days after the end of the financial year in which a change to the interest occurs.

In Queensland, foreign persons are also required to notify the Foreign Ownership of Land Register of their dealings in land, in accordance with the Foreign Ownership of Land Register Act 1988 (Qld) (FOLRA). Notification under FOLRA is in addition to the FIRB approval under FATA.

Foreign Exchange Controls

"Physical currency" is defined in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) as the coin and printed money of Australia or a foreign country that:

- Is designated as legal tender
- Circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue

Travellers entering and departing Australia are required to report any currency of AUD 10,000 or more, or the foreign currency equivalent, they are carrying. Mailing or shipping currency of AUD 10,000 or more, or the foreign currency equivalent, must also be reported.

Separately, if a reporting entity (being one that provides one of a range of designated services described in Australia's anti-money laundering laws) sends or receives an instruction to or from a foreign country for a transfer of money or property, either electronically or under a remittance arrangement, they must submit an international funds transfer Instruction (IFTI) report to the Australian Transaction Reports and Analysis Centre

(AUSTRAC) within 10 Business Days after the day the instruction was sent or received. There is no threshold for reporting of these transactions.

Reporting entities have an obligation to report suspicious matters to the AUSTRAC if these matters are connected to the actual or potential provision of a designated service, and if the reporting entity has a suspicion on reasonable grounds that the client is not who they claim to be or the reporting entity has information that may be relevant to the commission of an offense under Australian laws or of tax evasion.

Taxes on Ownership of Real Estate

In all States and in the Australian Capital Territory (ACT) (but not in the Northern Territory), land tax is payable on an annual basis on the unimproved value of land, subject to certain exemptions, e.g. for a principal place of residence or land used for primary production. Except in the ACT, tax-free thresholds apply. These thresholds and the land tax rates vary between jurisdictions.

In New South Wales, land tax is applied to most forms of vacant and developed land on a progressive scale of AUD 100 (approximately USD 74) plus 1.6% of the amount by which the taxable value of the land exceeds the minimum threshold but is not more than the premium rate threshold, and an additional 2% thereafter of the amount by which the taxable value of the land exceeds the premium rate threshold. For the 2018 land tax year, the minimum threshold is AUD 629,000 (approximately USD 463,232) and the premium threshold is AUD 3.846 million (approximately USD 2.83 million).

Foreign Owner Land Tax Surcharges

A surcharge land tax rate may apply where a "foreign person" owns land in New South Wales, Victoria, Queensland or the ACT. In New South Wales, Queensland, and the ACT, the surcharge is limited to residential land, whereas in Victoria it applies to any foreign owned land. The definition of foreign person in New South Wales, Victoria and the ACT is the same as for stamp duty purposes and is outlined in the "Stamp Duty on Land Transfers" section below. In Queensland, the surcharge only applies to foreign individuals owning residential land.

The surcharges payable in the relevant jurisdictions are as follows:

- New South Wales – 2%
- Victoria – 1.5%
- Queensland – 1.5%
- ACT – 0.75%

There is no tax-free threshold for land tax surcharges in New South Wales or the ACT. In Victoria, there is a tax-free threshold of AUD 250,000 (approximately USD 184,115) for land owned by foreign persons (including corporations) and a tax-free threshold of AUD 25,000 (approximately USD 18,411) for land held by foreign trusts. In Queensland, a tax-free threshold of AUD 349,999 (approximately USD 257,760) applies to foreign landholders. Exemptions from surcharge land tax may be available.

If the seller of land is liable to pay land tax, the general practice is for the land tax to be adjusted between the seller and the buyer on completion or closing (even if the real estate will not be liable to land tax in the buyer's ownership).

Vacant Residential Property Tax

In Victoria, in addition to land tax, an annual charge of 1% of the capital improved value applies to vacant residential land in certain parts of Melbourne.

In its budget announcement for the 2018/19 income year, the Northern Territory Government stated that it would introduce a derelict and vacant property levy for land in the Darwin central business district from 1 July 2019. This is to be levied at a rate of 1% for buildings with a vacancy rate of 50% or more, and 2% for undeveloped land.

The Federal Government has also imposed an annual charge (equivalent to the Foreign Investment Review Board application fee) for any residential property left vacant and not genuinely available for rent for at least six months in a year.

Rates

City, municipal and shire councils (and the ACT Government, in the case of the ACT) also levy taxes to fund the provision of services. These are commonly termed "rates" and are charged to landowners on the basis of land values. They vary between council areas.

Stamp Duty on Direct and Indirect Land Transfers

All States and Territories impose stamp duty at varying rates on the acquisition of land and certain other property including goods and certain business assets but in some States only where sold with land.

Stamp duty is charged on an increasing sliding scale. As an example, the rates in New South Wales start at 1.25% and gradually increase to a general top rate of 5.5% for land with a dutiable value in excess of AUD 1 million (approximately USD 0.74 million). Residential property over AUD 3 million (approximately USD 2.21 million) is

subject to duty at 7% on the excess over AUD 3 million. The rate may also vary depending on the characterization of the land. For example, the purchase of a lower value principal residence may be subject to concessional rates.

In South Australia, stamp duty for transfers of non-residential, non-primary production real property were abolished on 1 July 2018.

Foreign Owner Stamp Duty Surcharges

Surcharge duty may also apply in respect of residential land acquired by foreign persons. The current rates in the relevant jurisdictions are as follows:

- New South Wales – 8%
- Victoria – 7%
- Queensland – 7%
- South Australia – 7%
- Western Australia – 7% (from 1 January 2019).
- Tasmania – 3%

A foreign person includes a foreign individual, a foreign corporation or the trustee of a foreign trust. In New South Wales, a foreign owner also includes a foreign government. The tests to determine whether an individual, a corporation or a trust is "foreign" differ between each State. Generally, a corporation or a trust is foreign in Victoria and Queensland if a "controlling interest" of at least 50% is held by a foreign person (or an aggregate controlling interest of 50% if there is more than one foreign person). A corporation or a trust is "foreign" in New South Wales if a "substantial interest" of at least 20% is held by a foreign person (or an aggregated substantial interest of 40% if there are two or more foreign persons). A foreign individual in New South Wales is a person who does not fit into any of the following categories: an Australian citizen, a person ordinarily resident in Australia or a New Zealand citizen who holds a special category visa within the meaning of section 32 of the Migration Act 1958 (Cth).

The definition of "residential land" also differs between the States. Generally, residential land in New South Wales is land on which there is one or more dwellings and also includes vacant land which is zoned residential. However this definition does not include any land used for primary production.

Where a foreign purchaser acquires property in Victoria that is not residential property on or after 1 July 2015, and at any time after the property is transferred the foreign purchaser forms the intention to use the land for residential purposes, the foreign purchaser is required to notify the Commissioner within 14 days of forming that intention and pay the additional surcharge duty within 30 days.

In Queensland and Tasmania, the Commissioner must make a reassessment for surcharge duty if the purchaser is a corporation or a trust which becomes foreign controlled within 3 years after the time the liability for transfer duty arose.

Certain transactions may be exempt from surcharge duty, including certain acquisitions by property developers with significant local presence.

Landholder Stamp Duty

To prevent stamp duty on the transfer of land being avoided by interposing an entity, all jurisdictions apply landholder duty to acquisitions of shares or units in companies and unit trusts that directly or indirectly hold land with a value above a stated threshold. The land value thresholds range from AUD 500,000 (approximately USD 368,229) to AUD 2 million (approximately USD 1.47 million), with no threshold applying in the ACT. Where the land is "residential land" and the purchaser is "foreign", no threshold value applies in New South Wales.

Landholder duty is generally calculated by reference to the proportionate interest in the underlying land acquired, at the general transfer duty rates (including foreign purchaser surcharge duty rates in New South Wales, Victoria, Queensland, South Australia, Tasmania and from 1 July 2019, Western Australia on the unencumbered market value of the relevant land). In New South Wales, Western Australia and Tasmania, landholder duty also applies to any dutiable goods of the landholder (even if not used with land).

A concessional rate of 10% of the duty otherwise payable applies to acquisitions in listed entities in New South Wales, Queensland, South Australia, Tasmania and Victoria, and widely held trusts in New South Wales, South Australia, Tasmania and Victoria. The 10% concessional rate does not apply in Victoria if the entity has been listed for less than 12 months or, in the case of a widely held trust, it has satisfied the definition of that term for less than 12 months at the date of the relevant acquisition.

In general, the provisions apply to changes or increases in "significant" interests in relevant landholding companies and unit trusts (generally 50% for private companies and unit trusts and 90% for listed companies and unit trusts) where the value of those landholdings exceed the stated thresholds. Acquisitions by related persons or as part of one arrangement are generally aggregated.

Payment of Stamp Duty

Stamp duty is usually payable by the buyer, although in some States (eg Queensland and South Australia), both parties to the transaction are jointly and severally liable. It is normal commercial practice for the buyer to bear the duty.

Stamp duty is payable from one to three months after the contract for sale is signed depending on the State or Territory in which the asset is located (or in the case of Victoria and Tasmania, after settlement). Penalties can apply for late payment. In some States, there are extended times for payment of duty on certain off-the-plan purchases (but not in New South Wales where the purchaser is a foreign person). In Victoria, there is a duty concession for off-the-plan purchases available in certain circumstances in relation to premises which are the principal place of residence of the buyer. The land transfer cannot be registered until duty has been paid.

Lease Duty

Lease duty on rents has been abolished in all States and Territories. However, the grant or transfer of a lease at a premium generally attracts stamp duty. The rate of duty is the same as for a transfer of land and includes foreign purchaser surcharge duty in New South Wales, Victoria, Queensland South Australia (and Western Australia from 1 July 2019). In Victoria, the grant or transfer of a lease for any consideration other than rent can attract duty by reference to the value of the leased property. Special rules also apply to the grant or transfer of certain commercial leases in the ACT.

Goods and Services Tax

A broad-based consumption tax called the Goods and Services Tax (GST) is levied at 10% on a wide range of supplies connected with Australia, including goods, services, real property and rights. GST is not payable on a supply to the extent that the supply is GST-free or input taxed.

The sale of "existing residential premises" (or the supply of existing residential premises by way of long-term lease) is generally input taxed. This means that no GST is payable on the supply of existing residential premises and the vendor cannot claim any input tax credits on associated acquisitions. However, the sale is not input taxed to the extent that the residential premises are "commercial residential premises" (eg hotels) or are "new" residential premises, in which case the supply is taxable and attracts GST at a rate of 10%. The supply of premises by way of lease, hire or licence (including an extension of the lease, hire or licence) is also potentially taxable (or input taxed if residential premises).

Supplies of all things necessary to carry on a business or commercial enterprise including real property where the real property is sold as part of a going concern or is existing farm land supplied for farming can potentially be GST-free. No GST is payable on the supply and the supplier is able to claim credits for the GST payable on any business inputs that relate to that supply.

Some special rules apply to the calculation of GST on certain land transfers (ie the margin scheme, input taxed treatment of supplies of long-term accommodation in commercial residential premises and the GST-free going concern exemption).

From 1 July 2018 purchasers of new residential premises and potential residential land are required to withhold and remit GST on such sales to the Australian Taxation Office (instead of paying the GST to the vendor)..

Capital Gains Tax

The comments in this section do not apply to gains taxed as ordinary income. Some gains can be treated as ordinary income and, hence, may be subject to tax at personal or company tax rates (for example, where the gain is realised from a "profit-making undertaking or scheme").

Capital gains are taxed under the capital gains tax regime (CGT). Taxes on capital gains are levied at the federal rather than the state level, and are therefore uniform across Australia. Capital gains and capital losses of a taxpayer in a year of income are aggregated to determine whether there is a net capital gain. If so, that net capital gain (reduced by any available capital losses from prior years) is included in assessable income and is subject to income tax. However, a "CGT discount" may be available to reduce the taxable capital gain for certain taxpayers (see further below).

Capital losses may not be deducted against other income for income tax purposes, but may be offset against capital gains realised in the same income year or be carried forward to be offset against future capital gains. There are various factors which may limit a taxpayer's ability to carry forward capital losses to offset future capital gains. Trading losses may be offset against taxable capital gains.

Non-residents are only taxed on capital gains arising from the disposal of a specified list of assets referred to as "taxable Australian property". This includes Australian real property (including leases and mining and petroleum rights) and certain interests in entities that hold Australian real property directly or indirectly (referred to as "indirect

Australian real property interests"). For Australian real property held by a non-resident individual, the non-resident may be exempt from Australian capital gains tax on that property if the property is the main residence of the non-resident ("main residence exemption"), although there is currently a Bill in Parliament seeking to abolish the exemption for non-residents, with effect from 9 May 2017. Notably, under this Bill, where a non-resident acquired a piece of real property prior to 9 May 2017, and is using this property as their main residence, they will still be able to claim the main residence exemption provided that they dispose of it prior to 30 June 2019.

In respect of indirect Australian real property interests that consist of shares in a company, the sale of shares by a non-resident of Australia will generally not be subject to Australian CGT provisions unless the non-resident holds the shares through a permanent establishment in Australia, or:

a. the non-resident together with associates (if any) beneficially owns, or has owned for a 12 month period during the 2 years preceding the disposal, 10% or more of the issued share capital; and
b. more than 50% of the gross market value of the entity's assets directly or indirectly is attributable to Australian real property (ie, the company passes the "principal asset test").

There is currently a Bill in Parliament which, if enacted, will broaden the principal asset test to include associate holdings in determining the proportion of the market value of the company's assets which are attributable to Australian real property.

The amount of the taxable gain may be reduced in some situations by the "capital gains tax discount", that is, the taxpayer may be entitled to discount the capital gain after applying capital losses. The discount for an individual or trust is 50% of the gain (although this discount may be effectively reversed for beneficiaries of trusts that are not eligible for the discount) and for a complying superannuation entity, 33.3%. Companies are not eligible for the discount. Non-residents (including non-residents holding interests through trusts) are not eligible for the discount with respect to capital gains made after 8 May 2012. Non-residents will still be entitled to the capital gains tax discount for the gain accrued before that time (after offsetting capital losses), provided they choose to value the asset at that time.[1]

CGT Withholding Regime

Purchasers of Australian real property assets (including certain shares in land rich entities) are required to withhold tax on purchases unless the seller has a clearance certification from the ATO (for real property) or a valid declaration from the seller (for shares in land rich entities). Some transactions are excluded from the withholding rules, including transactions on an approved stock exchange and transactions in Australian real property with a market value of less than AUD 750,000.

The withholding rate is 12.5% of the gross purchase price of the asset, but taxpayers are able to apply for variations to the amount to be withheld (eg, if the seller in fact suffered a loss on the sale, the withholding rate may be varied to nil on application to the ATO). The withholding is not a final tax. The seller is still required to lodge an income tax return and is entitled to a credit against their final tax liability for the amount withheld. To the extent the final tax liability exceeds the amount withheld, the seller will be required to pay the difference to the ATO, and where the amount withheld exceeds the final tax liability, a refund of the excess is available.

Tax Depreciation

Plant and equipment used to produce assessable income is depreciable at rates reflecting the plant or equipment's effective life. The effective life may generally be self-assessed or based on an effective life determined by the Commissioner of Taxation.

Depreciation at a rate of 2.5% is available on the following buildings and improvements, construction for which began after the following dates:

- Eligible hotels and short-term traveller accommodation after August 21, 1979
- Non-residential buildings used for producing income after July 19, 1982
- Residential accommodation used for producing income after July 17, 1985
- Buildings used in conducting R&D after November 20, 1987

A higher depreciation rate of 4% is available for eligible hotels, short-term traveller accommodation and industrial property constructed after February 26, 1992 and for certain buildings constructed between August 22, 1984 and September 17, 1987. The deduction on buildings and improvements can only be claimed following completion of the construction.

[1] CGT indexation, which unlike the CGT discount is also available to companies, may also be applicable as an alternative to the CGT discount. However, these rules only apply to assets acquired on or before September 21, 1999 and if applicable, indexation is only applied for the period up to 30 September 1999.

Following legislative changes in 2017, subject to certain exceptions, depreciation for plant and equipment items in relation to rental premises used as residential accommodation are only claimable by the investors that actually outlaid the cost of these items. As such, subsequent owners of the plant and equipment will not be able to claim depreciation. This applies to previously used plant and equipment acquired after 7:30pm on 9 May 2017 (unless acquired under a contract entered into prior to this time), and plant and equipment that was acquired prior to 1 July 2017, but was not used to earn income in either the current or previous year.

Corporate Taxation

Non-resident corporations are generally taxed only on Australian-sourced income, with some additional protection from Australian tax potentially being available under Australia's tax treaties. However, those treaties will generally preserve Australia's right to tax income from Australian real property (e.g. rent) and profits from the sale of Australian real property.

Resident and non-resident corporations are both subject to the corporate tax on taxable income at a flat rate of 30%. However, if a corporation is a "base rate entity" (ie, its aggregated turnover is less than AUD $50 million and no more than 80% of its assessable income is "base rate entity passive income) for the year of income commencing 1 July 2018, the corporate tax rate is reduced to 27.5% and will gradually reduce to 25% by the 2026-27 income year. The Federal Government initially proposed to reduce the corporate tax rate to 25% for all corporations by the 2026-27 income year. However, the Government announced in August 2018 that this proposal will not proceed and the corporate tax rate will remain at 30% for corporations other than base rate entities.

Thin Capitalisation

In Australia, thin capitalisation limits can be imposed on the amount of debt deductions that an entity is entitled to claim for income tax purposes unless a de minimis exemption applies (less than AUD 2 million of Australian debt deductions in total for the entity and its associates). In general, debt deductions are disallowed for the proportion of debt that exceeds an entity's maximum allowable debt. The maximum allowable debt will depend on the circumstances of an entity.

Generally for foreign investors, the maximum allowable debt that can be used to finance their Australian assets is the greater of:

- Sixty per cent of the value of the entity's total adjusted Australian assets
- An "arm's length amount" corresponding to the amount of debt likely to have been able to be borne by a hypothetical independent borrower otherwise identical to the entity to finance the entity's Australian assets
- One hundred per cent of the gearing level of the entity's worldwide group (provided certain conditions are met)

The Government is shortly expected to introduce into Parliament legislation which provides that, with effect from 1 July 2018, the thin capitalisation rules will restrict interest deductions when "double gearing" structures are used – that is, where interest bearing debt is introduced in upper tier entities investing in Australian "flow through entities" (eg trusts and partnerships). From that date, the thin capitalisation rules will apply to ensure that additional upper tier gearing is not possible where an investor holds a 10% or more interest in a flow through entity.

Personal Taxation

A resident individual is taxed on his or her worldwide income (subject to certain exemptions and credits) on a graduated scale. For the 2018–19 tax year, this scale ranges from 19% to 45%. The first AUD 18,200 is tax-exempt, with the top marginal rate of 45% applying to income over AUD 180,000.

In addition, a levy of 2% of personal income is imposed on all resident taxpayers to cover the cost of Medicare (subject to a reduction or exemption for certain low income taxpayers).

For the 2018–19 income year non-resident individuals (other than "working holiday makers" – see below) are taxed on Australian-sourced income at 32.5% up to AUD 90,000, at 37% for taxable incomes from AUD 90,001 up to AUD 180,000 and thereafter at 45% on amounts over AUD 180,000. For the 2018-19 income year, "working holiday makers" are subject to tax at a rate of 15% for taxable incomes up to AUD 37,000 and thereafter at the ordinary tax rates applicable to non-resident individuals.

No Medicare levy is imposed on non-residents.

Recent legislation passed by Parliament will make a number of changes to the personal tax rates and thresholds in forthcoming years through to the 2024-25 income year.

Australia

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Tax Treaties: Avoidance of Double Taxation

The Australian Federal Treasury maintains a list of Australia's double tax conventions. This list is available at https://treasury.gov.au/tax-treaties/income-tax-treaties

Real Estate Investment Trusts

Introduction

Property trusts are vehicles that facilitate collective investment in property assets. Australia has one of the largest, most mature and most transparent indirect investment markets in the world, with property trusts forming a major part of this market (which also comprises syndicates and other joint investment vehicles).

Australia's first listed real estate investment trust (REIT) was established in 1971, and REITs now extend across most real estate asset classes.

There are two broad types of property trusts in Australia:

- Listed Australian real estate investment trusts (A-REITs)
- A range of unlisted vehicles

A-REITs are listed on the Australian Stock Exchange, and units can be traded in the same way as shares in listed companies. A-REITs are "open-ended vehicles" in that they do not have a defined life span. A-REITs have become a well-established part of the property investment market in Australia, with a risk/return profile generally between that of direct real estate and equity investment.

In addition to A-REITs, there are a range of unlisted investment vehicles available in the Australian market. The structures of these vehicles vary greatly as do the types of property in which they invest.

Typically, investors in property trusts derive income from the rents generated by the property assets held in the trust, together with the proceeds from the sale of assets. The income is typically distributed to unit holders in the form of distributions made quarterly or semi-annually. Many A-REITs have dividend reinvestment plans that allow unit holders to reinvest their dividends in additional units at a discount to the trading price of the unit.

The general law of trusts provides a comprehensive set of core legal principles governing the relationship between trustees (as the holders of the fund), the investors (as the beneficiaries) and the fund assets. Overlaid onto this general law is a detailed regulatory structure that applies to collective investment vehicles implemented through the Corporations Act 2001. A-REITs that are regulated under this legislation are called "registered schemes".

They are required, among other things, to have a responsible entity to manage the fund and to issue a product disclosure statement when interests in the fund are offered for investment to retail investors, as well as to comply with the ongoing management and disclosure requirements applying to registered managed investment schemes. A-REITs and other property trusts with more than 100 retail investors are required to provide an enhanced level of disclosure in their product disclosure statements.

Borrowing and Trading Levels

Gearing levels are calculated as the ratio of debt to total assets. Generally, A-REITs have a gearing ratio of between 20% and 40% of total assets. In recent years, there has also been a modest improvement in A-REITs' market prices compared with their net tangible assets (NTA) — the balance sheet value of the underlying properties less debt in an A-REIT. As A-REITs traded in the aftermath of the 2008 financial crisis at steep discounts to NTA, this has resulted in a reasonably high level of restructures and acquisitions in this sector in recent years.

Legal Form and Distribution

In the typical REIT structure the real estate holding vehicle is a passive trust which distributes 100% of the net taxable income it derives from its assets. This allows A-REITs to maximise their yields, but it is in turn dependent on their ability to raise equity in the market for refurbishment and other management requirements. The regulatory structure supports this raising of equity though rigorous disclosure as well as licensing and registration requirements, all designed to promote transparency and investor confidence.

Taxation

Investors in A-REITs (other than A-REITS that qualify as AMITs – see below) are taxed as ordinary beneficiaries of a trust. To the extent that the distributions exceed the investor's share of the net taxable income of the trust (e.g. cash distributions that are sheltered by building or plant depreciation), the excess has generally been treated as "tax deferred" in that the excess may not be immediately taxable if it can reduce the investor's cost base of its interest in the trust. If the cost base is reduced to nil, a capital gain is realised for the remaining excess.

Property trusts that qualify as "managed investment trusts" (MITs) are eligible for special tax concessions.

These include a concessional rate of withholding tax of 15% (further reduced to 10% if the MIT only holds newly constructed energy-efficient commercial buildings) on distributions to investors resident in "exchange of information" (EOI) countries (a 30% withholding rate applies otherwise for MITs).

The taxation applying to MITs which form part of stapled structures may increase under anticipated measures designed to address tax integrity issues associate with these structures (see below).

A Bill is currently before Parliament which aims to provide further concessions for MITs that invest in "affordable housing" for income years starting on or after 1 July 2018. If the MIT qualifies under the proposed regime, resident unitholders will be eligible for an additional 10% (ie, 60% in total) discount on capital gains realised and foreign unitholders who are resident in a country with which Australia has an EOI agreement will be eligible for the concessional withholding tax rate of 15%. Broadly, under this proposal, eligible MITs must ensure that their housing meets a number of requirements (including leasing the property through a community housing provider), and must allow the land to be rented as affordable housing for at least 10 years.

Trusts that qualify as MITs and which meet certain other requirements (including a requirement that member's rights to capital and income of the trust are "clearly defined") can elect to be taxed under a separate "attribution MIT" (AMIT) regime.

Under the AMIT regime, unit holders are taxed on the MITs' net taxable income based on the trustee's fair and reasonable allocation of the MIT's net taxable income of different tax characters (such as capital gains and franked dividends) to them, worked out in accordance with the constituent documents of the MIT, irrespective of whether or not the MIT makes any distributions of income to the unit holder. The allocations will be set out in a statement which the MIT must send to members within 3 months after the end of the income year.

The AMIT regime also provides for a more symmetrical approach to cost base adjustments, with an increase made to the cost base of a unitholder's units where distributions are less than the taxable amounts allocated to the unitholder and a decrease made to the cost base of a unitholder's units where distributions exceed the taxable amounts allocated to the unitholder.

Where the MIT does not make an election for the AMIT regime to apply, the general tax rules for trusts described above will continue to apply.

Corporate Collective Investment Vehicle Regime

On 13 June 2018, the Australian Treasury released updated exposure draft legislation for the Corporate Collective Investment Vehicle (CCIV) regime for public consultation (the original exposure draft legislation for this regime was previously released in September 2017).

The CCIV regime is intended to broaden the suite of investment vehicles available to Australian fund managers and introduce internationally recognised corporate investment vehicles into the Australian legal system that can be marketed to foreign investors. The exposure draft includes the core provisions establishing how CCIVs will operate, as well as provisions dealing with matters such as meeting rules and members' rights and remedies. On 19 July 2018, the Australian Treasury released a second tranche of exposure draft legislation , which includes the further aspects of the regime, including provisions covering external administration, penalties, and amendments which will provide that CCIVs are generally subject to the financial services regime contained within the Corporations Act.

Treasury has also released an exposure draft Bill which would introduce into the tax law an "attribution corporate collective investment" (ACCIV) scheme to apply to CCIVs. Under the ACCIV framework, the tax treatment of a company that is a CCIV would be broadly aligned with the tax treatment of AMITs.

Stapled Structures

Stapled structures, which involve two or more securities contractually bound together, are often used as pooled investment vehicles for commercial property and infrastructure investments. Australian REITS and infrastructure funds, by value and number, are largely stapled (eg, approximately 90% of infrastructure funds operate through stapled structures). In recent years, they have been used by a wider range of asset classes and industries with listed staples now accounting for approximately 10% of the ASX market capitalisation as at December 2016.

On 27 March 2018, the Australian Treasury released a package of measures to address tax integrity risks associated with stapled structures and to limit broader tax concessions available to foreign investors. Under this package, significant limits will be placed on MIT concessions that are currently very widely used involving stapled structures for non-resident investors. The changes have the following features:

- from 1 July 2019, integrity measures will prevent stapled structures from being used to enable business income to be taxed at the 15% MIT tax rate and, in addition, investment in agricultural land will cease to be a qualifying MIT activity;
- existing (pre-27 March 2018) stapled structures will be quarantined from these new rules for 7 years or, in the case of infrastructure staples, for 15 years; and
- the Government will still allow new staples to access the MIT concessions for qualifying infrastructure investments for a period of 15 years, but only where specific conditions are met.

Under this package, changes will also be made to the treatment of foreign pension funds and foreign sovereign investors. From 1 July 2019, foreign pension funds will only be exempt from Australian dividend or interest withholding tax where they hold a less than 10% interest in the paying entity (currently, there is no limit on the exemption). Furthermore, tax exemptions for foreign sovereign investors (including sovereign wealth funds) will be codified in legislation and limited to portfolio investments (ie where the sovereign investor holds less than 10% of the investee and does not otherwise influence the key decision making of the investee).

These changes are not expected to affect traditional property stapled structures.

Legislation to give effect to these amendments and integrity measures which will need to be met to access the 7 and 15 year concessional periods is expected to be introduced into Parliament shortly.

Hybrid Mismatch Rules

Parliament has recently enacted legislation to implement the OECD's "anti-hybrid" rules into the Australian tax law. In broad terms, these rules operate to prevent entities liable to Australian tax from obtaining taxation benefits by exploiting differences between the taxation treatment of entities and instruments across different countries.

For more information on investing in Australian real estate, please go to the publications page at www.ashurst.com and search for our publication entitled "Australian Real Estate – A legal guide for foreign investors".

Australia

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Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of Measurement	Square Metres
Rental payments	
Rents	Quoted in AUD/m2/year (net area) Can be charged net or gross of outgoings
Typical lease term	3–5 years, 6–10 years for larger occupiers
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	Six months' gross rent (depends on the term of the lease usually)
Security of Tenure	A right which a tenant has to remain in possession of property
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed at the outset and is specified in the lease
Basis of rent increases or rent review	Open market rental value (with or without ratchet) at option or mid-way through term. During term, there usually is a fixed increase (3.5–4.5%) or an increase linked to the consumer price index
Frequency of rent increase or rent review	Annual increases
Outgoings, repairs and insurance	
Recovery of Outgoings	To be paid monthly in advance by the tenant Net basis - tenant will be responsible for their proportion of the operating cost, either of the total operating cost or the increase in operating costs over a Base Year amount. Gross basis – tenant is not responsible for operating costs and the rent payable is otherwise inclusive of any operating costs the landlord may incur.
Responsibility for utilities	Consumption is generally separately metered and payable by each tenant;
Car parking	Offices: separate monthly licence for an additional fee Industrial: included in the lease
Responsibility for internal repairs	Tenant (a "redecoration clause" is usually included)
Responsibility for payment of outgoings	Landlord (charged back via outgoings charge)
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
Responsibility for building insurance	Landlord (charged back via outgoings charge)
Disposal of leases	
Tenant subleasing & assignment rights	Generally full assignment to third parties is accepted, subject to landlord's approval
Tenant early termination rights	Only by break clause
TTenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

Source: JLL

Brunei

Property Tenure/Ownership

Brunei operates a modified system of registration of title.

The main types of land tenure are:

- Freehold: Registered title may be granted in perpetuity. Ownership may be transferred with approval of His Majesty the Sultan in Council.
- Leasehold: Registered title in landed property may be granted by the state for a term of years. Terms range from 25, 50 to 99 years. Title may be transferred with approval of His Majesty the Sultan in Council. Title may be extended on expiry of the lease term with approval of His Majesty the Sultan in Council and payment of a premium.
- Strata Title: Strata Title may be obtained in a building for a period of up to 99 years.
- Lease interests: Long-term leases in commercial and residential property may be granted by registered owners of land. Leases may be registered for terms of up to 60 years. Lessees have a right to sublease. Leases of over seven years require registration with approval of His Majesty the Sultan in Council.
- The government may grant temporary occupation permits over state land to applicants, for licences to occupy land for agricultural, commercial, housing or industrial purposes. These licences are not registered, and are granted for renewable annual terms.

Major Property Legislation

- Stamp Act (Cap. 34)
- Land Code (Cap. 40)
- Land Acquisition Act (Cap. 41)
- Licensed land Surveyors Act (Cap. 100)
- Description of Land Act (Cap. 101)
- Town and Country Planning (Development Control) Act (Cap. 143)
- Land Code (Strata) Act (Cap. 189)
- The Housing Developers (Control and Licensing) Order 2012 was published in August 2012, but as of December 2017 had not yet come into force

Operational Requirements for Foreign Corporations

Modes of Entry

- Incorporation of a local company under the Companies Act (Cap. 39)
- Registration of a branch of an overseas incorporated company under Part IX of the Companies Act (Cap. 39)

Registration/Licensing Requirements

Incorporation of a Local Company

Local companies may be incorporated with limited liability to the value unpaid on shares held by its members (limited by shares) or to the value guaranteed by its members on a winding up (limited by guarantee). Companies may also be incorporated with unlimited liability on the part of its members.

Most locally incorporated companies are private limited companies (“sendirian berhad” or “sdn bhd”) and, as such, the right of transfer of shares is limited to 50 members and there is a prohibition on any invitation to the public for the subscription of shares.

Incorporation is completed by the subscription to a minimum of two shares in the proposed company by two shareholders, the registration with the Registrar of Companies (ROC) of the memorandum and articles of association, the registration of a place of business in Brunei Darussalam, the appointment and registration of at least two directors, and the payment to the ROC of the registration fee. Companies may generally undertake any type of business subject to licensing requirements. There may be licensing or approval requirements depending on the type of business undertaken. The types of businesses that generally require a licence or approval include:

- banking and finance
- insurance and insurance agents
- factories and manufacturing
- security companies
- employment agencies
- property agents
- motor vehicle dealers
- travel agents

The Housing Developers (Control and Licensing) Order 2012 provides for the licensing and regulation of property developers. As of December 2017, this Order had not yet been gazetted as coming into force.

For the purposes of incorporation there is no restriction on foreign ownership of shares. There is a minimum requirement of two directors. If there are two directors, at least one must be resident in Brunei. If there are 3 or more directors, at least two of the directors must be resident in Brunei. A Brunei citizen or permanent resident is deemed a resident in Brunei. A person from overseas may apply to the ROC for resident status for the purposes of holding a directorship and satisfying the requirement to have resident directors.

Registration of a branch of an overseas incorporated company

An overseas incorporated company may register a branch in Brunei pursuant to Part IX of the Companies Act by registering with the ROC the following documents as provided by Section 299 of the Companies Act:

- Certified true copy of the certificate of incorporation
- Certified true copy of the charter, statute or memorandum and articles, or other instrument that establishes or defines the constitution of the company
- A list of the directors of the company, giving their names, nationality, contact details, passport numbers and occupations. Where the list includes directors resident in Brunei, a memorandum executed by or on behalf of the company incorporated outside Brunei stating the powers of the local directors must also be filed
- A memorandum of appointment or power of attorney under the seal of the company incorporated outside Brunei, or on its behalf, stating the names and addresses of two or more individuals resident in Brunei, authorised to accept service of process and any notices on the company
- A notice of situation of the registered office in Brunei Darussalam

Registration fees are calculated on the registered authorised capital of the company

A branch of an overseas incorporated company registered under Part IX may undertake the same business or activities that a locally incorporated company may undertake.

Registration under Part IX does not create a separate legal entity. The rights, liabilities and obligations of the branch are the rights, liabilities and obligations of the overseas incorporated company.

A branch is obliged to lodge balance sheets every year with the ROC and to register with the ROC any changes made to its:

- Constitutional documents
- Board of directors
- Shareholding
- Names and addresses of persons authorised to accept service
- Registered office in and/or outside Brunei
- Its name
- Any changes to the power of any directors within Brunei

Foreign Employment Requirements

Overseas employees may only enter Brunei Darussalam for the purposes of work or employment under an employment pass issued by the Department of Immigration.

In order to employ overseas workers or employees, a company must obtain from the Commissioner of Labour a license to employ overseas workers. This license will state the positions, nationalities and number of overseas workers or employees allowed.

A company intending to employ a particular overseas worker or employee will need to obtain approval from the Commissioner for that worker to fill an available position on the company's license. Once approval is obtained, an employment pass will be granted by the Department of Immigration. The employee will undergo a health screening for his or her work permit to be issued. This work permit is required if the employee intends to stay and work in Brunei for a period of two years or more. Work permits are generally renewable after two years.

Tax Incentives

Investment incentives are under the purview of the Investment Incentives Order 2001 (the Order). The ambit of this legislation is "to make provisions for encouraging the establishment and development in Brunei Darussalam of industrial and economic enterprises, for economic expansion and for incidental and related purposes."

The main purpose of the Order is to provide for tax and other related incentives and reliefs to various new industries encouraged to be set up within Brunei Darussalam. Such industries are identified in the Order as:

- Pioneer industries, pioneer service companies, expansion of established enterprises as "approved industry" production of product or produce as an export product or export produce

- Companies engaged in international trade
- Warehousing and servicing industries
- Investment in new technology companies; overseas investment and venture capital undertaking and henceforth

The Order provides, "any company which is desirous of producing a pioneer product may make an application in writing to the Minister to be approved as a pioneer enterprise."

Any company which has been granted a pioneer certificate will be given the pioneer incentives provided the following requirements are met:

- If the Minister is satisfied that it is expedient in the public interest to do so
- The industry has not been carried out in Brunei on a scale adequate to the economic needs of Brunei
- There are favourable prospect of development to be a pioneer industry, and any specific product of that industry to be a pioneer product
- Every pioneer certificate issued under Section 5 of the Order shall specify the date on or before which it is expected that the pioneer enterprise will commence to produce, in marketable quantities, the product specified in the certificate as well as the date on or before which it is expected that the rate of production of that product will be attained - and that date shall be deemed to be the production day of the pioneer enterprise under Section 5(3). The purpose of fixing a production date is because, pursuant to Section 6, the relief from income tax commences from the production date.
- Tax relief shall commence on its production day and shall continue for a period of:
- 5 years, where the fixed capital expenditure is not less BND 500,000.00 but is less than BND 2.5 million
- 8 years, where the fixed capital expenditure is more than BND 2.5 million
- 11 years, where it is located in a high-technology park

The production day is designated as the date on or before which the pioneer enterprise will commence to produce the pioneer product in marketable quantities.

Further extension of the tax relief period is possible. The Minister may extend such period as he may determine, provided that the tax relief shall not, in aggregate, exceed 11 years.

Where the pioneer enterprise is one that is located in a high-technology park, the extended tax relief period shall not exceed five years at any one time as the Minister may determine, provided that the total tax relief shall not, in total, exceed 20 years.

Restrictions on Ownership of Property by Foreigners

Any transfer of freehold and leasehold landed property may only be registered with approval of His Majesty the Sultan in Council. Generally, only individual citizens of Brunei may be registered as owners of these types of landed property.

There is no restriction as to who may be registered as owners of strata units.

Locally incorporated or registered companies, and individuals, both local and foreign may be registered as a long-term lessee of up to 60 years over residential, industrial or commercial property. Registration of leases of over seven years requires approval of His Majesty the Sultan in Council.

Application may be made to the government for a temporary occupation permit of state land by locally incorporated or registered company or individual Brunei citizens or permanent residents.

Amendments to the Land Code were published in 2016 but as of December 2017 have not been gazetted as to coming into force. The amendments set out a clear prohibition on non-citizens from owning or having rights or interests in landed property. Until the announcement of the proposed changes, non-citizens had used a combination of powers of attorney and trust arrangements to obtain interests in landed property. The amendments do not restrict noncitizens from taking lease interests or interest's in strata titled properties.

Foreign Exchange Controls

There are no restrictions on the remittance or repatriation of capital or profits outside Brunei Darussalam.

Taxes on Possession and Operation of Real Estate

Annual Ground Rent is payable by registered owners of land depending on the conditions of use attached to the land at the following rates (in Brunei Dollars):

- Padi
  - BND 2.00 (USD 1.438) / acre
- Agriculture
  - BND 5.00 (USD 3.46) / acre
- Rubber
  - BND 5.00 (USD 3.46) / acre
- Residential
  - BND 10.00 (USD 76.92) per 1/4 acre (Outside Development Control Competent Authority Area (DCCA)),
  - BND 50.00 (USD 34.60) per 1/4 acre (Within DCCA)

- Residential and minor commercial
  - BND 12.50 (USD 8.65) per 1/4 acre (Outside DCCA),
  - BND 62.50 (USD 43.25) per 1/4 acre (Within DCCA)
- Residential and commercial
  - BND 125.00 (USD 86.50) per 1/4 acre
- Flats
  - BND 100.00 (USD 69.20) per 1/4 acre
- Flat and commercial
  - BND 125.00 (USD 86.50) per 1/4 acre
- Commercial
  - BND 150.00 (USD 103.80) per 1/4 acre
- Commercial and industrial
  - BND 150.00 (USD 103.80) per 1/4 acre
- Industrial
  - BND 150.00 (USD 103.80) per 1/4 acre
- Institutional building
  - BND 62.50 (USD 43.25) per 1/4 acre
- Institutional building, commercial and industrial
  - BND 150.00 (USD 103.80) per 1/4 acre
- Hotel
  - BND 150.00 (USD 103.80) per 1/4 acre
- Filling/petrol station
  - BND 125.00 (USD 86.50) per 1/4 acre
- Diplomatic
  - BND 62.50 (USD 43.25) per 1/4 acre

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty is payable on documents relating to the transactions involving immovable property.

The main documents involved and the stamp duty that they would attract are as follows:

- Agreements
  - BND 1.00 (USD 0.69)
- Powers of Attorney
  - BND 10.00 (USD 6.92)
- Trust deeds
  - BND 10.00 (USD 6.92)
- Leases
  - At an ad valorem rate.
  - If the lease is for less than one year, stamp duty is calculated at BND 3.50 (USD 2.42) for the first BND 500.00 (USD 346.00) of annual rent and BND 1.00 (USD 0.69) for every BND 250.00 (USD 173.00) of annual rent thereafter.
  - If the lease is for more than one year but less than five years, stamp duty is calculated at BND 7.50 (USD 5.19) for the first BND 500.00 (USD 346.00) of annual rent and BND 2.00 (USD 1.38) for every BND 250.00 (USD 173.00) of annual rent thereafter.
  - If the lease is for more than five years, stamp duty is calculated at BND 14.00 (USD 9.69) for the first BND 500.00 (USD 346.00) of annual rent and BND 4.00 (USD 2.96) for every BND 250.00 (USD 173.00) of annual rent thereafter.
- Memorandum of charge
  - At an ad valorem rate.
  - For the first BND 500.00 (USD 346.00) of security created, the stamp duty is BND 1.85 (USD 1.28) and BND 1.00 (USD 0.69) for every BND 500.00 (USD 346.00) of security created thereafter.

On approval for the transfer of landed property, stamp duty for the transfer is charged at an advalorem rate, based on a valuation of the property by the Land Office. Stamp duty is charged at BND 5.00 (USD 3.466) for the first BND 500.00 (USD 346.00) of value and BND 1.50 (USD 1.04) for every BND 250.00 (USD 173.00) of value thereafter.

Income Tax

There is no personal income tax charged in Brunei Darussalam.

Goods and Services Tax

There is no goods and services tax charged in Brunei Darussalam.

Corporate Tax

Brunei companies are liable to income tax on income derived from or accrued in Brunei Darussalam or received from overseas.

Companies are subject to tax on the following types of income:

- Gains of profits from any trade, business or vocation
- Dividends received from companies not previously assessed for tax in Brunei Darussalam
- Interest and discounts
- Rents, royalties, premiums, and any other profits arising from properties

Companies with annual gross sales or turnover of less than BND 1,000,000.00 are exempt from paying corporate income tax.

Brunei

Corporate income tax is paid at a rate of 18.5%. From year end 2012, the following tax thresholds apply:

- For the first BND 100,000.00 (USD 69,200) of chargeable income, tax is charged at 25% of the applicable tax rate
- For the next BND 150,000.00 (USD 103,800) of chargeable income, tax is charged at 50% of the applicable tax rate
- The remaining balance of chargeable income is paid at the applicable tax rate of 18.5%

For newly incorporated companies, a tax exemption will be granted for the first BND 100,000 (USD 69,200) of the chargeable income of the company during the first three consecutive Years of Assessment falling within or after Year of Assessment 2008. The chargeable income above BND 100,000 (USD 69,200) shall be charged with tax at the applicable rate.

Withholding tax is payable on payments made by Brunei residents to non-residents at the following rates:

- Interest, commission, fee or other payment in connection with any loan or indebtedness – 15%
- Royalties or other lump sum payments for the use of movable properties – 10%
- Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information – 10%
- Rendering technical assistance and service fees – 20%
- Management fees – 20%
- Rent or other payments for the use of movable property – 10%
- Non-resident Directors' Remuneration – 20%

Double Tax Relief

Brunei Darussalam has entered into double taxation treaties with the following countries:

United Kingdom

Bahrain

China

Hong Kong

Japan

Kuwait

Indonesia

Malaysia

Oman

Pakistan

Singapore

Vietnam

Laos

United Arab Emirates

Tajikistan

Qatar

South Korea

Luxembourg

Real Estate Investment Trusts

REITS are not commonly utilised in Brunei Darussalam.

Common Terms of Lease for tenancy Agreements

Unit of measurement	
Unit of Measurement	Square Feet
Rental payments	
Rents	BND/month, exclusive of service charge
Typical lease term	2 years or longer
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	2–3 months
Security of Tenure	For the duration of the tenancy. There is no guarantee beyond the original term
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed at the outset and specified in the tenancy agreement
Basis of rent increases or rent review	Open market rental value
Frequency of rent increase or rent review	Every 2 years
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity, telecommunication and water consumption are separately metered and payable by each tenant
Car parking	Typically not provided
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord (charged back via service charge)
Responsibility for external/structural repairs	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Subletting or assignment to third parties is usually accepted (subject to the landlords approval)
Tenant early termination rights	Only if a predetermination clause is provided for in the tenancy agreement
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition on expiry/termination

Source: JLL

Cambodia

Sciaroni & Associates
Since 1993

Property Tenure/Ownership

Cambodia adopted a freehold system of land tenure in 2001 with the implementation of the Land Law. Private ownership of land is permissible for most types of land.

Under the former legal regime, ownership was permitted for residential property only and agricultural land was reserved for state ownership, with limited "possession" status only being granted to private citizens.

Currently, there are three main types of land tenure:

- Freehold: fee simple, unrestricted;
- Leasehold: long-term leaseholds (for a term of between 15–50 years, with one renewal of the term) create "in rem" rights that can be registered; and
- Concessions: conditional leases granted by the government over state private land. Concessions are used for specific development purposes, with the land subject to specific conditions of use, primarily for agricultural projects, island development and mineral exploitation.

Major Legislation

- The Constitution, promulgated on September 21, 1993, as amended
- The Land Law, promulgated on August 30, 2001, sets out the rights of tenure and the different classifications of land (State Public, State Private, Private, Monastery, Indigenous Land)
- Law on Natural Protected Areas, promulgated on February 15, 2008
- Law on Finance for year 2010, introducing Property Tax
- Law on Investment of the Kingdom of Cambodia 1994 (as amended in 2003)
- Sub-decree No. 111 on the Implementation of the Amendment to Law on Investment of the Kingdom of Cambodia, dated September 27, 2005
- Law on Expropriation, promulgated on February 26, 2010
- Sub-decree No. 126 on the Management and Use of Co-owned Buildings, dated August 12, 2009
- Sub-decree No. 146 on Economic Land Concession, dated December 27, 2005, as amended on September 15, 2008
- Prakas No. 493 of the Ministry of Economy and Finance on Collection of Property Tax, dated July 19, 2010
- Prakas No. 371 on Taxable Rate on Immovable Properties, dated May 5, 2011
- Prakas No. 1222 on Real Estate Development Business Management, dated December 15, 2009
- Law on Providing Foreigners with Ownership Rights in Private Units of Co-Owned Buildings, dated May 27, 2010
- Sub-decree No. 82 on Determination of Proportion and Method of Calculation of Private Unites to Be Owned by Foreigners within a Co-Owned Building, dated July 29, 2010
- Civil Code, effective on 8 December 2007, enforceable on December 21, 2011
- Law on the Implementation of the Civil Code, effective on May 31, 2011, enforceable on December 21, 2011
- Sub-decree No. 86 on Construction Permit, dated December 19, 1997
- Royal decree on Transitional Principles and Provisions for the Transfer of Public Properties of the State and of Public Entities, dated August 3, 2006
- Sub-decree on Rules and Procedure for Transfer of Public Properties of the State and of Public Entities, dated November 27, 2006
- Inter-ministerial Prakas No. 59 on Registration of Immovable Property based on the Civil Code dated June 3, 2011
- Sub-decree No. 39 on Management of Borey dated March 10, 2011
- 2013 Law on Financial Management dated December 26, 2012
- Sor Chor Nor No. 1344 on Strengthening on Stamp Duty Management in Phnom Penh, and 24 Provinces.

Operation Requirements for Foreign Corporations

Limited companies, branch offices and representative offices are registered with the Ministry of Commerce (MOC). Limited companies engaging in encouraged business activities may be eligible for investment incentives offered through registration with the Council for the Development of Cambodia (CDC).

Under the Law on Commercial Enterprises, forms of commercial enterprises include:

- Partnership;
- Limited Company;
- Branch Office;
- Representative Office.

Cambodia

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Registration/Licensing Requirements

Registration is a straightforward process, although time consuming and document intensive compared to other jurisdictions. Most enterprises can begin operations upon the issuance of the approval letter from the MOC. Certain business sectors require a specific operating license issued by the relevant ministry (e.g. mining, telecommunications, hotels and restaurants, banking, real estate and securities).

Foreign Employment Requirements

Month-long business visas are available on arrival, with the right to extend on a yearly basis. All foreign employees are required to register at the Ministry of Labor for work permits, renewable annually. There are no limitations on the number of renewals. Companies are entitled to hire foreigners of up to 10% of its total workforce. Exemptions (for over 10% of the workforce) are available upon request to the Ministry.

Foreign Investment Incentives

The CDC grants investment incentives to qualified investment projects (QIP) in the form of profit tax holidays (of up to three years) and exemption on import duty for production equipment, raw materials and inputs to manufacturing. Rather than a tax holiday, a QIP may elect to take accelerated depreciation on manufacturing assets.

Sub-decree No. 111 provides a "Negative List" which restricts certain activities from eligibility for some or all investment incentives.

The CDC requires all QIPs to apply for a Certificate of Compliance on an annual basis to enable the QIP to continue receiving the incentives granted.

Restrictions on Foreign Property Ownership

Ownership of land is restricted to Cambodian citizens. Cambodian citizens include individuals and legal entities in which 51% or more of the shares are held by Cambodian citizens.

Foreigners may acquire leasehold rights (which can be for a term of up to 100 years) and concessions. In addition, since the implementation of the Law on the Provision of Ownership Rights over Co-owned Buildings to Foreigners in 2010, foreigners may acquire apartments in registered co-owned buildings above the ground floor to a maximum of 70% of any one apartment building, provided that the building has applied for and obtained "strata title", which generally only applies to new construction.

Foreign Exchange Controls

There are no restrictions on the remittance or repatriation of capital or profits into or out of Cambodia, so long as the transfers are conducted through registered financial institutions.

The Amended Law on Investment guarantees the rights of foreign investors to remit foreign currencies abroad for the following:

- Payment of imports and repayment of principal and interest on foreign loans
- Payment of royalties and management fees
- Remittance of profits
- Repatriation of invested capital on dissolution of investment projects

Whereas the Riel (KHR) is the official currency, most transactions are conducted and denominated in the US dollar. Remittances are subject to applicable withholding taxes.

Taxes on Possession and Operation of Real Estate

Property tax is levied on immoveable property in Cambodia in the following manner:

- Except for unused land, property tax of 0.1% is levied on 80% of the value of properties valued in excess of KHR 100 million (USD 25,000). The tax base is derived from the value of the property determined by the Real Estate Evaluation Commission. The tax is levied annually.
  - For example: (80% x Value of Property – USD 25,000) x 0.1% = property tax liability.
- An unused land tax of 2% is levied on all unused properties. It is calculated on the market price per square meter, as assessed by the Committee for the Valuation of Unused Land. This tax may be paid annually (by 30 September) or will be levied at the time of transfer (with back taxes assessed since last payment).
- For leased properties, a withholding tax of 10% is levied on the rental amount.

Cambodia

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Taxes on Acquisition and Transfer of Real Estate

A transfer tax of 4% is levied on both all "hard title" and "soft title" property transfers (transfer of title). It is important to note that currently, a vast majority of private properties are registered only with the local authorities (commonly referred to as "soft title", and technically constitutes a weak "possession" status only). Typically, the General Department of Taxation will assess the value of properties based on its determined ranges, for the purpose of assessing transfer tax (and might not rely on the price stated in the sale contract).Resident enterprises are taxed on all profits derived from both inside and outside Cambodia. Non-resident enterprises are taxed on Cambodian sourced income.

Taxable income is the net profit realized from all business operations, including capital gains realized from the sale of real property during or at the cessation of business.

The current corporate profit tax rate is 20%. However, certain industries, such as oil and gas production, as well as mining enterprises, are taxed at a higher rate of 30%.

There is a 0% tax rate applied on the profit of CDC approved projects for the duration of the approved tax holiday (up to three years).

Companies are subject to a monthly prepayment of tax on profit, self-assessed at 1% of the monthly turnover, inclusive of all taxes except VAT.

A withholding tax on dividends is levied at 14%; however, this is only applied to non-resident shareholders.

Other forms of withholding tax are as follows:

Payments Made to a Resident Entity

- Payment for services to a physical person: 15%
- Royalty payments for intangible assets and interests in minerals, oil and natural gas: 15%
- Interest payments to a physical person or enterprise, except for interest paid to a domestic bank or savings institution: 15%
- Rental on moveable or immovable properties: 10%
- Interest payments on a fixed deposit made by a domestic bank or savings institution to a resident taxpayer: 6%
- Interest payments on a savings account made by a domestic bank or savings institution to a resident taxpayer: 4%

Payments made to a non-resident

- Interest: 14%
- Royalties, rent: 14%
- Management or technical services: 14%
- Dividends: 14%

Tax Treaties: Avoidance of Double Taxation

Cambodia singed its first DTA with the Republic of Singapore on May 2016 and thereafter its second DTA agreement on 13 October 2016 with the People's Republic of China. Subsequent to the DTAs with Singapore and China, Cambodia also entered into DTAs with the Kingdom of Thailand (7 January 2017), Vietnam (31 March 2018) and Brunei Darussalam (27 July 2017). DTA negotiations with Japan, Malaysia, Philippines and South Korea are currently ongoing.

China

ashurst

Property Tenure/Ownership

While all land in China is still owned by the state, an amendment to Article 10 of the Constitution of the People's Republic of China (PRC), made in April 1988, allows the transfer of land use rights for value (Land Use Rights).

The ownership of Land Use Rights is the main form of property ownership applicable to foreign investors. Land Use Rights can be transferred, assigned, leased and mortgaged. Land Use Rights can be acquired through a negotiated agreement, an auction or a tender. Previously, a majority of Land Use Rights were assigned through negotiation, but now, all rights for new developments are obtained through a public tender or an auction process. Though the purchase of land from private developers can be negotiated privately, the transaction information in Shanghai has to be posted on the public government website.

Land Use Rights for real estate developments are typically for terms of 40 to 70 years and are granted in consideration of an upfront premium. The national standard for maximum periods of Land Use Rights are:

Usage	Use period
Residential	70 years
Commercial, tourist, recreational	40 years
Industrial	50 years
Educational, scientific, cultural, public health, physical education	50 years
Mixed-use	50 years

Major Property Legislation

- PRC Law of Administration of Urban Real Estate (issued on July 5. 1994, revised on August 30, 2007 and August 27, 2009)
- Implementation Rules of PRC Land Administration Law (issued on December 27, 1998, effective on January 1, 1999, revised on January 8, 2011 and July 29, 2014)
- Regulations on Administration of Development and Operations of Urban Real Estate (issued and effective on July 20, 1998, revised on January 8, 2011)
- Opinions for Regulating the Access by and Administration on Foreign Investment in the Real Estate Market (issued and effective on July 11, 2006)
- Provisional Regulations/Interim Regulations of the PRC concerning the Grant and Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas
- Land Management Law of PRC (issued and effective on May 19, 1990 and revised on August 28, 2004)
- Measures on Administration of Foreign Investment on Development of Land (issued on May 19, 1990)

Specific legislation concerning the implementation of national law often exists at the provincial level.

In February 2003, the Ministry of Land and Resources PRC (MLR) announced restrictions on the sale of land zoned for villa use to developers countrywide. This was largely aimed at ensuring that banked land was developed. In addition, the MLR and the National Development and Reform Commission (NDRC) jointly issued the Catalog of Prohibited Uses of Land and the Catalog of Restricted Uses of Land on December 12, 2006. This completely prohibited the use of land for real property development of villas and golf courses. Such catalogs were supplemented by the MLR in 2009, showing the trend of more restrictions on land use.

In late 2003, floor area ratios were reduced in Shanghai to limit the buildable area of residential developments to 2.5 times of plot size and office developments to 4.0 times of plot area. Previous developments had been built at nearly double these ratios.

In 2004, the government banned the use of loans to purchase land, effectively requiring developers to purchase the land outright. In addition, the government limited borrowings by developers to 65% of the development cost.

Individuals borrowing for residential property were also limited to a percentage of the property value for secondhand transactions. However, government policies toward bank loans to real properties have shown the trend of tightening in recent years.

In July 2006, several PRC authorities jointly announced a requirement for foreign investors making investments in the PRC real estate sector to establish a business presence in China and to invest via that entity. More stringent requirements with regard to obtaining offshore finance and paid-in registered capital were also put in place.

In May 2007, the Chinese Ministry of Commerce (MOFCOM) and the State Administration of Foreign Exchange (SAFE) jointly issued a new notice, requiring foreign investors to purchase land use rights or building ownership rights

before applying to establish a foreign invested real estate enterprise in China. Effective on June 1, 2007, SAFE no longer processes foreign exchange registrations, currency conversions or debt registrations for foreign invested real estate enterprise business capital accounts (i.e. debt funding to purchase land use or building ownership rights can no longer come from overseas). In addition, any form of direct or indirect fixed return in favor of the foreign partner in a joint venture real estate enterprise is now prohibited. All foreign invested real estate projects approved at provincial level must be filed with the central MOFCOM.

In June 2008, MOFCOM delegated its verification powers regarding the filing of foreign investment in real estate to provincial level commerce authorities, signaling an easing on the requirements for foreign investment in the real estate industry.

The Foreign Investment Guiding Catalog (the Catalog) has been jointly revised and promulgated by the NDRC and MOFCOM on December 24, 2011, with the construction and operation of villas being moved from the category of "restricted" in the Catalog (then in force) to the category of "prohibited", showing the trend of prohibition on certain types of foreign investment on real property.

The Ministry of Housing and Urban-Rural Development (MOHURD, the successor of MLR) issued the Administrative Measures for Floor Area Ratio of Construction Land on February 17, 2012 that stipulated more specific rules and stricter standards on floor area ratios to impose stricter control on development of real property.

The Catalog was further revised and promulgated again on April 10, 2015, with all items in relation to foreign investment in real estate industry under the category of "restricted" or "prohibited" being removed (which means foreign investment in real estate industry is "allowed" in the PRC again). However, it is worth noting that foreign invested real estate enterprises shall still be subject to relevant regulatory requirements (e.g. business presence principle and relevant filing requirements).

The filing process of foreign investment in real estate industry has been simplified by MOFCOM in 2014 and 2015, by replacing the previous hardcopy filing system with the online filing system.

On August 19, 2015, several PRC authorities jointly announced the Notice of the Ministry of Housing and Urban-Rural Development and Other Departments on Amending the Policies Concerning Access by and Administration of Foreign Investment in the Real Estate Market. According to this notice, the foreign exchange registration procedures for the foreign-invested real estate enterprises were also simplified (i.e. the foreign-invested real estate enterprises may carry out relevant foreign exchange registrations directly with the commercial banks), and the requirement on applying for domestic or foreign loans (i.e. full payment of the registered capital) was lifted.

On November 6, 2015, the Ministry of Commerce and the State Administration of Foreign Exchange jointly announced the Notice on Further Improvements to Filing for Real Estate Investments of Foreign Investors. According to this Notice, the filing announcement procedures of foreign investment in real estate industry on the website of the Ministry of Commerce was removed; upon completion of the relevant approval procedure with the competent local commerce authorities, foreign-funded real estate enterprises may complete the registration formalities for foreign exchange under direct foreign investment with the banks pursuant to the relevant foreign exchange control provisions.

Operational Requirements for Foreign Corporations

Office

Modes of Entry

- Foreign Investment Enterprises
  - Wholly foreign-owned enterprises (referred to as WFOE)
  - Equity joint ventures
  - Cooperative joint ventures
- Representative Offices
- Partnership

Registration/Licensing Requirements

1. Foreign Investment Enterprises

- Name registration – Municipal Administrative Bureau for Industry and Commerce (AIC)
- Business registration - AIC
- Business filing – MOFCOM

The following documents should be presented:

- application form
- certificate of name registration
- contract and articles of association
- identification documents of the investor
- appointment of general manager, vice-general manager and directors, and copies of valid identification documents
- appointment of legal representative and copies of his/her valid identification documents

- office premises lease contract and copy of deeds to property
- power of attorney issued by the investor to the relevant attorney for the registration process
- letter of authorisation regarding the delivery of legal documents signed by the investor and the person who is authorised to receive the legal documents on behalf of the investor.

2. Representative Offices

- Initial approval certificate from MOFCOM
- Business registration – AIC

The following documents should be presented:

- application signed by the chairman or president of the enterprise
- articles of association of the enterprise
- approval certificate
- copies of a legitimate certificate for operation for at least two years issued by the relevant government authority of its host country
- original capital credit certificate issued by the bank with which the enterprise does business
- appointment letter for the chief representative and representatives signed by the chairman of the board of directors or general manager of the enterprise, together with each of their resumes and copies of their identification cards
- office premises lease contract and copy of deeds to property.

3. Partnership

- Initial approval certificate from MOFCOM
- Business registration – AIC

The following documents should be presented:

- application signed by all partners
- partnership contract
- copies of identification documentation of all partners
- approval certificate
- office premises lease contract and copy of deeds to property
- power of attorney issued by all partners to the relevant attorney for the registration process
- statement regarding compliance with state investment policy
- contribution confirmation
- capital credit certificate issued by the bank with which the foreign partner does business
- letter of authorisation regarding the delivery of legal documents signed by the foreign partner and the person who is authorised to receive the legal documents on behalf of the foreign partner.

Retail Trade

After entry into the World Trade Organisation (WTO) in December 2002, China has undertaken major commitments to reduce restrictions on business. Retailers are now allowed to set up independent entities and are no longer required to set up joint ventures.

The establishment of a wholly foreign-owned retail business requires any license application to be accompanied by a suitable retail premises lease agreement.

All geographic restrictions have been lifted, and there are no longer any restrictions on franchising other than the requirements of the "2+1" rule. This rule mandates franchisors to operate two company-owned stores (anywhere in the world) before commencing franchising activities in China. The previous requirement that the two stores be in China was removed in 2007, but, in practice, franchisors are usually required to provide additional information if they do not have a presence in China.

The retailing and distribution of chemical fertilizers, processed oil and crude oil are now allowed. In addition, foreign service suppliers are now permitted to engage in the retailing of all products, and foreign chain store operators will have the freedom of choice of any partner, legally established in China.

Industrial

Registration/Licensing Requirements

Please refer to the "Foreign Investment Enterprises" section under "Office".

Foreign Investment Incentives

In China, there is a wide range of incentives for foreign investors depending on the industry type and location.

Foreign investment projects are divided into three types—encouraged, restricted or banned by the central government. Projects encouraged are typically production oriented projects, especially high-technology and export oriented production, as well as infrastructure projects. The categorisation of foreign investment projects is regularly reviewed. The Catalog, updated on April 10, 2015 ("2015 Catalog"), had made significant changes to the former versions. Real estate industry had been removed from the restricted category.

The latest updated Catalog came effective from July 28, 2017 ("2017 Catalog") and it continues the tendency of opening-up of the market in various industries, in particular, transportation and service industries, manufacturing industry and mining and oil & gas industries. The 2017 Catalogue is divided into two parts, being the "encouraged" category and the "negative" list (the " 2017 National Negative List"). The 2017 National Negative List categorises a number of industries or sectors as either "restricted" or "prohibited". Industries or sectors which are not "restricted" or "prohibited" are considered "permitted" and benefit from the simpler and quicker procedures. An industry in the "encouraged" category will be entitled to certain preferential treatment.

The 2017 National Negative List was updated on June 28, 2018 to further reduce the foreign investment restrictions in the above industries as well as finance and agricultural industries, and it provided specific timelines for future cancellation of foreign shareholding limit in certain industries . Compared to the 2015 Catalog, the number of industries which are subject to restrictions have been reduced from 93 to 48.

A foreign investor can get a fair idea of whether its proposed investment is permitted or subject to approval by simply checking the National Negative List to check if their proposed investments shall be subject to the case-by-case MOFCOM approval.

Foreign investment incentives are more readily available and more wide-ranging in Free Trade Zones, China's Special Economic Zones and open coastal cities, as well as in national-level high and new technology industrial zones.

Typical tax incentives for foreign investors have been canceled since the implementation of the new Corporation Income Tax Law in 2008, but foreign investors engaging in high-technology operations and investing in China's western areas continue to enjoy tax incentives such as tax holidays and reduced corporate income tax.

To attract foreign investment, some local governments have now adopted incentive schemes. In Shanghai, some district governments return a portion of taxes paid to foreign investors.

Property development does not qualify as a production oriented enterprise and, therefore, tax holidays are limited.

On December 21, 2017, the Ministry of Finance, the State Administration of Taxation (SAT), the National Development and Reform Commission and the Ministry of Commerce jointly issued tax circular Cai Shui [2017] No. 88, Circular on Policy Issues Concerning Provisionally Not Levying Withholding Income Tax on Direct Investments by Foreign Investors Made Using Distributed Profits, which provides a temporary waiver of enterprise income tax (EIT, usually at 10%, unless a preferential tax rate applies under a double tax treaty or arrangement) for non-tax-resident enterprises (i.e. overseas investors) that make direct investments in an encouraged industry with profits distributed by a tax-resident enterprise in the PRC ("Tax Deferral"), if certain conditions are met. Subsequently, on January 2, 2018, the SAT issued the SAT Announcement [2018] No.3, Announcement on Issues Relevant to the Implementation of the Policy of Provisionally Not Levying Withholding Income Tax on Direct Investments Made by Foreign Investors Using Distributed Profits in order to provide further guidance in this regard.

Both Circular 88 and Announcement 3 have a retrospective effect from January 1, 2017, which means that the Tax Deferral applies to dividends or profit distributions derived by overseas investors from their equity investments in the PRC on and after January 1, 2017.

Restrictions On Foreign Property Ownership

Land ownership for all local and foreign users is limited to land rights granted by the state or assigned from a current land user.

There is no restriction against foreign investors purchasing property zoned for residential, commercial, tourist, entertainment or financial services in Shanghai and Beijing. Foreign investors are allowed to invest in local residential projects.

Foreign Exchange Controls

The Chinese currency, Renminbi (RMB), is not freely convertible at present, though free convertibility is expected in the midterm, according to the WTO schedule.

The State Administration of Exchange Control regulates the flow of foreign exchange in China and controls all foreign expenditure and outward remittances.

On December 1, 1996, the RMB became convertible under the current account, which includes trade, labor, tourism and short-term banking. Currency exchange relating to direct investment, international loans and securities trading is still restricted.

Taxes on Possession and Operation of Real Estate

Real Estate Tax

Real estate tax applies to the holders of property titles in China. Currently, in most of the cities around China, real estate tax is not levied upon real property owned by individuals for nonbusiness purposes.

Since 2011, both the Shanghai and Chongqing municipal

governments have introduced new real estate taxes to curb speculation. These real estate taxes are levied on individual owners who have more than one property. Real estate tax is levied as follows:

- For owner-occupied properties in Shanghai, real estate tax rate is from 0.4% to 0.6% of 70% of the original value of the property. In Chongqing, real estate tax rate is from 0.5% to 1.2%.
- For leased properties in Shanghai, real estate tax is levied at 12% of rent for both foreign and local companies.
- For leased properties without rental income, real estate tax is levied at 1.2% of the annual value.

From January 1, 2009, real estate tax also applies to foreign-invested enterprises and foreign individuals.

Land Use Tax

Land use tax is levied on Land Use Right holders and is charged at rates ranging from RMB 1.50 (USD 0.22[1]) per sqm per annum to RMB 30 (USD 4.38) per sqm per annum in Shanghai, depending on the location and use.

Taxes on Leasing Income

When taxing rental income in China, the government sometimes defines the taxes in three categories — property tax, value-added tax and income tax. Other times, the government lumps the taxes together and calls it a "comprehensive" tax. The taxes are applied in Beijing, Shanghai and Guangzhou, as follows:

Residential property

- Beijing
  - Leased by an individual landlord: either 1) comprehensive rate: 5%; or 2) by-category rate: real estate tax (4% of rental income) + value-added tax (1.5% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education fee supplement (3% of value-added tax) +local education fee supplement (2% of value-added tax) + individual income tax (10% of the income from property leasing).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50–30.0 per sqm or USD 0.22–4.38) + value added tax (11% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education fee supplement (3% of value-added tax) + local education fee supplement (2% of value-added tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).
- Shanghai
  - Leased by an individual landlord: 5% comprehensive.
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50–30.0 per sqm or USD 0.22–4.38) value-added tax (5% of rental income) + city maintenance and construction tax (7% of value-added tax) + education fee supplement (5% of value-added tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).
- Guangzhou

	Individual (comprehensive rate)
Monthly rental < RMB 2,000 (USD 292)	4%
Monthly rental between RMB 2,000 (USD 292) (inclusive) and RMB 30,000 (USD 4,380) (inclusive)	6%
Monthly rental between RMB 30,000 (USD 4,380) and RMB 100,000 (USD 14,599) (inclusive)	7.9%
Monthly rental > RMB 100,000 (USD 14,599)	8%

Nonresidential property

- Beijing
  - Leased by an individual landlord: either
  1. comprehensive rate:
  - Monthly rental < RMB 3,1500 (USD 4,599): 12%
  - Monthly rental ≥ RMB 3,1500 (USD 4,599): 7%, or
  2. by-category rate: real estate tax (12% of rental income) + value-added tax (5% of rental income) + city maintenance and construction tax (1/5/7% of value-added tax) + education fee supplement (3% of value-added tax) + local education fee supplement (2% of value-added tax) + individual income tax (20% of the income from property leasing) + urban and township land use tax (RMB 1.50–30.0 per sqm or USD 0.22–4.38) + stamp tax (0.1% of rental income).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50–30.0 per sqm or USD 0.22–4.38) + value added tax (11% of rental income) + city maintenance and construction tax (7% of value-added tax) + education fee supplement (3% of value-added tax) + local education fee supplement (2% of value-added tax) +

[1] The dollar-yuan exchange rate used in this guideline is 1:6.85.

stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).

- Shanghai
  - Leased by an individual landlord: real estate tax (12% of rental income) + urban and township land use tax + value-added tax (5% of rental income) + city maintenance and construction tax (1% to 7% of value-added tax) + education fee supplement (5% of value-added tax) + stamp tax (0.1% of rental income) + individual income tax (20% of the income from property leasing, deducted of certain amounts).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50–30.0 per sqm or USD 0.22–4.38) value-added tax (5% of rental income) + city maintenance and construction tax (1 percent to 7% of value-added tax) + education fee supplement (5% of value-added tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).
- Guangzhou

	Individual (comprehensive rate)
Monthly rental < RMB 2,000 (USD 292)	5%
Monthly rental between RMB 2,000 (USD 292) (inclusive) and RMB 30,000 (USD 4,380) (inclusive)	8%
Monthly rental between RMB 30,000 (USD 4,380) and RMB 100,000 (USD 14,599) (inclusive)	13.7%
Monthly rental > RMB 100,000 (USD 14,599)	14%

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty and Legal Costs

Under the 1988 provisional regulations on stamp duty, local governments are allowed to decide the stamp duty within a given range. Stamp duty on sale or lease agreements for real estate is assessed at 0.05% of the value for sales or 0.1% of the leasing fee.

Since 1994, all foreign-invested enterprises and foreign enterprises are subject to stamp duty.

Notarization fees are charged at rates ranging from 0.3% to 0.01% of the property's purchase price. Sometimes, a discount may be given at the discretion of the notary agency, although this is not written in the tax regulations.

Real estate registrations are charged at RMB 80 (USD 12) per set for a residential property and RMB 550 (USD 80) per set for a nonresidential property.

Deed Tax

Deed tax is levied on purchasers of real property at the rate of 3% to 5%. According to the Circular on Adjusting Deed Tax and Business Tax Policies for Real Estate Transactions promulgated on 17 February 2016, in most cities, for those who purchase a sole property for family occupation, if the area of the property is under 90 sqm, the deed tax is reduced to 1%; if the area of the property is more than 90 sqm, the deed tax is reduced to 1.5%; and for those who purchase a second property for family occupation, if the area of the property is under 90 sqm, the deed tax is reduced to 1%; if the area of the property is more than 90 sqm, the deed tax is reduced to 2%. However, in Beijing, Shanghai, Guangzhou and Shenzhen, for the purchasers of a second property for family occupation, the deed tax still remains at 3%.

Valued-added Tax

According to the Circular on Comprehensively Promoting the Pilot Program of the Collection of Value-added Tax in Lieu of Business Tax issued on 23 March 2016 by the State Administration of Taxation and Ministry of Finance, if an individual sells a residential property that has been owned by the seller for less than two years in any regions other than Beijing, Shanghai, Guangzhou and Shenzhen, the individual shall pay a value-added tax at the rate of 5% in respect of the full amount of the sales proceeds; if an individual sells a residential property that has been owned by the seller for more than two years (inclusive) in any regions other than Beijing, Shanghai, Guangzhou and Shenzhen, the value-added tax shall be exempted.

In Beijing, Shanghai, Guangzhou or Shenzhen, if an individual sells a residential property that has been owned by the seller for less than two years, the value-added tax should be paid at the rate of 5% in respect of the full amount of the sales proceeds. If an individual sells a nonordinary residential property that has been owned by the seller for more than two years (inclusive), the valueadded tax should then be paid at the rate of 5% of the sale proceeds after deduction of the original purchase price.

For the sale of ordinary residential property that has been owned by the seller for more than two years (inclusive) in Beijing, Shanghai, Guangzhou and Shenzhen, the valueadded tax shall be exempted.

City Maintenance and Construction Tax

City maintenance and construction tax is levied at three levels, namely 1%, 5% and 7%, of value-added tax, depending on the location of the taxpayer. The highest rate is applicable to downtown locations. From December 1, 2010, foreign companies and foreign individuals are also subject to this tax at the same level as imposed to domestic companies and PRC nationals.

Land Appreciation Tax

The land appreciation tax (LAT) was introduced in January 1994. LAT applies to the sale of real estate and is levied at rates between 30 percent and 60 percent on profits from real estate sales:

Profit Band	LAT Rate
On the portion of profit not exceeding 50% of deductible items	30%
For the portion over 50%, but not exceeding 100%	40%
For the portion over 100%, but not exceeding 200%	50%
For the portion exceeding 200%	60%

Costs deductible for the calculation of profits include the original cost of Land Use Rights, land development costs, construction costs, interest, value-added tax, stamp duty, and the assessed value of old houses or buildings. A property developer may deduct 120 percent of the original cost of Land Use Rights, cost of land development and construction cost.

Owner-occupiers who have used a property for at least five years will be exempted from this tax, which is aimed at curbing speculative development in particular.

Tax Depreciation

Depreciation of real property must be computed on a straight-line method over a 20-year period. Depreciation is normally at 4.5% of cost per year, leaving a 10 percent residual value.

However, it is possible to negotiate an accelerated rate of tax depreciation if, for example, the venture has a life of less than 20 years.

Corporate Taxation

Under the corporate income tax law introduced in 2008, a flat rate of 25% is levied on all enterprises, including foreign investment enterprises.

As outlined under the section "Tax Incentives", there are tax reductions and tax holidays available for enterprises, including foreign investment enterprises depending on the nature and industry of the enterprise and its location.

Personal Taxation

The recently revised Individual Income Tax law of the PRC came into effect from September 1, 2011.

Individual Income Tax (IIT) is levied on Chinese residents on their worldwide income and, for nonresidents, on all income derived from within China.

Wages and salaries for both PRC citizens and expatriates are taxed at progressive rates ranging from 5 percent to 45 percent:

Monthly Taxable Income*	IIT Rate	Deduction
Up to RMB 1,500 (USD 219)	3%	-
RMB 1,501–4,500 (USD 219–657)	10%	RMB 105 (USD 15)
RMB 4,501–9,000 (USD 657–1,314)	20%	RMB 555 (USD 81)
RMB 9,001–35,000 (USD 1,314–5,109)	25%	RMB 1,005 (USD 147)
RMB 35,001–55,000 (USD 5,109–8,029)	30%	RMB 2,755 (USD 402)
RMB 55,001–80,000 (USD 8,029–11,679)	35%	RMB 5,505 (USD 804)
Over RMB 80,000 (USD 11,679)	45%	RMB 13,505 (USD 1,972)

* PRC citizens have a standard tax-free allowance of RMB 3,500 (USD 511) per month. For expatriates, this allowance is RMB 4,800 (USD 701) per month. The monthly taxable income refers to the amount remaining after deducting the standard tax-free allowance.

Tax Treaties: Avoidance of Double Taxation

As of October 2017, the PRC Government had concluded 106 Double Taxation Avoidance Agreements with the following countries/Special Administrative Regions:

Albania
Algeria
Armenia
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Botswana *
Brazil
Brunei
Bulgaria
Cambodia*
Canada
Chile
Croatia
Cuba
Cyprus
Czech Republic
Czechoslovakia
Denmark
Ecuador
Egypt
Ethiopia
Estonia
Finland
France
Georgia
Germany
Greece
Hong Kong
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Jamaica
Japan
Kazakhstan
Kenya*
Kuwait
Kyrgyzstan
Laos
Latvia
Lithuania
Luxembourg
Macau
Macedonia
Malaysia
Malta
Mauritius
Mexico
Moldova
Mongolia
Morocco
Nepal
New Zealand
Nigeria
Norway
Oman
Pakistan
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russia
Saudi Arabia
Seychelles
Singapore
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syria
Taiwan*
Tajikistan
Thailand
The Netherlands
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Uganda *
Ukraine
United Arab Emirates
United Kingdom
United States
Uzbekistan
Venezuela
Vietnam
Yugoslavia(Bosnia and Herzegovina)
Yugoslavia(Serbia and Montenegro)
Zambia
Zambabwe

*Not yet effective

Real Estate Investment Trusts

Real estate investment trusts (REITs) have not been established in mainland China. The China Securities Regulatory Commission is currently drafting the China Investment Fund Management Law, but there is no approval from the People's Congress so far.

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Common Terms of Lease for tenancy Agreements

Unit of measurement	
Unit of measurement	Square Meters
Rental payments	
Rents	Shanghai: RMB per sqm of gross space per day
Typical lease term	Generally minimum 2 years (usually with an option for the tenant to renew for an additional 2 or 3 year term at market rates). Standard lease is normally 3–5 years
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	3 months of rent and management fees payable in cash or check. Bank guarantee/ letter of credit is not accepted by most of the property due to the local banking environment.
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	Yes but it is a common practice to stipulate an option to renew if tenants require
Basis of rent increases or rent review	Open market rental value. Renewed rental cap to be negotiated
Frequency of rent increase or rent review	Generally at lease renewal, but if an agreed lease is over 5 years, rent is normally reviewed every 3 or 5 years
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges
Car parking	Allocated parking is very limited. Where parking is available, it is held under a separate monthly lease for an additional rent, charged at a fixed monthly cost.
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord responsible, but costs sometimes charged back to tenant via service charge
Responsibility for external/structural repairs	Usually landlord responsible, but costs sometimes charged back to tenant via service charge
Responsibility for building insurance	Usually landlord
Disposal of leases	
Tenant subleasing & assignment rights	Generally accepted to tenant's affiliated companies and not to unrelated third parties (subject to the landlords approval)
Tenant early termination rights	Only by break clause, usually subject to penalty
Tenant's building reinstatement responsibilities at lease-end	Original condition, allowing for wear and tear

Source: JLL

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Property Tenure/Ownership

All land in Hong Kong is leasehold land, with the exception of St. John's Cathedral being the only freehold property in Hong Kong.

Land rights are generally provided by way of government lease. A government lease conveys certain rights to occupy, develop and use parcels of land in the territory in return for payment of government rent. The terms of government leases vary, such as 50, 75, 99 or 999 years, with or without the right of renewal.

It is common in Hong Kong to sell a strata-title interest in a multi-story building (effectively a long leasehold interest).

A Deed of Mutual Covenant (DMC) notionally divides the building and the land granted under government lease into a number of equal undivided shares. Each individual unit in the building is allocated a number of undivided shares, which convey the right to the exclusive use and possession of the unit. The DMC is binding on all owners of the units in the building and their successors, and governs responsibilities for the upkeep and management of the building.

There is an active market in leasing commercial and residential properties. Lease terms generally range from one to three years.

Major Property Legislation

- Building Management Ordinance
- Buildings Ordinance
- Companies Ordinance
- Conveyancing and Property Ordinance
- Government Leases Ordinance
- Inland Revenue Ordinance
- Land Registration Ordinance
- Landlord and Tenant (Consolidation) Ordinance
- Stamp Duty Ordinance
- Town Planning Ordinance

Operational Requirements for Foreign Corporations

Limited Company

A company incorporated in Hong Kong with limited liability is the most commonly-used company type in Hong Kong.

Overseas Company

If a company incorporated outside Hong Kong establishes a place of business in Hong Kong, it must register with the Companies Registry as a "Non-Hong Kong Company" within one month of establishment.

Partnership

Partnerships are governed by the Partnership Ordinance and any partnership agreements, and may be established between two or more persons carrying on business in common with a view of profit. If the partnership is registered with the Registrar of Companies, it takes the form of a limited partnership. If it is not registered, it becomes a general partnership.

Registration/Licensing Requirements

All businesses (local or otherwise) are required to apply for a Business Registration Certificate from the Business Registration Office of the Inland Revenue Department to commence business in Hong Kong.

Foreign Investment Regulations

There are no specific incentives for foreign investment, no restrictions to foreigners owning or operating businesses and no residency requirements for directors and shareholders.

The Hong Kong Government has suspended the Capital Investment Entrant Scheme (a scheme to facilitate the entry for residence by capital investment entrants, i.e. persons who make capital investment in Hong Kong but would not be engaged in the running of any business in Hong Kong) with effect from January 15, 2015 until further notice.

Restrictions on Foreign Property Ownership

None.

Foreign Exchange Controls

None.

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Taxes on Possession and Operation of Real Estate

Government Rent

Certain types of properties are liable to pay government rent at an annual rate of 3% of the rateable value of the property and is adjusted in step with any subsequent changes in the rateable value. These include:

- properties in the New Territories and New Kowloon north of Boundary Street.
- properties with land leases granted on or after May 27, 1985.
- properties with their non-renewable land leases extended on or after May 27, 1985.

Rates

Rates are payable at a percentage of the rateable value of the property. For financial year 2018 – 2019, the percentage is 5 percent. The rateable value of a property is reviewed annually and is an estimate of the annual rental value of the property at a designated valuation reference date, assuming that the property was then vacant and to let. For financial year 2018-2019, the designated valuation reference date is 1 October 2018 and the rateable values take effect from 1 April 2018.

Property Tax

Property tax is levied on owners of property situated in Hong Kong on rental income derived from letting the properties. However, any person that sublets premises is considered to be carrying on a business, and the corresponding rental income is subject to profits tax rather than property tax. The property tax rate is 15 percent. For property tax purposes, a flat rate of 20 percent of the assessable value is deductible from gross rental income as a notional allowance for outgoings (regardless of the actual outgoings incurred). In addition, rates are deductible, provided that they are paid by the owner of the property. Bad debts (i.e. irrevocable rent) are also deductible.

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty and Legal Costs

Property transactions are recorded with the land registry. Stamp duty is levied on the sale of property and is generally borne by the buyer.

To regulate the property price in Hong Kong, the government has introduced ad valorem stamp duty, special stamp duty and buyer's stamp duty.

Ad valorem stamp duty

The acquisition of both residential property and non-residential property are subject to ad valorem stamp duty (AVD), but the AVD rates are different depending on the user of the property and the identity of the buyer.

All properties are generally subject to Scale 1 AVD rates. But if the purchaser/transferee is a Hong Kong permanent resident (HKPR) acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition, then a lower Scale 2 rate is applicable when certain conditions are met.

With effect from 5 November 2016, Scale 1 AVD rates are divided into Part 1 (which applies to residential property) and Part 2 (which applies to non-residential property). In terms of Scale 1 Part 1, residential property acquisitions on or after 5 November 2016 are subject to a flat AVD rate of 15% of the consideration or value of the property, whichever is the higher. In terms of Scale 1 Part 2, the AVD rates for non-residential property are as follows:

Amount or Value of the Consideration (Whichever Is Higher)		
Exceeds	Does Not Exceed	Rate at Scale 1 Part 2
–	HKD 2,000,000	1.5%
HKD 2,000,000	HKD 2,176,470	HKD 30,000 + 20% of excess over HKD 2,000,000
HKD 2,176,470	HKD 3,000,000	3%
HKD 3,000,000	HKD 3,290,330	HKD 90,000 + 20% of excess over HKD 3,000,000
HKD 3,290,330	HKD 4,000,000 (USD 515,960)	4.5%
HKD 4,000,000	HKD 4,428,580	HKD 180,000 + 20% of excess over HKD 4,000,000
HKD 4,428,580	HKD 6,000,000	6%
HKD 6,000,000	HKD 6,720,000	HKD 360,000 + 20% of excess over HKD 6,000,000
HKD 6,720,000	HKD 20,000,000	7.5%
HKD 20,000,000	HKD 21,739,130	HKD 1,500,000 + 20% of excess over HKD 20,000,000
HKD 21,739,130	-	8.5%

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The Scale 2 AVD rates for residential property where the purchaser/transferee is an HKPR acting on his/her own behalf and does not own any other residential property in Hong Kong are as follows:

Amount or Value of the Consideration (Whichever Is Higher)		
Exceeds	Does Not Exceed	Rate
–	HKD 2,000,000	HKD 100
HKD 2,000,000	HKD 2,351,760	HKD 100 + 10% of excess over HKD 2,000,000
HKD 2,351,760	HKD 3,000,000	1.5%
HKD 3,000,000	HKD 3,290,320	HKD 45,000 + 10% of excess over HKD 3,000,000
HKD 3,290,320	HKD 4,000,000	2.25%
HKD 4,000,000	HKD 4,428,570	HKD 90,000 + 10% of excess over HKD 4,000,000
HKD 4,428,570	HKD 6,000,000	3%
HKD 6,000,000	HKD 6,720,000	HKD 180,000 + 10% of excess over HKD 6,000,000
HKD 6,720,000	HKD 20,000,000	3.75%
HKD 20,000,000	HKD 21,739,120	HKD 750,000 + 10% of excess over HKD 20,000,000
HKD 21,739,120	-	4.25%

Stamp duty is also payable on leasing transactions, with the rate dependent on the rent payable and lease term as follows:

Term		Rate
Not defined or is uncertain		0.25% of the yearly or average yearly rent
Exceeds	Does not exceed	
-	1 year	0.25% of the total rent payable over the term of the lease
1 year	3 years	0.5% of the yearly or average yearly rent
3 years	-	1% of the yearly or average yearly rent
Key money, construction fee etc. mentioned in the lease		4.25% of the consideration if rent is also payable under the lease. Otherwise, same duty as for a sale of immovable property
Duplicate or counterpart		HKD 5 each

Stamp duty on a lease transaction is normally borne equally by the landlord and the tenant.

It is a usual practice for each party to bear its own legal costs in a property transaction.

Special Stamp Duty

In addition to the AVD, "special stamp duty" (SSD) is imposed on the disposal of any residential property acquired either by an individual or company (regardless of where it is incorporated) and resold within 36 months after acquisition.

SSD is calculated based on the stated consideration for the transaction or the market value of the property, whichever is higher, at the following rates:

- 20 percent if the vendor has held the property for six months or less.
- 15 percent if the vendor has held the property for more than six months but for 12 months or less.
- 10 percent if the vendor has held the property for more than 12 months but for 36 months or less.

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Buyer's Stamp Duty

Buyer's stamp duty of 15 percent of the market value or stated consideration of the property (whichever is higher) is imposed on top of the AVD and SSD (where applicable). This is unless the buyer is an HKPR acquiring the property for himself/herself or the transaction is subject to an exemption.

Capital Gains Tax

None. However, where gains form part of normal trading activities, they are liable to profits tax.

Value Added Tax/Goods and Services Tax

None.

Tax depreciation

The following types of depreciation allowances are available:

	Industrial Building Allowances on Industrial Buildings and Structures	Commercial Building Allowances on Commercial Buildings and Structures	Plant and Machinery
Initial Allowance	20% on the cost of construction of the premises	-	60% on the cost of the plant/ machinery
Annual Allowance	4% on the cost of construction of the premises	4% on the cost of construction of the premises	10%, 20% or 30%, as prescribed by the Board of Inland Revenue in the Inland Revenue Rules on the reducing value of the asset
Balancing Allowance or Charge	Due upon disposal of the premises	Due upon disposal of the premises	Available only on cessation of a business to which there is no successor

Corporate Taxation

The rate of corporate taxation for:

- incorporated entities is 16.5 percent
- unincorporated entities is 15 percent

Net losses may be carried forward indefinitely.

Personal Taxation

Individuals are subject to tax on income from properties, salaries and profits of sole proprietor businesses. Persons staying in Hong Kong for periods of not exceeding 60 days within a year of assessment are not subject to salaries tax. Owner-occupiers are allowed to deduct interest payments from taxable income up to a maximum of HKD 100,000 (USD 12,896) per year per property for 15 years of assessment.

Tax is levied on earnings arising in, or derived from, Hong Kong. It is calculated as the lesser of the following:

- a graduated scale of tax rates applied after taking into account a range of deductions and allowances.
- a standard tax rate applied to total net income without allowances (15 percent). Usually landlord responsible, but costs charged back to tenant via Tax Treaties

Tax Treaties

Treaties in relation to avoidance of double taxation in existence:

Austria
Belarus
Belgium
Brunei
Canada
Czech
*Finland
France
Guernsey
Hungary
*India
Indonesia
Ireland
Italy
Japan
Jersey
Korea
Kuwait
Latvia
Liechtenstein
Luxembourg
Mainland of China
Malaysia
Malta
Mexico
Netherlands
New Zealand
Pakistan
Portugal
Qatar
Romania
Russia
*Saudi Arabia
South Africa
Spain
Switzerland
Thailand
United Arab Emirates
United Kingdom
Vietnam

*treaty that has not yet come into force

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Real Estate Investment Trusts

Introduction

Real Estate Investment Trusts (REITs) are mainly governed by the Code on Real Estate Investment Trusts. The Code, however, does not have the force of law and shall not be interpreted in a way that will override the provision of any law.

A REIT is a collective investment scheme constituted as a trust that invests primarily in real estate, with the aim to provide unit holders with returns derived from the rental income of the real estate. Funds obtained by a REIT from the sale of units in the REIT are used in accordance with the constitutive documents to maintain, manage and acquire real estate within its portfolio.

The assets of a REIT shall be held in a trust and segregated from the assets of its trustee, management company, related entities, other collective investment schemes and any other entity.

REITs are allowed to invest in overseas properties in accordance with the provisions of the Code and Practice Note issued by the Securities and Futures Commission (SFC).

Examples of Restrictions on REITs

- A REIT may acquire uncompleted units in a building, but the aggregate contract value of such real estate, together with property development costs, shall not exceed 10 percent of the REIT's gross asset value at the time of acquisition.
- No investment in vacant land is allowed.
- The REIT shall hold each property for a period of at least two years.
- If the name of the REIT indicates a particular type of real estate, at least 70 percent of the REIT's noncash assets shall be invested in such type of real estate.
- A REIT may borrow for the purpose of financing investments or operations, but the aggregate gearing shall not exceed 45 percent of its total gross asset value.
- A REIT shall distribute to unit holders as dividends each year an amount not less than 90 percent of its audited annual net income after tax.

Taxation for REITs

A REIT is liable for tax as other ordinary companies are in Hong Kong.

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Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Open market rental value	Square Feet
Rental payments	
Rents	HKD/sq ft/month
Typical lease term	Typically 3–6 years with 6–12 years for larger occupiers
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	3 months
Security of tenure	Not guaranteed beyond the original lease term. The period of prior notice is subject to the terms prescribed in the underlying contract
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed at the outset and specified in the lease
Basis of rent increases or rent review	Open market rental value
Frequency of rent increase or rent review	At lease renewal or every three years in longer leases
Service charges, operating costs, repairs and insurance	
Responsibility for service charge/ management fee	Monthly in advance. Tenant is responsible for respective pro-rata share.
Responsibility for utilities	Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption for industrial facilities is typically separately metered and payable by each tenant
Car parking	Where parking is available, it is typically held under a separate monthly lease for an additional rent
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord but costs charged back to tenant via service charge
Responsibility for external/structural repairs	Usually landlord responsible, but costs charged back to tenant via service charge
Responsibility for building insurance	Usually landlord responsible, but costs charged back to tenant via service charge The tenancy agreement may also require the tenant to purchase insurance coverage on leased space
Disposal of leases	
Tenant subleasing & assignment rights	Subletting up to 25% of acquired space is generally possible for larger anchor occupiers
Tenant early termination rights	Only by Original condition break clause
Tenant's building reinstatement responsibilities at lease-end	

Source: JLL

India

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Property Tenure/Ownership

There are mainly two types of real estate:

- Freehold title
- Leasehold title

Major Property Central Legislation

- Transfer of Property Act, 1882
- Indian Easements Act, 1882
- Registration Act, 1908
- Environment (Protection) Act, 1986
- Forest (Conservation) Act, 1980
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
- Real Estate (Regulation and Development) Act, 2016
- Slum Areas (Improvement and Clearance) Act, 1956
- Prohibition of Benami Property Transactions Act, 1988
- Indian Stamp Act, 1899
- Special Economic Zones Act, 2005
- Development Control Regulations/ Building Bye-laws - These regulations apply to building activities and development works and are issued by the local municipal authorities of each city, such as Mumbai, Delhi and so forth.

There are various other State legislations applicable to real estate, particularly construction related (such as master plan, zonal plan, fire safety laws and electricity laws), stamp duty laws, registration laws, rent control laws and labor laws.

Further, the Real Estate (Regulation and Development) Act, 2016 was brought into force to ensure a uniform regulatory environment to protect consumer interests and ensure orderly growth of the real estate sector. The aforesaid Act seeks to reduce frauds and delays.[1]

Operational Requirements for Foreign Corporations

Modes of Entry

A foreign company planning to establish business operations in India can do so in the following ways:

- In accordance with the provisions of the (Indian) Companies Act, 2013 (**Companies Act**) by incorporating a company, as a joint venture or a wholly owned subsidiary.[2]
- In accordance with the provisions of the (Indian) Limited Liability Partnership Act, 2008 (**LLP Act**) by incorporating a limited liability partnership.
- In accordance with the provisions of the Foreign Direct Investment Policy (**FDI Policy**), by investing in an existing company or limited liability partnership, subject to the conditions mentioned in the FDI Policy.
- In accordance with the provisions of the Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any Other Place of Business) Regulations, 2016, through a place of business in India, being one of the following:
  - liaison/representative office;
  - project office; or
  - branch office.

Some general conditions applicable to liaison/branch/ project offices of foreign entities in India are:

A liaison office/branch office can be established in India by obtaining prior permission from the Reserve Bank of India (**RBI**) under the relevant provisions of the Foreign Exchange Management Act, 1999 (**FEMA**). Applications for establishing a liaison office/branch office need to be forwarded by the foreign entity through a designated authorized dealer category bank to the relevant department of the RBI which considers the applications under the following two routes:

1. **Reserve Bank Route** - Where the principal business of the foreign entity falls under sectors where 100% Foreign Direct Investment (**FDI**) is permissible under the automatic route; or
2. **Government Route** - Where the principal business of the foreign entity falls under the sectors where 100% FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non - Government Organisations / Non - Profit Organisations / Government Bodies / Departments are considered by the RBI in consultation with the Ministry of Finance, Government of India.

RBI grants general permission to foreign entities to establish project offices in India, provided such foreign entities have secured a contract from an Indian company to execute a project in India, subject to certain conditions.

[1] The Real Estate (Regulation and Development) Act 2016 has now been passed by the Indian Parliament and got notified on 26 March 2016.
[2] Foreign Investment Promotion Board has been abolished and has been replaced by FIFP per the FDI Policy 2017.

- No person being a citizen of/entity registered in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau can establish in India a branch/liaison/ project office (or any other place of business) without the prior permission of the RBI.
- Branch/project offices of a foreign entity, excluding a liaison office, are permitted to acquire immovable property for their own use and to carry out permitted/ incidental activities.. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Hong Kong, Macau, Nepal, Bhutan or China or Democratic People's Republic of Korea are not allowed to acquire immovable property in India for a branch/project office without prior RBI approval.
- All branch/project offices (including liaison offices) have general permission to lease property for a period not exceeding 5 (five) years.
- Project offices are allowed to open non-interest bearing foreign currency account in India subject to certain conditions.

Per the 2018 Master Direction of RBI on establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities, an application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of RBI where the principal business of the applicant falls in the four sectors namely defence, telecom, private security and information and broadcasting.

In the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with ministry of defence or service headquarters or defence public sector undertakings. No separate approval is required from RBI for such cases only.

Foreign companies have to initiate the process of registration with the relevant Registrar of Companies (**ROC**) within 30 (thirty) days of setting up a place of business in India as an Indian company under the Companies Act, through:

- A joint venture; or
- A wholly-owned subsidiary.

Foreign equity investment in Indian companies can be up to 100%, depending on the FDI Policy. The FDI Policy specifies various caps on foreign holdings in Indian companies, depending on the activity of the Indian company. The FDI Policy also has regard to the business plan of the foreign investor, the prevailing government investment policies and the attainment of requisite approvals. Further, all investments are subject to the pricing guidelines issued by the RBI and entry conditions (i.e. minimum capitalisation, lock-in period, etc., if any) contained in the FDI Policy, in addition to sectoral/state laws, rules, regulations and applicable tax laws in India.

FDI is also permitted in LLPs subject to certain conditions mentioned in the FDI Policy.

Registration/Filing Requirements

While no approvals/registrations are required in case of investments made under the "automatic route", prior approval of the concerned competent authority which would be the respective Administrative Ministry/ Department is required where the investment falls under the government approval route. In case the investment falls under the approval route then:

a. Proposals for foreign investment would be examined by concerned Administrative Ministry/ Department as per the Standard Operating Procedure (**SOP**) laid down by Department of Industrial Policy & Promotion (**DIPP**).
b. In case of proposals involving total foreign equity flow of more than INR 50 billion, the Competent Authority shall place the same for consideration of Cabinet Committee on Economic Affairs (**CCEA**). The CCEA would also consider the proposals which may be referred to it by the concerned Competent Authority.

The monitoring of the compliance of conditions under the FDI approvals, including the past cases approved by the Government, shall be done by the concerned Administrative Ministries/Departments in consultation with DIPP.

The Foreign Investment Facilitation Portal[3] (**FIFP**) is the new online single point interface of the Government of India for investors to facilitate FDI which is administered by the DIPP, Ministry of Commerce & Industry. It facilitates the single window clearance of applications which are through approval route. The guidelines for e-filing of applications, filing of amendment applications, and instructions to applicants seeking Government of India's approval can now be accessed at www.fifp.gov.in Irrespective of the route under which the investment has been made, post-investment filings have to be made with the RBI.

[3] Foreign Investment Promotion Board has been abolished and has been replaced by FIFP per the FDI Policy 2017.

Apart from the above-mentioned approvals and filings, additional approvals may have to be obtained from authorities such as the Competition Commission of India and filings may have to be made with other authorities, such as the ROC, depending on the manner in which the investment has been made.

A number of approvals/licenses may be required from State governmental bodies under relevant local regulations for the acquisition of assets and the carrying out of construction activities.

Foreign Employment Limitations

Indian companies are allowed to engage the services of foreign nationals without any approval, but subject to the relevant visa policy guidelines. However, an employment visa must be obtained from the Indian Consulate in the foreign national's country of residence before departure for India.

Foreign nationals, including their family members, are required to register with the Foreigners Regional Registration Office (Ministry of Home Affairs) within 2 (two) weeks[4] of their arrival in India if they intend to stay in India for a period of 180 (one hundred and eighty) days or more.

A "Resident Permit" may be issued for the validity of the visa period.

Foreign nationals who reside in India and are in employment with an Indian company are allowed to open local bank accounts and to repatriate funds to their country of residence, net of applicable taxes.

Foreign nationals who are employed by an Indian company are required to obtain tax registration ("Permanent Account Numbers") with the Income Tax Department.

Foreign Investment

Foreign investments into Indian companies are permitted through 2 (two) routes:

- **Automatic route** – For certain industries (to the extent permitted), the RBI or the government automatically approves all proposals involving foreign investment, subject to the fulfilment of prescribed parameters.

Under the "automatic route", the Indian company, having received FDI, needs to inform the RBI within 30 (thirty) days of receipt of inward remittances and file the required documents within 30 (thirty) days from the date of issue of shares. In case of a transfer of shares, the transferor/transferee resident in India would need to file the required documents with the RBI within 60 (sixty) days from the date of receipt of the amount of consideration. All regulatory filings in respect of the above are to be made by filing a single master form (**SMF**) through an online portal known as the Foreign Investment Reporting and Management System (**FIRMS**) which integrates the existing reporting norms for foreign investment in India. The procedure for the regulatory filings is prescribed under the SMF manual released by the RBI on 1 September 2018.

- **Government approval** – In cases where the proposed foreign investment would exceed the extent permitted under the automatic route, or where the activities are not covered under the automatic route, prior approval from the concerned respective Administrative Department/Ministry (or CCEA, if applicable) is required.

The government allows FDI of between 20% and 100% in the following sectors (subject to the prior approval of the concerned respective Administrative Department/Ministry, where required):

- Agriculture and animal husbandry
  - Floriculture, horticulture, apiculture and cultivation of vegetables and mushrooms under controlled conditions
  - Development and production of seeds and planting material
  - Animal husbandry (including breeding of dogs), pisciculture, aquaculture under controlled conditions
  - Services related to agro and allied sectors (Besides the aforesaid activities, FDI is not permitted in any other agricultural activity)
- Tea sector including tea plantations, coffee plantations, rubber plantations, cardamom plantations, palm oil tree plantations and olive oil tree plantations (Besides the aforesaid activities, FDI is not permitted in any other plantation activity)
- Mining
  - Mining and exploration of metal and non-metal ores
  - Coal and lignite
  - Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation) Act, 1957
- Petroleum and natural gas
- Manufacturing including products manufactured in India being sold through e-commerce
- Defence

[4] Pakistan nationals are required to register within 24 (twenty four) hours.

- Broadcasting
  - Broadcasting carriage services
  - Broadcasting content services
- Print Media
- Civil Aviation
  - Airports
  - Air transport services
  - Other services under civil aviation sector (such as ground handling services, maintenance and repair organisations and flying/technical training institutes)
- Courier services
- Construction development
  - Townships, housing, built-up infrastructure and construction development projects (including development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional-level infrastructure)
- Industrial parks (new and existing)
- Satellites (establishment and operation)
- Private security agencies
- Telecom services
- Trading
  - Cash and carry wholesale trading/wholesale trading (including sourcing from MSEs)
  - E-commerce activities
  - Retail (single and multi brand)
- Duty Free shops
- Railway infrastructure
- Financial services
  - Asset reconstruction companies
  - Banking - Private Sector
  - Banking
  - Public Sector
  - Commodity exchanges
  - Credit information companies
  - Infrastructure companies in the securities markets
  - Insurance
  - Pension Sector
  - White Label ATM Operations
  - Non-banking finance companies
- Pharmaceuticals
  - Greenfield
  - Brownfield
- Medical devices
- Power exchanges

Certain other sector specific approvals may be required and certain conditions may need to be fulfilled for foreign investment in certain sectors on a case-to-case basis.

No FDI is allowed in:

- Lottery business, including government/private lottery, online lotteries, etc.
- Gambling and betting, including casinos, etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDR)
- Real estate business or construction of farm houses
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment:

e.g. atomic energy and railway operations (other than the permitted activities under the FDI Policy) (Foreign technology collaboration in any form, including licensing for franchise, trademark, brand name, management contract, is also prohibited for lottery business, gambling and betting activities)

"Real estate business" means dealing in land and immovable property with a view to earning profit therefrom, and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships and Real Estate Investment Trusts (**REITs**) registered and regulated under the Securities and Exchange Board of India (**REIT Regulations**), 2014. It is also clarified that earning of rent/income on lease of the property, not amounting to transfer, will not amount to real estate business.

Real-estate broking service does not fall under real-estate business and hence, FDI in such services is permitted up to 100% under automatic route.

Continued Liberalisation –Real Estate

The government has liberalized the sectoral conditions for FDI in the construction sector. While the permissible limit for FDI in construction-development projects (which include townships, residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational

institutions, recreational facilities, and city-level and regional-level infrastructure) is 100% under the automatic route, several onerous conditions (such as minimum area and capitalization conditions) which were previously imposed have been dispensed with. Furthermore, the government has given infrastructure status to "affordable housing". This is followed by government incentives and tax benefits for developers of affordable housing. Instead of built-up area, a carpet area of 30 (thirty) and 60 (sixty) mtrs. will now be applicable for affordable housing. The government has also eased the exit norms for foreign investors and has prescribed that each phase of the construction development project would be considered as a separate project for the purposes of the FDI Policy. Some of the key conditions to be satisfied prior to any foreign investment are as follows:

- The investor will be permitted to exit on completion of the project or after the development of trunk infrastructure, which includes roads, water supply, street lighting, drainage and sewerage.
- A foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in period of 3 (three) years calculated with reference to each tranche of foreign investment has been completed.
- However, the lock-in condition will not apply to hotels and tourist resorts, hospitals, special economic zones (**SEZ**), educational institutions, old age homes and investments by Non-Resident Indians.
- Transfer of stake by one non-resident investor to another non-resident investor, without repatriation of investment will neither be subject to any lock-in-period nor any government approval.
- The Indian investee company will be permitted to sell only "developed plots" (i.e. plots where trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage have been made available).
- The project must conform to the norms and standards (including land-use requirements and provision of community amenities and common facilities) as laid down in the applicable building control regulations, by-laws, rules and other regulations of the concerned State government or the municipal/local body concerned. Further, the Indian investee company is responsible for obtaining all necessary approvals and India consents, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements, as may be applicable under the regulations, rules or bye-laws of the concerned State government/municipal/local body concerned.
- 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/shopping complexes and business centres. Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is permitted, subject to a minimum lock-in period of 3 (three) years calculated with reference to each tranche of FDI and transfer of immovable property or part thereof is not permitted during this period.
- The concerned State government/municipal/local body, which approves the building/development plans, will monitor compliance of the above conditions by the developer.
- Completion of the project will be determined as per the local bye-laws/rules and other regulations of State governments.
- It is pertinent to note that the term "transfer" in relation to the construction sector under the FDI Policy, includes (a) the sale, exchange or relinquishment of the asset; (b) the extinguishment of any rights therein; (c) the compulsory acquisition thereof under any law; (d) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882; or (e) any transaction by acquiring shares in a company or by way of an agreement or arrangement or in any other manner whatsoever which has the effect of transferring or enabling the enjoyment of any immovable property.

Special tax incentive packages have also been developed for developers in SEZs and for companies operating from the SEZs.

Restrictions on Property Ownership

The general provisions with respect to purchase/sale of immovable property by foreign corporate bodies or individuals are set out in the FEMA and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018. No person resident outside India is permitted to transfer any immovable property in India, unless with the approval of the RBI.

A person resident outside India who has established in India, in accordance with the Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any other Place of Business) Regulations, 2016, a branch/project office or other place of business (excluding a liaison office) for carrying on in India any permitted activity can acquire any immovable property in India that is necessary for or incidental to carrying on such activity, subject to compliance with other applicable laws and RBI reporting in a prescribed format. Further, such person may transfer the immovable property so acquired by way of mortgage to an authorised dealer bank as a security for any borrowing.

Generally, funds for the transaction must be provided by way of an inward remittance of foreign currency through normal banking channels, but there will be no automatic right of repatriation of either principal sum or profit from capital appreciation if the property is subsequently sold. A foreign national of non-Indian origin, resident outside India, cannot acquire any immovable property in India unless such property is acquired by way of an inheritance from a person who was a resident in India. However, they can acquire or transfer immovable property in India, on lease, not exceeding 5 (five) years without the prior permission of the RBI.

Foreign nationals of non-Indian origin, other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Macau, Democratic People's Republic of Korea, Hong Kong or Bhutan, can acquire immovable property in India on becoming resident in India as per the conditions mentioned in the FEMA. A foreign national resident in India can purchase immovable property in India.

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or, Bhutan, Democratic People's Republic of Korea, Macau or Hong Kong without prior permission of the RBI, can acquire or transfer immovable property in India, other than lease, not exceeding 5 (five) years.

Foreign Exchange Controls

Foreign capital investment can be repatriated along with capital gains after the payment of tax, except in the case of real estate where the remittance would be subject to certain conditions prescribed by the FEMA and the regulations issued thereunder.

Profit and dividends earned in India can be repatriated after the deduction of taxes due on them.

Taxes on Possession and Operation of Real Estate

Property tax is levied as a percentage of the rateable value (**RV**) or capital value (**CV**) of the property. Calculation of RV, CV and the tax rate payable varies between states. The property tax payable also varies depending on whether the property is owner-occupied or leased. The RV is calculated on the basis of actual rent if the property is leased. If the property is owner-occupied, the RV is calculated on the basis of the comparable rent that the property can achieve.

For example, in Bangalore, the assessment of RV has been finalised according to the zones. The Municipal Corporation of Greater Mumbai has introduced the CV based property tax system, where the property tax would be based on the market value as per the stamp duty ready reckoner.

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty and Legal Costs

Stamp duty and registration charges are payable on most instruments associated with the transfer of property, including sale, long lease, mortgage instruments, etc. The actual rates vary from state to state. Stamp duty and registration charges on conveyance, applicable in important cities, in India are as follows:

City	Stamp Duty	Registration Charge
Delhi	6% (with municipal levies) (men) 4% (with municipal levies) (women)	1%
Mumbai	5% of the market value of the property (urban)	1% [subject to a maximum of INR 30,000 (USD 461 approx.)]
Bangalore	5% of the market value (including local surcharge)	1%
Chennai	7% of the market value (including local surcharge)	1%

Legal costs are borne by each party involved. Legal fees in India range between INR 6,000–20,000 (USD 92–307) per hour.

Capital Gains Tax

Gains on the sale of capital assets held for 3 (three) years or more (or 1 (one) year for equity and preference shares, other listed securities, zero-coupon bonds or mutual fund units) are treated as long-term capital gains and are taxed at concessionary rates compared to short-term capital gains, which are gains on the sale of investments held for a period of less than 3 (three) years (or 1 (one) year for equity and preference shares, other listed securities, zero-coupon bonds or mutual fund units). A recent positive development has been to reduce the aforesaid period of

holding in the case of an immovable property being land or building or both, from 3 (three) years to 2 (two) years for the purposes of computing capital gains.

Furthermore, the base year for indexation of all long-term assets (including land/building) is 2001.

Indirect Taxes

With effect from July 1, 2017 a unified tax regime of indirect tax has been introduced in India called the Goods and Services Tax (**GST**).

GST is a dual structure tax model, levied and collected by the Union and State governments, viz. Central GST and State GST for ease of reference "CGST" and "SGST" respectively.

CGST and SGST are applicable to all transactions involving supply of goods and services and the GST is structured on the destination principle so that the tax base shifts from production to consumption whereby imports into a State are liable to tax and exports from a State are relieved of the burden of GST. Consequently, revenues accrue to the State in which the consumption takes place or is deemed to take place.

There are five GST Rates for all goods and services ranging from 0%, 5%, 12%, 18% and 28%.

At the Central level, the following taxes have been subsumed:

Central Excise Duty, Additional Excise Duty, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, and Special Additional Duty of Customs.

At the State level, the following taxes have been subsumed:

State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, etc.

Since the GST is a new jurisprudence involving one of the largest market places in the world, it is evolving and as such further changes should be expected in the future

Customs duty is levied on imports at rates specified in the annual budget. Different rates are specified for different commodities.

Customs duty in India falls under the Customs Act 1962 and Customs Tariff Act of 1975.

Corporate Taxation

The rates of corporate taxation for the financial year 2017–2018 are as follows:

Category	Rate (excluding cess)
Domestic company	30% of the total income or 25% where total turnover or the gross receipt in the previous year 2016–2017 does not exceed INR 2500,000,000 (Rupees two billion five hundred million) (USD 38,225,000) + 7% surcharge (if net income exceeds INR 10,000,000 (USD 153,846) but does not exceed INR 100,000,000 (USD 1,528,000)); OR 12% surcharge (if net income exceeds INR 100,000,000 (USD1,528,000)).
Foreign company - Income from royalty and fees for technical services received from government or Indian concern	50%
- Any other income	40% Surcharge: 2% surcharge (if net income exceeds INR 10,000,000 (USD 152,800) but does not exceed INR 100,000,000 (USD 1,492,426)); OR 5% surcharge (if net income exceeds INR 100,000,000 (USD 1,528,000)).

The following exemptions are allowed:

- Companies engaged in the business of biotechnology or the manufacture or production of specific articles or things are eligible for a weighted deduction of 200% of expenditure on in-house research and development facilities.
- One hundred percent deduction of expenditure for companies carrying out scientific research and development, as approved by the Council for Scientific and Industrial Research.

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Tax Depreciation

Depreciation allowances vary according to the types of asset:

Plant and machinery:	15%
Furniture and fittings:	10%
Vehicles:	60%
Shipping:	20%
Computer hardware:	80%
Residential building:	5%
Hotels:	10%
Wooden structures:	100%
All other building (including commercial and industrial):	10%

Personal Taxation

Income tax rate for Indian nationals and expatriate residents are:

For resident senior citizen (60 (sixty) years up to 80 (eighty) years at any time during the previous year):

Net Income range	Income tax rate (excluding cess)
Up to INR 300,000 (USD 4,584)	Nil
INR 300,001 to INR 500,000 (USD 4,584 to USD 7,640)	5% of total income exceeding INR 300,000 (USD 4,584)
INR 500,001 to INR 1,000,000 (USD 7,640 to USD 15,280)	INR 10,000 (USD 153) + 20% on total income exceeding INR 500,000 (USD 7,640)
Above INR 1,000,000 (USD 15,280)	INR 110,000 (USD 1681) + 30% of total income exceeding INR 1,000,000 (USD15,280)

For resident super senior citizen (80 (eighty) years or more at any time during the previous year):

Net Income range	Incme tax rate (excluding cess)
Up to INR 500,000 (USD 7,640)	Nil
INR 500,001 to INR 1,000,000 (USD 7,640 to USD 15,280)	20% of total income exceeding INR 500,000 (USD 7,640)
Above INR 1,000,000 (USD 15,280)	INR 100,000 (USD 1,528) + 30% of total income exceeding INR 1,000,000 (USD 15,280)

For any other individual, every Hindu Undivided Family (**HUF**) or Association of Persons (**AOP**) or body of individuals or every artificial juridical person as per the provisions of Income Tax Act, 1961:

Net Income range	Income tax rate (excluding cess)
Up to INR 250,000 (USD 3,820)	Nil
INR 250,001 to INR 500,000 (USD 3,820 to USD 7,640)	5% of the amount by which total income exceeds INR 250,000 (USD 3,820)
INR 500,001 to INR 1,000,000 (USD 7640 to USD 15,280)	INR 12,500 (USD 191) + 20% of the amount by which the total income exceeds INR 500,000 (USD 7,640)
Above INR 1,000,000 (USD 15,280)	INR 112,500(USD 1,719) + 30% of the amount by which the total income exceeds INR 1,000,000 (USD 15,280)

Additionally, income of every individual or HUF or AOP or body of individuals or every artificial juridical person having a total income exceeding INR 5,000,000 (USD 76,400) and upto INR 10,000,000 (USD 152,800) and exceeding INR 10,000,000 (USD 152,800), shall be taxed with surcharge calculated at the rate of 10% and 15% of such income-tax respectively. Also, health and education cess will be applicable.

A deduction in total income with regard to investment made by individuals/HUF is limited to INR 150,000 (USD 2292).

In addition to the above, the following general deductions are available for individuals:

- interest paid on housing loan for self-occupied residential property
- medical insurance premiums
- specific expenditure on disabled dependent
- expenses for medical treatment for self or dependent or member of HUF
- interest paid on loan for pursuing higher studies
- deduction of person with disability
- donations to recognized charitable institutions

Tax Treaties: Avoidance of Double Taxation

Comprehensive tax treaties are in existence with the following countries:

Albania
Armenia
Australia
Austria
Bangladesh
Belarus
Belgium
Bhutan
Botswana
Brazil
Bulgaria
Canada
Chile
China
Columbia
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Ethiopia
Fiji
Finland
France
Georgia
Germany
Greece
Hashemite Kingdom of Jordan
Hungary
Iceland
Indonesia
Ireland
Israel
Italy
Japan
Kazakhstan
Kenya
Korea
Kuwait
Kyrgyz Republic
Latvia
Libya
Lithuania
Luxembourg
Macedonia
Malaysia
Malta
Mauritius
Mexico
Mongolia
Montenegro
Morocco
Mozambique
Myanmar
Namibia
Nepal
Netherlands
New Zealand
Norway
OECD Member Countries
Oman
Oriental Republic of Uruguay
Philippines
Poland
Portuguese Republic
Qatar
Romania
Russia
Saudi Arabia
Serbia
Sierra Leone
Singapore
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Swiss Confederation
Syrian Arab Republic
Taipei
Tajikistan
Tanzania
Thailand
Trinidad and Tobago
Turkey
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Arab Republic (Egypt)
United Kingdom
United States of America
Uzbekistan
Vietnam
Zambia
Hong Kong Special Administrative Region (**HKSAR**) of China[5]

In addition, limited tax treating (with respect to income of airlines) are in existence in the following countries:

Afghanistan
Ethiopia
Iran
Lebanon
Maldives
Pakistan
People's Democratic Republic of Yemen
Yemen Arab Republic
South Asian Association for Regional Cooperation Countries

Real Estate Mutual Funds

In 2008, the Securities and Exchange Board of India (**SEBI**), the apex regulatory body in India for the securities markets, approved the guidelines for real estate mutual funds (**REMFs**). As per the guidelines, all the schemes having an objective to invest, directly or indirectly, in real estate assets or other permissible assets are governed by the provisions and guidelines under the SEBI (Mutual Funds) Regulations, 1996.

The key features of the guidelines are as follows:

- REMFs should be closed-end funds, and its units should be listed on a recognised stock exchange. The net asset value should be declared at the close of each business day on the basis of the most current valuation of the real estate assets held by the scheme.

[5] CBDT Press Release (India and Hong Kong sign Double Taxation Avoidance Agreement (DTAA)) dated 19 March 2018.

- Title deeds pertaining to the real estate assets should be kept in safe custody with the custodian of the REMF.
- No lending or housing finance activities should be taken up by REMFs.
- The investments by an REMF are to be made in the prescribed ratios among real estate assets, mortgage-backed securities (but not in mortgages), equity shares or debentures of companies (whether listed or not) engaged in dealing in real estate assets or in undertaking real estate development projects and other securities.
- Real estate assets may be let out or leased out if the term of such lease or letting does not extend beyond the period of maturity of the REMF.
- All financial transactions of an REMF should be through banking channels and shall not be through unaccounted transactions nor through cash.
- Disclosure of offer documents of REMF shall be adequate for investors to make informed investment decisions.

Real Estate Investment Trusts

In 2014, SEBI approved the REIT Regulations. The key features of the REIT Regulations are:

- REITs are required to be set up as a trust and registered with SEBI and include designated persons such as trustee, sponsor(s) and manager (as defined under the REIT Regulations). The trustee (of a REIT) is required to be a SEBI registered debenture trustee who should not be an associate of the sponsor/manager. The roles and duties of trustees, sponsors and managers are enumerated in the REIT Regulations.
- REITs are permitted to invest in commercial real estate assets, either directly or through Special Purpose Vehicles (**SPVs**). In such SPVs, a REIT should hold or propose to hold controlling interest and not less than 51% of the equity share capital or interest. Further, such SPVs should hold not less than 80% of its assets directly in properties and should not invest in other SPVs.
- Upon registration, the REIT should raise funds through an initial offer provided the value of all assets owned by such REIT is not less than INR 500 crores (approx. USD 76 million);[6]and the offer size is not less than INR 250 crores (approx. USD 3 8 million). Subsequently, funds may be raised through a follow-on offer, rights issue, qualified institutional placement, bonus issue, offer for sale or any other mechanism and in the manner as specified by SEBI.
- Units of REITs are required to be mandatorily listed on a recognised stock exchange within a period of 12 (twelve) days from the date of closure of the initial offer and REITs are required to make continuous disclosures in terms of the listing agreement.
- REITs should redeem units only by way of buy-back or at the time of delisting of units.
- Investment by REITs should only be in holding company and/or[7] SPVs or properties or securities or TDR in India in accordance with the REIT Regulations and the investment strategy as set out in the offer document.
- Mutual funds are also allowed to invest in REITs, however a mutual fund scheme cannot invest more than 10 (ten) per cent of its net asset value in units of REITs.[8]

Recently, SEBI has amended the REIT Regulations.[9] The key changes inter alia include:

- REITS have now been allowed to raise funds by way of issue of non-convertible debentures and bonds;
- 'Strategic Investors' have now been defined in the REIT Regulations and are allowed to invest in the public issues of units of REITS;
- Minimum holding norms have been relaxed for REITS; and
- REITS are now allowed to lend to their underlying holding companies or SPVs

[6] Inserted by the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2016, w.e.f. 30.11.2016
[7] Omitted, by the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2016, w.e.f. 30.11.2016
[8] Inserted by the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2016, w.e.f. 30.11.2016
[9] The amendment was notified by SEBI on 27 December 2017.

India

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Common terms of lease agreements

Unit of measurement	
Open market rental value	Square Feet
Rental payments	
Rents	Rupees per sq.ft per month
	Tier I cities: Rent quoted is exclusive of 18% GST plus Swachh Bharat Cess[10] at the rate of 0.5% and Krishi Kalyan Cess at the rate of 0.5%[11]. Tier II cities: Rent quoted is inclusive of taxes in the Commercial Business District (CBD), while it is quoted without taxes in peripherals.
Typical lease term	Normal commercial lease terms: 3+3+3 years
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	Tier I cities: 3–6 months' rent Tier II cities: 6–12 months' rent
Security of Tenure	For the duration of the tenancy, the landlord generally has no termination rights Lock-in depends on the condition of the office space (furnished/unfurnished)
Does tenant have statutory rights to terminate	Tier I cities: Termination right is generally available after expiration of the "lock in period" Tier II cities: Termination rights generally available after expiration of the "lock in period"
Basis of rent increases or rent review	Fixed increment negotiated and agreed at the outset of the lease, typically between 15–20% every 3 (three) years
Frequency of rent increase or rent review	Every 3 (three) years
Service charges, operating costs, repairs and insurance	
Responsibility for service charge/ management fee	Tier I cities: Monthly, in advance Tier II cities: Monthly, in advance
Responsibility for utilities	Tier I cities: Electricity and water are separately metered and payable by each tenant Tier II cities: Only electricity is separately metered and payable by each tenant
Car parking	Tier I cities: Allocated parking is on a per sq.ft. ratio (e.g. one bay per 1,000 sq.ft.). It may be held under a separate monthly lease for an additional rent Tier II cities: Allocated parking is on a per sq.ft. ratio and varies within micro-markets (e.g. one bay per 2,000 sq.ft. in the CBD and one bay per 1,000 sq.ft. or one bay per 1,250 sq.ft. in peripherals). It may be held under a separate monthly lease for an additional rent
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc.)	Landlord (charged back via service charge)
Responsibility for external/structural repairs	Landlord (charged back via service charge)
Responsibility for building insurance	Landlord (charged back via service charge)
Disposal of leases	
Tenant subleasing & assignment rights	Generally prohibited (subject to landlord approval)
Tenant early termination rights	Termination rights generally available after expiration of the "lock in period"
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition (subject to normal wear and tear)

It is pertinent to note that in certain states in India, including in the State of Maharashtra, the concept of leave and license is prevalent which gives the licensee a right to only use and occupy the property without creating any interest therein.

Source: JLL

[10] SEBI Press Release dated 14.01.2017
[11] Per section 66B of Finance act, 1994 read with section 119 of Finance Act 2015

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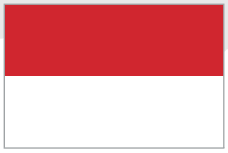

Property Tenure/Ownership

Land rights can be divided into two categories:

- Adat land (customary land)
  - Not registered with the relevant land office (Badan Pertanahan Nasional (BPN) or National Land Agency).
  - Usually held through a (hereditary) traditional joint community ownership structure.
  - A (joint) community may temporarily "release" valid customary land to be used for agricultural purposes by granting another person a Right of Cultivation (Hak Guna Usaha) and/or a Right of Use (Hak Pakai) over the customary land, for a limited tenure.
  - Rights held under this category can be converted to certified titles.
- Certified land
  - Title is governed by the Basic Agrarian Law of 1960 and is registered at the local land office.
  - There are basically five types of certified land rights held under the Agrarian Law:

1. Right of Ownership (Hak Milik)
   - Absolute ownership of land and corresponds to a fee simple or freehold title in common law jurisdiction.
   - This right is hereditary and held only by Indonesian citizens. Certain legal entities specified by the Indonesian government can hold a Right of Ownership, namely state banks, community agriculture cooperatives, and religious or social organizations designated by the Minister of Agriculture or Minister of Agrarian Matters.
   - This land right can be sold, transferred, bequeathed or hypothecated (mortgaged).
2. Right of Cultivation (Hak Guna Usaha)
   - Right to cultivate or exploit state-owned land for agricultural, fishery or husbandry purposes.
   - Valid for a maximum of 35 years, but extendable for another 25-year period, with a possibility of renewal.
   - Can be held by Indonesian individuals or entities, as well as Indonesian incorporated foreign joint-venture companies.
   - This land right can be mortgaged.
3. Right to Build (Hak Guna Bangunan)
   - Right to develop and own buildings on land owned by others.
   - Right to Build is granted over state-owned land, Right of Ownership and Right to Operate/Manage (Hak Pengelolaan) land.
   - Granted for a maximum initial period of 30 years and extendable for another 20-year period, with a possibility of renewal.
   - Can be held directly by Indonesian entities or Indonesian incorporated foreign joint-venture companies.
   - This land right can be sold, exchanged, transferred, bequeathed or mortgaged.
4. Right of Use (Hak Pakai)
   - Right to use state-owned land or land owned by others for a specific purpose, as agreed by both parties, such as for social activities, religious worship, embassies and international organizations.
   - Right of use granted over state-owned land is valid for a maximum of 25 years, but extendable for another period of 20 years or occasionally for an indefinite period, as stated in its grant or agreement (if it is granted to embassies, non-department government institutions, representative of international organizations, or religious or social institutions).
   - Right of use granted over an underlying Right of Ownership title is valid for a maximum of 25 years and cannot be extended. However, subject to mutual agreement between the land owner and the right of use holder, the right of use can be renewed.
   - Can be held by Indonesian citizens and entities, foreign-invested entities, individual foreigners residing in Indonesia, foreign embassies, or representative offices of foreign entities.
   - This land right can be sold, exchanged or transferred, subject to approval of the land lower in each case.
5. Right to Operate/Manage (Hak Pengelolaan)
   - Right to operate state-owned land for a specific purpose, as approved by the authorities.
   - Given exclusively to government institutions or state-owned companies for an unspecified period.
   - Can be transferred to a third party in the form of "Hak Guna Bangunan" or "Hak Pakai".

Hak Guna Usaha, Hak Guna Bangunan and Hak Pakai titles are available to companies registered under current Indonesian laws, including Indonesian incorporated foreign-owned companies and Indonesian incorporated foreign joint venture companies.

Other rights of cultivation include Right to Crop Forest Products (Hak Memungut Hasil Hutan) and Right to Clear Land (Hak Membuka Tanah).

Besides the above types of land rights, there is a law governing the right of ownership relating to multi storey buildings (Hak Milik atas Satuan Rumah Susun) (Law No. 16 of 1985, as revoked and substituted by Law No. 20 of 2011), issued to owners of residential/commercial/retail units in multi storey buildings such as condominiums, strata-title office building or trade centers. The validity period depends on the expiry date of the land right of the plot on which the building is constructed.

Update on Strata-title Office Buildings, Malls and Trade Centers

Under the Law No. 20 of 2011, the ownership over unit in multi-storey building is evidenced by a strata-title certificate (Sertipikat Hak Milik Satuan Rumah Susun) issued by the local land office.

In practice, some developers build office towers, malls and trade centers and sold the units to the owner on the basis that the owner will have the ownership over the office units based on strata-title rights. For such ownership by the local land office.

However, currently the local land office is suspending any application for the issuance of strata-title certificate for ownership of units in strata-title office buildings, malls and trade centers. This is because on 30 December 2014 the Head of Legal and Employment Matters Bureau of the Ministry of Public Housing issued a letter to the Head of DKI Jakarta Regional Land Office stating that the issuance of strata-title certificate for office buildings, malls and trade centers cannot be processed as the Law No. 20 of 2011 does not recognize the concept of strata-title over non-residential unit in multi-storey buildings.

Based on our latest checking at the relevant land office, the policy of the land office remain the same and strata-title certificate for office buildings, malls and trade centers still cannot be issued by the land office on the basis that pursuant the Law No. 20 of 2011 the strata-title certificate is issued for residential (apartment) unit in residential building not for office, malls and trade centers.

Major Property-related Legislation

- Basic Agrarian Law (and its implementing regulations)
- Investment Law
- Taxation Law

Regional Autonomy

Law No. 23 of 2014 on regional autonomy (subsequently substituted by Law No. 2 of 2015 and its amendments) and Law No. 25 of 1999, as substituted by Law No. 33 of 2004 on financial balancing between central and local government, were issued to implement the decentralization of autonomy for all Indonesian provinces and regencies, effective from 2 October 2014.

This package of laws allows each regional government to issue new government regulations on taxes and retributions for their regions. These laws, together with several government regulations, also give the regional government the authority to issue permits for investment in forestry, fishery, mining (except oil and gas), etc.

Operational Requirements for Foreign Corporations

Office

Modes of Entry

Foreign joint venture company (either joint venture with an Indonesian party or 100% foreign ownership). However, not all business sectors are opened for 100% foreign ownership and in this case the foreign investor must form a joint venture with an Indonesian parties. The list of foreign ownership limitations in foreign joint venture company is set out in the negative list of investment (that is issued by the Capital Investment Coordination Board).

Registered permanent establishment (mainly for oil and gas participants under a Production Sharing Contract).

Representative office.

Registration/Licensing Requirements

- Foreign joint venture company
  - principal license and business license registration from the Capital Investment Coordination Board (Badan Koordinasi Penanaman Modal or BKPM);
  - BKPM is to issue business licenses on behalf of government ministries in accordance with applicable law and regulations of the related ministries (e.g. Ministry of Public Works, Ministry of Trade, Ministry of Agriculture, Ministry of Industry, Ministry of Tourism, Ministry of Health, Ministry of Transportation, Ministry of Public Housing, Ministry of Communication and

Informatics, Ministry of Maritime Affairs and Fisheries, Indonesia Police Force, Ministry of Forestry, Ministry of Energy and Mineral Resources and the Ministry of Education and Culture);

- location permit (Ijin Lokasi) from the relevant regional authority. The location permit is required in case the company intends to undertake a land acquisition;
- recommendation from relevant government body (for business license); and
- articles of association ratification with respect to the change of company status to become a foreign investment company from the Ministry of Law and Human Rights.

- Representative Office
  - general representative offices must obtain a licence from the BKPM for general corporate and investment preparation purposes (among others, to prepare the establishment and development of the relevant company's business in Indonesia);
  - trading representative offices should obtain licenses from the BKPM for marketing and market research purposes; and
  - oil and gas representative offices should obtain a license from the Directorate General of Oil and Gas of the Ministry of Energy and Mineral Resources.
- Online Company Folders

BKPM has issued a circular letter requiring all companies under its jurisdiction (namely foreign investment companies (PMA) and domestic investment companies (PMDN)) to create online company folders with BKPM (through its official website) for the purpose of document submission. The creation of these folders is required to be completed (for existing companies) prior to 1 October 2014. As of that date, any applications made regarding any to BKPM license will only be processed once the company folders have been created.

Foreign Employment Limitations

Expatriates are allowed to hold positions where qualified Indonesian nationals are not available, and subject to the condition that such position is open for expatriates, provided there is gradual localisation of these positions. A foreigner is not allowed to hold a position as human resources director. A non-foreign investment Indonesian company is also prohibited to have a foreigner in the board of commissioners. Also, some of the business sectors (e.g. multifinance business) require that all members of the board of directors must be resident in Indonesia.

Further, the number of expatriates shall be determined by the Directorate of Foreign Manpower Utilisation from the Ministry of Manpower upon application for approval of a company's or trading representative office's foreign manpower utilisation plan, taking into consideration to the accomplishment to the employee ratio requirement, amount of equity and the number of intended employees.

Foreign employees must obtain a working permit to work in Indonesia, an entry/exit permit for entering/leaving the country and insurance policy certificate card from any of Indonesian insurance company.

All expatriates residing in Indonesia are required to register with the Indonesian Tax Office and file personal income tax returns on a worldwide basis. Expatriates who have worked in Indonesia for more than 6 (six) months is required to obtain the Taxpayer Registration Number issued by the relevant Tax Office.

Retail Trade

Government Regulations No. 15/1998 and 46/1998 (amending various preceding regulations) were issued in 1998 to allow foreign investors in the manufacturing sector to set up retail companies and/or export import companies in Indonesia.

Currently, foreign companies are generally still operating under technical assistance agreements or franchise agreements with local-owned companies.

Foreign Investment Incentives

Foreign investment incentives for investment projects approved by BKPM include:

- Possible exemption from import duties and VAT on the import of capital goods, machines or equipment;
- For designated provinces and investment in certain business sectors that satisfy certain criteria, "tax allowances" are potentially available, including an investment allowance of 30% over six years, accelerated depreciation, extended loss carried forward in excess of five years (but not more than ten years), and 10% dividend withholding tax for non-resident shareholders, if required; and
- A new Government Regulation has recently been issued on 21 December 2015, which sets out the facilities which may be given to an investor who is investing in a special economic region. One of the facilities, is, among others, an "income tax holiday" for a minimum of 10 years or a maximum of 25 years for investments over IDR 1 trillion (USD 71,658,903.62) for several designated business

sectors in the special economic region. Thus far the government has established several regions across Indonesia as special economic regions, including among others, Banten, Palu, Bitung, Morotai and Mandalika.

Restrictions on Foreign Property Ownership

Generally, foreign individuals or foreign companies that are not registered under current Indonesian laws enjoy only the Right of Use (Hak Pakai).

Under Government Regulation No. 103/2015 issued in December 2015, individual foreigners are allowed to own residential property. Foreigners who provide benefits to the national development, reside permanently or temporarily in Indonesia, and have immigration documents or visa, may purchase:

- non-subsidised houses on land with Right of Use title
- strata-titled apartment units on land with Right of Use title
- vacant land with Right of Use title or other land use agreements with the land title holder, and build a house on the land

Pursuant to the 2015 Government Regulation, foreign individuals may hold a Right of Use (Hak Pakai) title for 30 years period and extendable up to another 20 years period.

Foreign Exchange Controls

Indonesia has limited foreign exchange controls. The rupiah has been, and in general is, freely convertible within or from Indonesia. However, to maintain the stability of the rupiah and to prevent the utilisation of the rupiah for speculative purposes by non-residents, Bank Indonesia has introduced regulations to restrict the movement of rupiah from banks within Indonesia to offshore banks, an offshore branch of an Indonesian bank, or any investment denominated in rupiah by foreign parties and/or Indonesian parties domiciled or permanently residing outside Indonesia, thereby limiting offshore trading to existing sources of liquidity. In addition, Bank Indonesia has the authority to request information and data concerning the foreign exchange activities of all people and legal entities that are domiciled, or who plan to be domiciled, in Indonesia for at least one year.

Bank Indonesia Regulation No. 14/21/PBI/2012 as revoked and substituted by Bank Indonesia Regulation No. 16/22/PBI/2014 on Foreign Exchange Reporting and Reporting of Implementation of Prudential Principles in the Management of Non-Bank Offshore Loans (PBI 16/22) requires bank institutions, non-bank financial institutions, non-financial institutions, state/regional-owned companies, private companies, business entities and individuals to submit a report to Bank Indonesia on their foreign exchange activities. The report is required to include:

- Trade activities in goods, services and other transactions between residents and non-residents of Indonesia
- The position and changes in the balance of foreign financial assets and/or foreign financial assets and/or foreign financial liabilities.
- Any plan to incur foreign debt and/or its implementation Indonesian companies are required to submit a foreign exchange report for any activities stipulated under PBI 16/22, to Bank Indonesia, by no later than the fifteenth day of the subsequent month. Any plan to obtain an offshore loan is required to be submitted to Bank Indonesia by no later than 15 March of the respective year when the plan is formulated by the company. In the event there is a change to the company's plan to obtain an offshore loan, an amendment to such report must be submitted to Bank Indonesia by no later than 1 July of the year of such change.

Further, an Indonesian company which obtains an offshore loan is also required to file an activity report with respect to the prudential principle on the offshore loan management which consists of:

- Implementation of Prudential Activity Report ("Prudential Report") incorporating foreign financial assets and foreign financial liabilities.
- Audited Prudential Report by the independent public accountant based on attestation procedure;
- Information regarding the accomplishment of Credit Rating; and
- Quarterly unaudited financial statement and annual audited financial statement.

Failure to submit the foreign exchange report could result in the imposition of an administrative sanction in the amount of IDR 10,000,000 (USD 721.34) while the failure to submit the Prudential Report could result in the imposition of an administrative sanction in the amount of IDR 500,000 (USD 36.06). Bank Indonesia will issue a warning letter and/or report to the licensing authority, should the non-banking institution fail to submit a report. The aforementioned sanctions of Prudential Report will be effective commencing from the reporting period in 3rd quarter of 2015, provided that such report is conducted through offline method, the obligation shall be effective as of 1 January 2016.

Indonesia

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On 23 December 2015, Bank Indonesia issued Bank Indonesia Regulation No. 17/23/PBI/2015 on the Receipt of Export Proceeds and Withdrawal of Offshore Loans in Foreign Currency Reporting amending the previous Bank Indonesia Regulation 16/10/PBI/2014 (PBI 16/10). Under PBI 16/10, Indonesian recipients of export proceeds (with the exception of (i) government export proceeds which are received through Bank Indonesia, and (ii) export proceeds which are domestically received in cash as proven by sufficient supporting documents and deemed reasonable by Bank Indonesia) or offshore loans are required to withdraw proceeds through foreign exchange banks located in Indonesia, and such withdrawal must be reported to Bank Indonesia. PBI 16/10 also stipulates that the accumulated amount of withdrawals for an offshore loan must be equal to the commitment amount of such offshore loan as stated under the relevant offshore loan agreement. If the accumulated amount of withdrawals is not equal to the commitment amount of the offshore loan and the difference is more than IDR 50 million (USD 3,582.94) (lesser than the commitment amount), the Indonesian debtor must provide a written explanation and supporting documents to Bank Indonesia. Any violation of PBI 16/10 means Indonesian exporters may be subject to a fine of up to IDR 100 million (USD 7,165.89) (within one month export goods notification period) and will subject Indonesian debtors to a fine in the maximum amount of IDR 50 million (USD 3,582.94) for each non-complying withdrawal.

Taxes on Possession and Operation of Real Estate

Property Tax

The property tax (PBB) rate on land and buildings is a maximum of 0.3% of the sale value of the property (NJOP) (which is determined by the Local Government on average every one to three years) less non-taxable NJOP minimum IDR 12million (USD 859.91).

For example in DKI Jakarta for years 2016:

Non-taxable NJOP is IDR 80 million (USD 5,732.71).

PBB rate is as follows:

NJOP value	PBB
Less than IDR 200 million (USD 14,331.78)	0.01%
IDR 200 million-2billion (USD 14,331.78-143,317.81)	0.01%
IDR2-10 billion (USD 143,317.81-716589.04)	0.02%
Above IDR 10 billion (USD 716,589.04)	0.3%

A 50% reduction in the property tax rate is given to land and buildings used for non-profit activities, including social and educational activities and health care services. Land and buildings used for religious worship, nature reserves, parks, diplomatic offices and designated international organizations are exempted.

From 1 January 2014, PBB for rural and city areas will be classified as Regional Tax (Pajak Daerah) for all regions and will no longer be National Tax regulated by the Directorate General of Tax.

Withholding Tax on Property Income

Income derived from rental payments and service charges are subject to a final tax of 10% of the transaction value. The party from which the payment is due is responsible for the deduction and payment of the withholding tax to the tax authorities. If not, the lessor must pay the 10% itself.

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty and Legal Costs

Stamp duty is levied on various legal documents to which a monetary value is affixed. The rates are fixed, as follows:

NJOP value	PBB
Up to IDR 250,000 (USD 17.91)	Nil
IDR 250,001-1,000,000 (USD 17.91-71.66)	IDR 3,000 (USD 0.21
Over IDR 1,000,000 (USD 71.66)	IDR 6,000 (USD 0.42)

Notary fees for the processing of legal documents are usually charged at about 0.5% to 1.5% of the transacted price.

Individuals or companies obtaining rights to land or buildings are required to pay a Land and Building Transfer Duty (BPHTB) of 5%. The 5% duty is computed based on the transaction value or the assessed value, whichever is higher.

The non-taxable threshold amount for BPHTB varies by region, and the minimum threshold currently is IDR 60 million (USD 4,299.53). For acquisitions by inheritance, the non-taxable property value is stipulated by the regional authorities, but the minimum is set at IDR 300 million (USD 21,497.67).

Indonesia

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Capital Gains Tax

1. Land and Building Transfers

- A 2.5% tax on sales value is levied on companies and individuals for the sale/transfer of land rights and/or buildings. For transfers of simple houses and apartments by tax payers engaged in property development business, the tax rate is 1%.
- The 2.5% tax on sales value is final.
- The transfer tax deposit slip (Surat Setoran Pajak) must be presented to the National Land Agency office together with the request for land title transfer.

2. Asset Revaluations

- The net gains from asset revaluations (approved by the tax authority) are subject to a 10% final tax. An additional final income tax of 15% is imposed if the revalued assets are sold or transferred within a certain period after revaluation (for example, for land/building assets, the period is less than 10 years). This additional tax does not apply to assets transferred to the government or transferred in the course of a tax-free business merger, however such mergers must be for business purposes and not tax driven.

Shares

- Foreign companies and individuals are subject to a 20% withholding tax on dividends from property companies (subject to tax treaty provisions, where relevant).
- A final tax of 0.1% applies to income from the sale of shares at the Indonesian Stock Exchange (collected "automatically" by the Stock Exchange). The rate is 0.6% if the seller is a founding shareholder.
- A 5% tax is applicable to the sale of shares by a foreign shareholder, unless it is exempted under a tax treaty.

Value Added Tax/Goods and Services Tax

A value added tax (VAT) of 10% applies to the delivery of most goods and services at import, manufacturing, wholesale and retail levels.

The sale of raw land is not subject to VAT, but the sale of land already prepared for development is subject to a VAT of 10%. VAT on rental payments and service charges is 10%.

Sales, leasing and construction services rendered for low-cost housing, modest flats and student accommodation may be exempted from VAT.

VAT can generally be passed on to customers, such as from contractors, architects, engineers and consultants to developers, from developers to purchasers, and from owners to tenants.

In addition to VAT, there is a sales tax on luxury goods. This is a one-time tax imposed on a wide range of luxury goods at import or manufacturing levels at rates of 10% to 75% (but potentially up to 200%). A 20% sales tax on luxury goods is applicable to luxury houses, apartments, condominiums, tower houses and the like.

Tax Depreciation

Assets in the permanent building category with a useful life of 20 years are depreciated at around 5% on a straight-line basis. Assets in the non-permanent building category with a useful life of ten years are depreciated at around 10% on a straight line basis.

Fixtures/equipment forming a part of buildings are depreciated at around 25% on the basis of reducing balance, or around 12.5% on a straight line basis.

The cost incurred in relation to the sale/transfer of land is not depreciable. However, the cost of acquiring intangible property (e.g. acquiring rights to land use from the government) can be amortised over four, eight, 16 or 20 years based on the useful life of the property.

Corporate Taxation

The income of resident and non-resident corporate entities is taxed at a flat rate of 25%. Small enterprises with a turnover no more than IDR 50 billion (USD 3,582,945.18) are entitled to a 50% discount off the standard rate, imposed proportionally on the taxable income of the part of gross turnover up to IDR 4.8 billion (USD 343,962.74). For certain small companies with turnover not more than IDR4.8-billion(USD343,962.74)thecorporatetaxis1%ofturnover and it is a final tax. Public companies that have at least 40% of their shares listed are entitled to a tax discount of 5%, essentially giving them an effective tax rate of 20%.

Resident corporations are taxed on their worldwide income, with an allowable credit for taxes paid to foreign countries. Non-resident corporations are taxed only on income derived in Indonesia as regulated under Article 26 of the Income Tax Law or Tax Treaties (see below).

Dividends of a non-resident corporation not covered by tax treaty protection are subject to a 20% withholding tax.

Lossesmaybecarriedforwardforfiveyears.For-certaincategories of business in certain regions provided with "tax incentives allowances", losses may be carried forward up to ten years. No carry back of losses is allowed.

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Personal Taxation

Residents(i.e. those staying in Indonesia for at least 183 days per annum) are taxed on their worldwide income, subject to certain allowances and deductions, on a graduated scale ranging from 5% to 30%.

Annual Income	Rate
Up to IDR 50,000,000 (USD 3,582.94)	5%
IDR 50,000,001–250,000,000 (USD 3,582.94–17,914.72)	15%
IDR 250,000,001–500,000,000 (USD 17,914.72–35,829.45)	25%
Over IDR 500,000,000 (USD 35,829.45)	30%

Non-residentsaretaxedat20%ofgrossincomederived-inIndonesia.

Employing entities are responsible for collecting and paying the tax due on employee remuneration (be it cash or "benefits in kind" BIK). Cash income is taxed on a monthly basis. BIKs, e.g., cars, housing etc. provided by the company to the employee, are not taxable in the hands of the employee, but the full cost of BIKs is non-deductible to the company (except for employees of companies under final tax regime and representative offices, where the cost of the BIKs must be taxed in the hands of employees the same as cash remuneration).

Tax Treaties: Avoidance of Double Taxation

Treaties in existence:

Algeria
Armenia
Australia
Austria
Bangladesh
Belarus
Belgium
Brunei Darussalam
Bulgaria
Canada
China
Croatia
Czech Republic
Denmark
Egypt
Finland
France
Germany
Hong Kong
Hungary
India
Iran
Italy
Japan
Jordan
Kuwait
Laos
Luxembourg
Malaysia
Mexico
Mongolia
Morocco
Myanmar
Netherlands
New Zealand
North Korea
Norway
Pakistan
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Romania
Russia
Saudi Arabia (limited treaty)
Serbia
Seychelles
Singapore
Slovakia
South Africa
South Korea
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Syria
Taiwan
Tajikistan
Thailand
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States of America
Uzbekistan
Venezuela
Vietnam
Zimbabwe

Real Estate Investment Trusts

Real estate investment trusts (REITs) have not been established in Indonesia, and there are no REIT specific regulations in the country. Currently, individuals in Indonesia who wish to invest in income-producing properties can do so through listed property companies or through real estate investment funds (REIFs or otherwise known as Dana Investasi Real Estate – DIRE).

A DIRE scheme involves a custodian bank and an investment manager who makes a collective investment in, among others, real estate and assets that are related to real estate. This excludes investments in vacant lots and investments in property that are still under development. A DIRE can invest its fund in a special purpose company, established specifically to achieve the DIREs' investment purpose. DIREs are regulated by the Indonesian Financial Services Authority (Otoritas Jasa Keuangan – OJK).

Indonesia

Oentoeng Suria & Partners

Common terms of lease for tenancy agreements

Unit of measurement	
Open market rental value	Square Meters
Rental payments	
Rents	RP/sqm/month, except for grade A buildings, where rents are quoted in USD. However, based on Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah in the Republic of Indonesia Territory requires that since 1 July 2015 the price quoted in the tenancy agreements shall be in Rupiah. The dual price quotation (in Rupiah and USD/other currency) is prohibited based on this regulation. Usually, the parties will agree on the exchange rate used before quoting the Rupiah price in the tenancy agreement. Rents are usually quoted as net of service charges and other outgoings
Typical lease term	3 Years, and 5-10 years for larger space users
Frequency of rent payable (in advance)	Quarterly or any agreed lease term.
Typical rent deposit (expressed as x months rent)	3 months
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed at the outset and specified in the lease
Basis of rent increases or rent review	Open market rental value or fixed increment agreed at the offset of the lease
Frequency of rent increase or rent review	At lease renewal or 3 yearly in longer leases
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Water consumption is included in the management charges
Car parking	Allocation (for reserved parking) is usually based on one parking lot per 50–100 sqm of leased space and is payable quarterly in advance and invoiced together with the rental charge invoice.
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord (charged back to tenant via service charge)
Responsibility for external/structural repairs	Landlord
Responsibility for building insurance	Landlord (charged back to tenant via service charge)
Disposal of leases	
Tenant subleasing & assignment rights	Generally full assignment to third parties is accepted (subject to landlord approval)
Tenant early termination rights	Only by break clause, usually subject to penalty
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

Source: JLL

Japan

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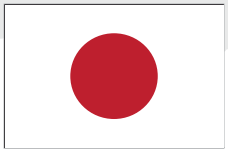

Property Tenure/Ownership

Real estate in Japan consists of land and fixtures affixed to land (such as buildings). Land and buildings are treated separately with respect to the tenure/ownership, which means, for example, that a parcel of land and a building on such land can be owned by different persons or entities.

Land and buildings are registered in the real estate register (fudosan tokibo), which records certain information including the address, size and name of owner thereof.

There are several types of tenure with respect to real estate in Japan:

Ownership

Ownership (shoyuken) is a right to freely use, obtain profit from, and dispose of the relevant property for an indefinite period, subject to certain restrictions (such as restrictions on its use for city planning purposes).

Ownership in land extends to above and below the surface of the land, subject to the restrictions prescribed by laws and regulations.

An acquisition of, disposition of, or change to the ownership of real estate may not be asserted against third parties unless they are registered in the real estate register.

Leasehold

Leasehold (chinshakuken) is a right to occupy and use the relevant property under a contract directly or indirectly entered into with the owner of such property.

A leasehold interest can be registered in the real estate register, but in the case of a leasehold of land for the purpose of owning a building thereon, it is normal practice that instead of the registration of the leasehold, a lessee of the land registers the building on the land to perfect its leasehold interest under the Act on Land and Building Leases.

Although the terms and conditions of a lease can be set out in an agreement between the lessor and the lessee, they are subject to various mandatory provisions under the Act on Land and Building Leases and certain court precedents that are intended to protect the lessee. These include provisions relating to the term, renewal and termination that prevail over the agreement between the lessor and the lessee.

Trust beneficiary interest

In many transactions related to investments in real estate in Japan, an investment is made to a trust beneficiary interest (shintaku juekiken) in the relevant real estate. In such a case, the relevant real estate is transferred to a trust bank or a trust company as trustee, who becomes the registered owner of such real estate and holds the real estate on trust for beneficiaries of the trust. Trust beneficiary interests can be freely transferred, subject to contractual restrictions.

Others

A superficies (chijoken) is a right to use the land of others to own structures (including buildings), trees or bamboo, on that land. Economically, this right can be similar to a leasehold interest, but it is given different legal characteristics.

A servitude (chiekiken) is a right to use the land of others for certain specific purposes on a non-exclusive basis.

A security interest (tanpoken) is a right created to secure the performance of an obligation, including a mortgage and a pledge.

Major property legislation

Laws relating to real estate

- Civil Code
- Act on Land and Building Leases
- Act on Building Unit Ownership, etc
- Real Property Registration Act
- Building Standards Act
- City Planning Act
- Fire Service Act

Laws relating to real estate investments

- Financial Instruments and Exchange Act
- Real Estate Specified Joint Enterprise Act
- Act on Investment Trusts and Investment Corporations

Operational requirements for foreign corporations

A foreign company may not carry on its business in Japan unless it incorporates a local company or registers itself as a foreign company in Japan.

Incorporation of a local subsidiary

A foreign company may incorporate a subsidiary in Japan. Such subsidiary is usually established as a limited company (kabushiki kaisha) or a limited liability company (godo kaisha). The requirements for incorporating a limited company are as follows:

- Head office: Required to be located in Japan;
- Capital: JPY 1 (USD .01) or more;
- Business purpose: A company must register specific business purposes in Japan.
- Officers: At least one director is required. In case a company establishes a board of directors, at least three directors are necessary. Although prior to March 16, 2015, there was the residency requirement that one or more of the directors with representative capacity shall be a resident in Japan, such requirement was abolished.

A foreign company must submit a prior notification or make a report after establishment of its subsidiary in Japan under the Foreign Exchange and Foreign Trade Act, depending on factors including the business purpose of such subsidiary and the nationality of such foreign company.

Registration as a foreign company

A foreign company may establish a branch office in Japan and register itself as a foreign company. Unlike the establishment of a local subsidiary, a branch office is not a separate legal entity from the relevant foreign company, and all rights and obligations of the branch belong to the relevant foreign company.

To establish a branch office, a foreign company needs to appoint one or more of its representatives in Japan, and at least one of them shall be a resident in Japan.

Establishment of a branch office in Japan is also subject to the notification obligation under the Foreign Exchange and Foreign Trade Act.

Foreign investment incentives

There is no specific incentive regime with respect to the investment in real estates in Japan by foreign persons.

Restrictions on foreign property ownership

Currently, there is no restriction on the purchase of real estate in Japan by foreign investors. However, a foreign investor who purchases real estate in Japan shall submit a report to the Minister of Finance within 20 days of such purchase under the Foreign Exchange and Foreign Trade Act, unless such purchase falls under certain exemptions.

Foreign exchange controls

Certain payments in or out of Japan require prior approval by, or a report made to, the competent minister under the Foreign Exchange and Foreign Trade Act. This depends on factors including the amount to be paid and the country to or from which such payment is made.

Taxes on possession and operation of real estate

Fixed Asset Tax

Fixed asset tax is levied on land, buildings, and tangible business assets (hereinafter termed "fixed assets"). A person, regardless of whether resident or nonresident, who is registered as owner of the fixed asset in the tax register book as of January 1 of each year, is obliged to pay the fixed asset tax. The amount of fixed asset tax is determined depending on the applicable tax rate (usually 1.4%) and the assessed value of the relevant fixed asset.

City Planning Tax

City planning tax is a surtax on the fixed asset tax, and is usually levied at a rate of 0.3% on land and buildings within city planning zones.

Business Office Tax

Companies in major cities such as Tokyo and Osaka having facilities exceeding 1,000 sqm in floor space and/or having more than 100 employees are subject to business office taxes. Tax rates are JPY 600 (USD 6) per sqm of floor space and 0.25% of the total amount of employee salaries.

Taxes on Acquisition and Transfer of Real Estate

Stamp Tax

Stamp tax is levied on certain documents such as contracts, bills and share certificates. As a rule, this tax is levied by affixing revenue stamps in the amount equal to the applicable stamp tax. Tax rates vary from JPY 200 (USD 2) to JPY 600,000 (USD 5,598).

Registration and License Tax

Registration and license tax is levied on the registration with respect to real estate, companies, etc. Tax rates vary depending on factors, such as the type of the transaction and the value of the relevant real estate.

Real Property Acquisition Tax

A real property acquisition tax is levied on the acquisition of land or buildings at the tax rate of 3% (for land and residential buildings) or 4% (for nonresidential buildings), although the reduced rates may apply in certain cases.

Capital Gains Tax

For individuals, capital gains from the transfer of land and buildings are subject to capital gains tax (consisting of a national [income] tax part and a local [residential] tax part). Capital gains tax is set out below, and shall be calculated separately from income tax on other income.

Holding Period of Land	Tax Rate
Five years or less	Income tax: 30% Residential tax: 9%
Over five years	Income tax: 15% Residential tax: 5%

For corporations, capital gains from the transfer of land and buildings are subject to a capital gains tax rate of 10% for properties held for five years or less and 5% for properties held for over five years. A special law provides that until March 31, 2020, the capital gains tax does not apply to corporations

Value Added Tax/Goods and Services Tax

Transfer or rental/lease of assets, or the provision of services for consideration as a business in Japan by an enterprise, is, except for certain transactions deemed nontaxable, subject to consumption tax. Sale or lease of land and lease of residential buildings are deemed nontaxable. The consumption tax rate is currently 8% (a national consumption tax rate of 6.3% and a local consumption tax rate of 1.7%). The consumption tax rate is expected to be increased to 10% (a national consumption tax rate of 7.8% and a local consumption tax rate of 2.2%) from 1 October, 2019.

Tax depreciation

Depreciation for a building can be deducted as a necessary expense from the amount of income from real estate for Japanese tax purposes. The amount of the deduction depends on the useful life of the property concerned and the depreciation calculation methodology used.

The length of the useful life of a building depends on the physical construction of the property. Cost of land cannot be depreciated.

Corporate taxation

Income generated by activities of a corporation is subject to corporate tax (national tax), corporate inhabitant tax (local tax), corporate enterprise tax (local tax) and special local corporate tax (local tax). Every Japanese company, regardless of domestic or foreign ownership, is treated as a Japanese resident and is liable to pay corporate taxes in Japan on its total income, whether earned in Japan or overseas. A foreign company that has a permanent establishment (including a branch office) in Japan will be charged corporate taxes on all revenue earned in Japan.

The corporate tax rate is currently 23.2%.

The corporate inhabitant tax includes a per capita levy that varies depending on the amount of capital and number of employees, and a corporate tax levy that varies depending on the amount of capital.

Corporate enterprise tax rates vary depending on the amount of capital and the amount of annual income.

Personal taxation

A foreign person is classified into one of the following three categories for Japanese tax purposes:

1. Resident

A resident is an individual who has his/her domicile in Japan, or an individual who has his/her residence in Japan for one year or longer. A resident is further categorized as follows:

- Nonpermanent Resident
  - A nonpermanent resident is a resident who does not have Japanese nationality and has had his/her domicile or residence consistently in Japan for five years or less in the last ten years.
  - A nonpermanent resident is subject to Japanese tax with respect to his/her Japan-sourced income and foreign-sourced income paid in or remitted into Japan.
- Permanent Resident
  - A permanent resident is a resident other than nonpermanent residents.
  - A permanent resident is subject to Japanese tax with respect to all of his/her income, regardless of whether or not it is earned in or paid into Japan.

2. Non-resident

- A nonresident is an individual other than residents, including a temporary visitor, who stays in Japan for less than a year.
- A nonresident is subject to Japanese tax with respect to his/her Japan-sourced income.

Income generated by the activities of an individual is subject to income tax (national tax), individual inhabitant tax (local tax) and individual enterprise tax (local tax). An individual who is classified as a non-resident as of January 1 each year is not subject to individual inhabitant tax for such year.

Japan

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Tax treaties: Avoidance of double taxation

Treaties for the avoidance of double taxation are in existence and in effect between Japan and the following countries or areas as of January 1, 2018:

Armenia
Australia
Austria
Azerbaijan
Bahamas
Bangladesh
Belarus
Belgium
Bermuda Islands
Brazil
Brunei Darussalam
Bulgaria
Canada
Cayman Islands
Chile
China
Czech Republic
Denmark
Egypt
Fiji Islands
Finland
France
Georgia
Germany
Guernsey
Hong Kong
Hungary
India
Indonesia
Ireland
Israel
Italy
Jersey
Kazakhstan
Kuwait
Kyrgyzstan
Latvia
Liechtenstein
Luxembourg
Malaysia
Mexico
Moldova
New Zealand
Norway
Oman
Pakistan
Philippines
Poland
Portugal
Qatar
Romania
Russia
Saudi Arabia
Singapore
Slovakia
Slovenia
South Africa
South Korea
Spain
Sri Lanka
Sweden
Switzerland
Taiwan
Tajikistan
Thailand
The Isle of Man
The Netherlands
Turkey
Turkmenistan
UAE
Ukraine
United Kingdom
United States of America
Uzbekistan
Vietnam
Zambia

Real Estate Investment Trusts

Introduction

In Japan, real estate investment trusts (J-REIT) were introduced along with a revision to the Act on Investment Trusts and Investment Corporations (Investment Trust Act) in 2000. In a J-REIT scheme, an investment corporation is established as a special investment vehicle that invests funds gathered from investors in real estate-related assets and distributes income from such investment to investors in the form of dividends. An investment corporation issues its equity securities called 'investment securities' to investors, and such investment securities meeting certain criteria for listing can be listed and traded on a stock exchange.

A special investment vehicle can also be formed as an investment trust under the Investment Trust Act, and beneficiary certificates issued by the trustee of the trust can also be listed, but there are currently no trust beneficiary certificates listed on a stock exchange.

Although an investment corporation has legal personality and is technically responsible for owning and managing real properties, in reality, all investment decisions are deferred to its asset management company, which is registered as a Financial Instruments Business Operator under the Financial Instruments and Exchange Act.

Restrictions

1. Establishment

- Under the Investment Trust Act, the total amount of investment in an investment corporation at the time of its establishment shall be at least JPY 100 million (USD 933,000), while the minimum amount of net assets regularly held by an investment corporation shall be JPY 50 million (USD 466,500).
- To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements, such as:
  - The total net assets shall be JPY 1 billion (USD 9.33 million) or more; and
  - The total assets shall be JPY 5 billion (USD 46.25 million) or more.
- The incorporator of an investment corporation shall notify the Prime Minister of certain matters required by the Investment Trust Act before establishment of the relevant investment corporation.
- In a J-REIT scheme, an investment corporation needs to be registered by the Prime Minister so that it is able to make investment in real estate related assets.

2. Asset restrictions

- At least 50% of the total assets of an investment corporation shall be invested in "specified assets", including securities and real estate.
- To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements such as:
  - Real estate (inclusive of certain limited categories of real estate-related asset classes) must make up at least 70% of the total assets under management; and
  - Real estate (inclusive of certain limited categories of real estate-related asset classes), real estate-related assets and floating assets must make up at least 95% of the total assets under management.

3. Distribution and unit holders' restrictions

The amount of dividend distributions shall not exceed the amount obtained by deducting the "amount of the net assets threshold" (as defined under the Investment Trust Act) from the amount of net assets stated on the balance sheet.

To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements such as:

- At least 4,000 units shall be listed
- Major unit holders may hold no more than 75% of listed units
- There shall be at least 1,000 unit holders
- No redemption of investment securities may be made other than because of dissolution or liquidation of the investment corporation.

Taxation

Unlike ordinary corporations, which are liable for corporate taxation on profits, investment corporations are exempt from taxation if certain criteria are met, which include, among others:

- The investment corporation not being engaged in any business other than those permitted to REITs
- The investment corporation not being an entity that would be classified as a "family corporation" at the end of its fiscal period
- The investment corporation distributes over 90% of its profits to unit holders as dividends for each fiscal period
- Over 50% of the "investment units" (toushi-guchi) on an issued amount basis having been offered in Japan

With respect to an acquisition of real estate by an investment corporation, the investment corporation may receive, conditional on certain criteria being satisfied, the benefit of a reduction in the following taxes (among others):

- Applicable registration and license tax levied on the registration of the transfer of ownership title of the real property
- Applicable real property acquisition tax levied on the acquisition

Special Purpose Entity Available Only to Certain Property Investment: TMK

Introduction

A tokutei mokuteki kaisha (TMK) is a specified purpose company created under the Act on Securitization of Assets that will purchase real estate as part of securitization transactions. A TMK gathers funds from investors and uses the funds to purchase real estate. Proceeds obtained from the management of real estate will be distributed to the investors. TMKs are very often used in real estate investment transactions because of their tax benefits and for certain regulatory reasons. In real property transactions using a TMK, the acquisition of underlying real property is funded by loans extended to the TMK, and/or bonds, commercial papers or preferred equity interests issued by the TMK.

"Pay-through" entity

TMKs are exempted from taxation if certain criteria are met, which include, among others:

All bonds issued by the TMK are expected to be held by certain qualified institutional investors, or all preferred equity interests to be subscribed by certain qualified institutional investors

(In the latter case of the above) the TMK not being an entity that would be classified as a "family corporation" at the end of its fiscal period

The TMK distributes over 90% of its profits to equity holders as dividends for each fiscal period

Over 50% of the preferred equity and certain equity on an issued amount basis having been offered in Japan

Reduction of taxes on acquisition of real estate

With respect to an acquisition of real estate by a TMK, the TMK may receive, on the condition that certain criteria are satisfied, the benefit of reduction of the following taxes (among others):

- Applicable registration and license tax levied on the registration of the transfer of ownership title of the real property
- Applicable real property acquisition tax levied on the acquisition

Japan

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Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of measurement	Tsubo (1 tsubo = 3.3 sqm = 35.58 sq ft)
Rental payments	
Rents	¥/sqm/month ¥/tsubo/month may also be stated in the lease
Typical lease term	Standard leases: 2–3 years with renewal rights. Fixed term leases: 3–5 years, but can be longer.
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	12 months
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term (typically has automatic renewal provision in standard leases)
Does tenant have statutory rights to renewal	Standard lease term: Yes Fixed lease term: No
Basis of rent increases or rent review	Open market rental value
Frequency of rent increase or rent review	Typically at lease renewal, but with traditional leases can be any time during term if market rent has substantially increased or decreased. Rents may not be varied for a fixed term, unless otherwise agreed
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity, water consumption and after core hour HVAC charges are separately metered and payable by each tenant; telecommunication is separately payable typically to vendor
Car parking	Where parking is available, it is held under a separate monthly lease for an additional rent and deposit
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
Responsibility for external/structural repairs	Landlord
Responsibility for building insurance	Usually landlord
Disposal of leases	
Tenant subleasing & assignment rights	Generally accepted to tenant's affiliated companies and rarely to unrelated third parties (subject to the landlord's approval)
Tenant early termination rights	Subject to landlord's approval with 6 month's written notice and subject to penalty payment. Termination within initial lease term usually requires repayment of any rent-free period. Typically not allowed under fixed-term lease.
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

Source: JLL

Macau

Land tenure/property ownership

The Macau Government grants the use of reclaimed or vacant land by means of public tender, pursuant to which a land lease agreement is executed between the Macau SAR and the tenant (hereinafter, the "Land Concession Agreement"). The Land Concession Agreement is subject to publication in the Macau Official Gazette and registration at the Land Registry. In some circumstances, land may be leased without a public tender, such as, for example, if it is to be used for the development of activities related to education, culture, health or social services. In Macau, there are also a small number of properties held as freeholds or as perpetual leases typically found in the older parts of the city and the outlying islands.

A land lease is, usually, granted for an initial term not exceeding 25 years. With a few exceptions, this term is automatically renewed for successive terms of ten years. In some situations, an application for renewal is required, such as if the land is under re-development.

Once the land is leased to a foreign or local individual or company (concessionaire), the latter undertakes the obligation of developing the land for a particular purpose within a certain period of time. The land lease is deemed provisional until completion of the development, upon which it is converted into a definitive lease. This usually happens upon completion of construction and an occupancy or usage permit being issued by the appropriate authority.

Under the Land Concession Agreement, the concessionaire shall pay an initial premium and an annual rent.

Once the project is completed, it may be registered as a single unit or divided in separate units under the strata title system. In both cases, the unit or units may be sold to third parties, who shall then hold the rights over such properties as per the Land Concession Agreement.

The recent changes to the land law in Macau introduced the possibility of public land concession for private use in cases where it is considered necessary and of public utility to perform investments on fixed installations, such as gas stations, service stations and installations with equipment for the supply of services of telecommunications, electricity, natural gas and water supply. The land concession for private use is granted for an initial term of 15 years, subject to renewal for successive terms of ten years, upon request of the concessionaire.

Under the Macau registration system of land title, property ownership is recorded at the Land Registry and such registration gives publicity to title of the owners.

Major property legislation

Macau Civil Code	Articles 1264 to 1312 Articles 1313 to 1372 Articles 865 to 932	Ownership Rights Strata Title Law 10/2013
Sale and Purchase Contracts	Land Law	

Developments in Macau Property Law

Law 7/2013, which sets out the Legal Regime on Promissory Agreements for the Sale and Purchase of Buildings Under Construction has been enacted and entered into force on 1 June 2013. Law 7/2013 is intended to impose some discipline on the real estate market, enhance transparency regarding transactions prior to completion of development and ensure the legitimate rights and interests of parties in real estate transactions involving buildings under construction.

Law 7/2013 applies to transactions over:

- Any real estate properties that are still in project stage, under construction or have been completed but have not been issued a usage license
- Buildings already erected and with strata title that is still registered as provisional.

With the aim to reduce the risk of construction being repeatedly delayed and to protect the interests of purchasers, Law 7/2013 has introduced a requirement of prior authorization for the sale of buildings under construction, to be issued by the Land, Public Works and Transport Bureau of Macau (the "DSSOPT").

Prior authorisation by the DSSOPT is subject to the following requirements:

- Issuance of construction license;
- Completion of the foundations and basement of the building;
- Provisional registration of the strata title.

If a sale is made without prior authorization, fines for administrative breach will be incurred, and the sale and purchaser contract will be void.

Macau

The DSSOPT is appointed as the regulatory authority in charge of supervising the compliance with the terms of the law and applying any administrative sanctions in the event of a breach of the rules.

Real estate agencies and agents

Law 16/2012 (as amended by Law 7/2014) and its supplementary Administrative Regulation no. 4/2013, both of which took effect on July 1, 2013, set forth the legal regime of real estate agencies and agents and regulate the access to and the exercise of real estate intermediation activities in Macau.

Real estate agencies and agents are intended to promote (on behalf and in the interest of the client by means of a contract executed between the two):

- The acquisition, disposal or leasing of real estate
- The acquisition or disposal of commercial or industrial establishments
- The assignment of lease contracts

Under this regime, real estate agents have certain duties toward their clients, namely a duty to exercise reasonable diligence and an obligation of disclosure of information, as well as various other responsibilities toward the regulator which is the Housing Bureau.

The activity of real estate agents is subject to licensing, to be issued by the Housing Bureau, once certain legal requirements are met. The license is valid for three years, renewable for equal periods and non-transferable. It may be cancelled or suspended if the real estate agent does not comply with its legal obligations.

Real estate agents doing business without a valid license commit an administrative offense punishable with a fine of between MOP 20,000 (USD 2,505) and MOP 300,000 (USD 37,570).

Requirements for Foreign Entities

To do business in Macau, any individuals or entities may incorporate a Macau company or register a local branch. Generally, there are no restrictions on the type of business that can be operated in Macau, notwithstanding any licensing requirements for certain regulated activities (e.g. banking, medical care, pharmacies, insurance, offshore, travel agencies). Some activities, like gaming, utilities and public transportation are awarded by the government under a concession agreement, usually preceded by a public tender.

Save for the above mentioned specially regulated activities, there are no foreign investment restrictions, which means that individuals or companies from any country may incorporate Macau companies and own the whole share capital thereof. In certain regulated activities, it is mandatory for a local company to maintain a certain number of directors who are Macau residents or who hold a Macau work permit. Branches of companies incorporated overseas must appoint as their local representative at least one person who resides in Macau.

The process of incorporating a company in Macau requires the preparation and execution of a number of mandatory documents, some of which are subject to local notarisation. Full registration at the Macau Commercial Registry takes around 15 days, once an application is filed.

Macau companies must file annual tax returns. Audited tax returns are only required to be submitted by companies who either (a) opt to file audited tax returns; (b) have MOP1 million or more in share capital; or (c) have an average taxable profit of more than MOP500.000 during the previous three years.

Where a foreign company is providing services to a Macau entity under a contractual arrangement, the overseas entity must register as taxpayer with the Macau Finance Bureau and be taxed in Macau for profit earned locally.

The most popular types of corporate entities in Macau are:

- Sole Shareholder Company
- Limited Liability Company by quotas
- Limited Liability Company by shares

Sole Shareholder Company	1 shareholder	Minimum share capital of MOP 25,000 (USD 3,125)
Limited Liability Company by quotas	2–30 shareholders	Minimum share capital of MOP 25,000 (USD 3,125)
Limited Liability Company by quotas	At least 3 shareholders	Minimum share capital of MOP 1,000,000 (USD 125,000)

Consortiums or economic interest groups are contractual and commercial arrangements, whereby two or more companies join together to facilitate or develop a certain project or a joint economic activity, without affecting each of the members' autonomous legal capacity.

Macau

事務所 律師 華年達

Foreign Employment Limitations

Persons who are not Macau residents must apply for residency or hold a work permit, if they wish to work or reside in Macau. Residency can be applied for by the individual, and work permits are applied for by the local employer. Applications for work permits can be filed either for nominated individuals as skilled workers, or as a quota for unskilled workers in which case the latter are not identified.

There is a specific procedure to obtain an 'investment residency', which will provide the applicant with a temporary residency identification card for managerial personnel, technical and professional qualification holders, as well as major investors. This procedure runs through the Macau Trade and Investment Promotion Institute ('IPIM'), www.ipim.gov.mo.

Temporary residency applications for purchases of fixed assets (e.g. real estate) have been suspended since 2007.

Investment Incentives

For foreign investment projects that promote economic diversification, contribute to promote exports to new markets, add value to the economy and contribute to technological modernization, there are fiscal incentives available.

There are no withholding taxes on interest, royalties or any other source of income paid to non-residents, save for dividends to be distributed to non-residents.

There are also financial incentives as well as refundable and non-refundable subsidies for investment projects, which are granted on a case-by-case basis and considered mainly for projects that address the diversification of the economy, environmental protection, technology innovation, new products and anti-pollution equipment.

Restrictions on Foreign Property Ownership

There are no restrictions on foreign property ownership in Macau.

Foreign Exchange Controls

There are no foreign exchange controls in Macau, except for those imposed by anti-money laundering and prevention of terrorism financing common in other jurisdictions. Accordingly, money denominated in all currencies may move into and out of Macau freely. The Macau Pataca (MOP) is currently indexed to the United States dollar via the Hong Kong dollar.

Macau

事務所 律師 華年達

Summary of Tax Regime

Designation	Incidence
Property Tax	For a leased property, tax is levied at 10% on the net rental income. For a non-leased property, tax is levied at 6% on the annual rental amount determined in accordance with its assessable rental value.
Complementary Tax (i.e., corporate tax)	Levied on corporate net profit derived from any commercial or industrial business. Sliding scale tax varying between 3% and 12%. Corporate profit up to MOP 32,000 (USD 4,007) is exempted. From MOP 32,001 (USD 4,007) up to MOP 65,000 (USD 8,140) – 3%. From MOP 65,001 (USD 8,140) up to MOP 100,000 (USD 12,524) – 5%. From MOP 100,001 (USD 12,524) up to MOP 200,000 (USD 25,047) – 7%. From MOP 200,001 (USD 25,047) up to MOP 300,000 (USD 37,571) – 9%. Above MOP 300,000 (USD 37,571) – 12%. In the 2018 Budget Law, the Macau Government has enacted a partial waiver of this tax, whereby only the 2017 profit that exceeds MOP600.000 (USD75.000) is taxed at the rate of 12%. A similar waiver has been enacted in previous budget laws as well.
Professional Tax	Levied on individuals with an annual income in excess of MOP 95,000 (USD 1,875), at rates varying between 7% and 12%, applicable to employees receiving daily wages and monthly salary as well as self-employed professionals (e.g. lawyers, medical doctors, accountants and consultants). In the 2018 Budget Law, the Macau Government has enacted a partial waiver of this tax, whereby only the 2017 taxable income that exceeds MOP144.000 (USD18.000) is taxed. A similar waiver has been enacted in previous budget laws as well.
Stamp Duty	Stamp duty is generally payable on documents relating to transactions involving immovable property, including all sales and sub-sales, mortgages and leases of such property. This applies to all types of property, both residential and non-residential, and regardless of whether the property is complete or incomplete. Real estate: Stamp duty is charged on the sale and purchase agreement and is payable by the purchaser. The transfer of a property worth up to MOP 2 million (USD 250,473) is subject to 1% stamp duty, 2% stamp duty on a property worth between MOP 2 million (USD 250,473) and MOP 4 million (USD 500,947), and 3% stamp duty on a property worth over MOP 4 million (USD 500,947). Free transfer of property or registered assets and rights worth over USD 6,262 (MOP 50,000) are subject to a standard rate of 5%. A 0.5% stamp duty is levied on the intermediate transfer of property. In 2011 (Law 6/2011), a special stamp duty was imposed on the seller for transfers of real estate for residential and commercial purposes (which include apartments, offices and parking), aiming to cooling down the property market and speculation. Such special stamp duty is charged at 20% of the sale price if a property is sold within 1 year after purchase, and 10% if sold within two years. Also, an additional special stamp duty 10% has been enacted where a transaction involves a non-resident individual or an overseas company. In 2018 (Law 2/2018), another special stamp duty was imposed on buyers holding residential estate in Macau. The acquisition of second real estate is subject to additional stamp duty of 5% and an additional of 10% will be levied on further acquisitions of real estate. Leases: Stamp duty is also charged on the lease instrument. The stamp duty is payable by the lessor based on the rental for the entire length of the lease. The rate of stamp duty is 5% of the total rents payable during the term of the lease.
Tourism Tax	Levied on services provided by hotels, restaurants and bars, corresponding to 5% of the price of the services provided.
Social Security Contributions	The monthly contribution paid by the employer is MOP 60 (USD 7.50) per resident employee and for each non-resident, employers have to pay an employment fee of MOP 200 (USD25) per month.

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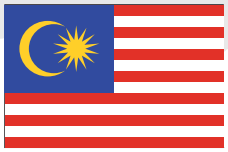

Property Tenure/Ownership

Malaysia operates under Torrens Land Registration System. Ownership of real property under this system is created by registration under the National Land Code 1965.

Subsequent transactions are registered against the title.

There are two types of tenure:

- Freehold
- Leasehold (a term not exceeding 99 years and if the lease relates to a part of a land, 30 years).

Major property legislation

Environmental Quality Act 1974	Goods and Services Tax Act 2014
Housing Development (Control and Licensing) Act 1966	Land Acquisition Act 1960
Land Conservation Act 1960	Local Government Act 1976
Malay Reservation Enactment F.M.S. Cap 142	National Land Code 1965
Real Property Gains Tax Act 1976	Stamp Act 1949
State Land Rules*	Strata Management Act 2013
Strata Titles Act 1985	Street, Drainage and Building Act 1974
Town and Country Planning Act 1976	Uniform Building Bylaws 1984

* In addition, each of the states in Malaysia may have its own set of regulations/rules.

Operational requirements for Setting up a Business Presence in Malaysia

Modes of entry

- Sole proprietorship and partnership
- Incorporation of local company (private or public limited company)
- Foreign company (via branch office and regional office)

Sole proprietorship and partnership

Sole proprietorship is the simplest form of business in terms of registration and formulation. A partnership, on the other hand, consists of not less than two and not more than 20 partners. In a partnership, partners are jointly and severally liable for the debts and obligations of the partnership. Formal partnership deeds may be drawn up, setting out the rights and obligations of each partner, but a formal deed is not obligatory.

Sole proprietors or partners in Malaysia will be personally liable for the debts of the business. All sole proprietorships and partnerships in Malaysia must be registered with the Companies Commission of Malaysia (CCM) under the Registration of Businesses Act 1956. Only Malaysian citizens and permanent residents are eligible to register for a sole proprietorship or partnership.

Incorporation of local company

The Companies Act 2016 ("**Companies Act**") governs all companies in Malaysia. The Companies Act stipulates that a person must register a company with the CCM in order to engage in any business activity. It provides for three types of companies:

- A company limited by shares;
- A company limited by guarantee; or
- An unlimited company.

Company limited by shares

This is the most common legal form of a company in Malaysia. A shareholder's liability in such a company is limited to the quantum of any amount remaining unpaid on their shares. A company having a share capital may be incorporated as a private company (identified through the words "Sendirian Berhad" or "Sdn. Bhd." appearing together with the company's name) or public company (identified through the words "Berhad" or "Bhd." appearing together with the company's name).

1. Private company (Sendirian Berhad/Sdn. Bhd.)

A private company limited by shares shall:

1. Restrict the right to transfer its shares;

- Limit the number of its members to 50, excluding employees and some former employees;
- Prohibit any invitation to the public to subscribe for its shares and debentures;
- Prohibit any invitation to the public to deposit money with the company for fixed periods or payable at call, whether bearing or not bearing interest.

Public company (Berhad/Bhd.)

A public company can be formed or a private company can be converted into a public company, subject to the requirements stated in the Companies Act. A public company limited by shares can offer shares to the public if it has registered a prospectus with the Securities Commission and has lodged a copy of the prospectus with the CCM on or before the date of its issue.

A public company can apply to have its shares quoted on Bursa Malaysia (the Malaysian stock exchange) subject

to compliance with the requirements laid down by Bursa Malaysia and the Securities Commission.

Requirements of a locally incorporated company

The requirements to form a company are:

- a company name.
- the minimum number of one director for a private company or two directors for a public company;
- the minimum number of one member, having limited or unlimited liability for the obligations of the company.
- the minimum number of one share, for company limited by shares.
- a company secretary.

Both the director and company secretary shall have their principal or only place of residence within Malaysia. It is not required that a company director must also be a shareholder.

A company must maintain a registered office in Malaysia where all books and documents required under the provisions of the Companies Act are kept. A company may or may not have a common seal. A company which has a common seal shall have its name and registration number engraved in legible Romanised characters on the seal.

A company cannot deal with its own shares or hold shares in its holding company. Each equity share of a public company carries only one vote at a poll at any general meeting of the company.

Foreign company

A foreign company cannot carry on business in Malaysia unless it incorporates a local company or registers itself in Malaysia under CCM. A foreign company refers to a company, corporation, society, association or other body incorporated outside Malaysia that, under the law of its place of origin, may sue or be sued.

Foreign companies must incorporate a local company or register a branch in Malaysia in order to conduct business in Malaysia.

Any documents in a language other than Bahasa Malaysia or English must have an accompanying certified translation. The CCM will bestow upon the applying company the status of a foreign company operating in Malaysia once all procedures are completed and approved.

Typical foreign business ventures

The following are the available options for a foreign company that intends to carry on a business in Malaysia:

- Register a branch office if the investor is a foreign company
- Incorporate a separate Malaysian company as its subsidiary
- Acquire all or a majority of the shares of an existing Malaysian company
- Enter into a joint venture with a Malaysian company or individual, typically through holding shares in a newly incorporated joint venture company
- Register as Labuan International Company under Labuan Companies Act 1990

Branch office

If the foreign company intends to open a branch in Malaysia to carry on business within Malaysia, it has to register with the CCM before it commences business or establishes a place of business in the country. The foreign company that is registered has power to hold immovable property in Malaysia. Such applications can be submitted via management companies that offer incorporation and company secretarial services to the CCM.

Representative office and regional office

Foreign companies or organisations involved in the manufacturing and services sectors may establish representative and regional offices in Malaysia to perform permissible activities for their head office or principal. The representative or regional office does not undertake any commercial activities and only represents its head office or principal to undertake designated functions. Such offices should be totally funded from sources outside Malaysia and are not required to be incorporated or registered with the CCM under the Companies Act. However, they must obtain the approval by the government. Applications for the establishment of representative or regional offices should be submitted to Malaysian Industrial Development Authority (MIDA).

A representative office collects relevant information regarding investment and business opportunities to develop bilateral trade relations, promote the export of Malaysian goods and services and carry out research and development (R&D).

A regional office serves as the coordination centre for its affiliates, subsidiaries and agents within Asia Pacific. It is responsible for conducting designated activities within the region it operates.

Activities allowed to be conducted by a representative or regional offices are:

- Planning or coordination of business activities;
- Gathering and analysing information, or undertaking feasibility studies on investment and business

opportunities in Malaysia and in the region;
- Identifying sources of raw materials, components or other industrial products;
- Undertaking research and product development;
- Acting as a coordination centre for the corporation's affiliates, subsidiaries and agents in the region;
- Other activities which will not result directly in actual commercial transactions.

Activities not allowed to be conducted by a representative or regional offices are:

- Engaging in any trading (including import and export), business or any form of commercial activity;
- Leasing warehousing facilities - any shipment/ transhipment or storage of goods must be carried out through a local agent or distributor;
- Signing business contracts on behalf of the foreign corporation or providing services for a fee;
- Participating in the daily management of any of its subsidiaries, affiliates or branches in Malaysia. Expatriate posts are allowed in representative and regional offices depending on the functions and activities of the representative or regional office. An expatriate post is divided into key post and term post. Key post is a post that is permanently filled by foreigners whereas time post is a position filled on specified time which is further divided into executive and non-executive post. Executive posts are intermediate level of managerial and professional post that require professional qualifications, practical experience, skills and expertise related to the respective jobs. Non-executive posts are posts for the performance of technical jobs that require specific technical or practical skills and experience. An expatriate working in a representative office is subject to normal income tax. However, expatriates working in regional offices are taxed only on the portion of their chargeable income attributable to the number of days they are in Malaysia.

New Principal Hub incentive scheme to replace OHQ/IPC/RDC

In April 2015, the Malaysian government announced a new customised principal hub incentive. The government is no longer accepting new applications for status and incentive of Operational Headquarter (OHQ), International Procurement Centre (IPC) and Regional Distribution Centre (RDC) from 30 April 2015. The incentive is intended to complement the evolving global business model and ASEAN Economic Community (AEC) - ASEAN Integration.

MIDA is granting investment incentives to multinational companies (MNCs) and local corporations that establish Principal Hubs in Malaysia.

Principal hub means a locally incorporated company that uses Malaysia as a base for conducting its regional and global businesses and operations to manage, control and support its key functions including management of risks, decision making, strategic business activities, trading, finance, management and human resources.

The Principal Hub concept outlines how MNCs are able to establish their regional centre in Greater KL, which will be more cost effective and efficient when operating from one central location, and to streamline operations and facilitation of shared resources and services which enable the delivery of superior service experience. The Principal Hub incentive is now one-offering which replaces the OHQ, IPC and RDC incentives.

The Principal Hub incentive allows MNCs to enjoy benefits such as customs duty exemptions into free industrial zones, licensed manufacturing warehouses and free commercial zones. Other incentives include the relaxation of equity ownership guidelines in the Principal Hubs, and MNCs can also hire expatriates based on their business requirements. Principal hubs will enjoy a reduced corporate tax rate of 0%, 5% or 10% (rather than the standard corporate tax rate of 25% for years of assessment 2009–2015 or 24% from year of assessment 2016) for a period of five years, with a possible extension for another five years.

Guidelines for Principal Hub Incentive

Incentives for Principal Hub

An approved Principal Hub new company is eligible for a 3-tiered corporate taxation rate as follows:

3 tier Incentive	Block (years)		Tax Rate
Tier 1	5	+5	0%
Tier 2	5	+5	5%
Tier 3	5	+5	10%

A new company is (a) a new locally incorporated company which does not have an existing entity or related entity in Malaysia; or (b) a new locally incorporated company which has an existing entity or related entity in Malaysia but has not undertaken any Principal Hub qualifying services in Malaysia. It includes manufacturing & services company that is entitled for tax exemption on trading & services income and commodity based company that integrates the supply chain management for upstream and downstream activities under its Principal Hub operation which is entitled only for tax exemption on services income only.

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Criteria to apply for Principal Hub Incentive:

- Criteria to apply for Principal Hub Incentive:
- Local incorporation under the Companies Act.
- Paid-up capital of more than MYR2.5 million.
- Minimum annual sales of MYR 300 million (Additional requirement for goods-based applicant company).
- Serves and control network companies in at least 3 countries outside Malaysia. Network companies means "related companies or any entity within the group including subsidiaries, branches, joint ventures, franchises or any other company related to applicants' supply chain and business with contractual agreements".
- Carry out at least three qualifying services, of which one of the qualifying services must be from the strategic services cluster as follows:
- Strategic Services
  - Regional P&L/Business Unit Management P&L Management focuses on the growth of the company with direct influence on how company resources are allocated - determining the regional/global direction, monitoring budget expenditure and net income, and ensuring every program generates a positive ROI
  - Strategic Business Planning and Corporate Development
  - Corporate Finance Advisory Services
  - Brand Management
  - IP Management
  - Senior-level Talent Acquisition and Management
- Business Services
  - Bid and Tender Management
  - Treasury and Fund Management
  - Research, Development & Innovation
  - Project Management
  - Sales and Marketing
  - Business Development
  - Technical Support and Consultancy
  - Information Management and Processing
  - Economic/Investment Research Analysis
  - Strategic Sourcing, Procurement and Distribution
  - Logistics Services
- Shared Services
  - Corporate Training and Human Resource Management
  - Finance & Accounting (Transactions, Internal Audit)
  - General Administration
  - IT Services
- Employment Requirement
  1. Tier 3: 15 high value jobs, including 3 key strategic/ management positions
  2. Tier 2: 30 high value jobs, including 4 key strategic/ management positions
  3. Tier 1: 50 high value jobs, including 5 key strategic/ management positions
     - Minimum monthly salary for high value jobs is at least MYR 5,000.00.
     - Minimum monthly salary of key strategic/ management positions is at least MYR 25,000.00. Definition of High Value Jobs that require higher and more diverse set of managerial/technical/ professional skills such as management, analytics, communication, problem solving, and proficiency in information technology iv.
- Annual Business Spending
  - Tier 3: MYR 3 Million
  - Tier 2: MYR 5 Million
  - Tier 1: MYR 10 Million

Must have HR training and development plan for Malaysians.

The applicant should be the planning, control and reporting centre for the qualifying services.

Malaysian-owned and incorporated businesses are encouraged to provide headquarters-related services and expertise to their overseas companies.

Significant use of Malaysia's banking and financial services and other ancillary services and facilities (e.g trade and logistics services, legal and arbitration services, finance and treasury services).

Income tax exemption threshold received from services/ goods-based company inside and outside of Malaysia is based on the ratio of 30:70 (inside:outside). Note: Each tier (Tier 1 – Tier 3) can be considered for an extension up to 5 years within the tiers subject to fulfilling the above criteria and:

- Jobs: 20% incremental of the base commitment; and
- Business spending: 30% incremental of the base commitment.

Facilities Accorded to Principal Hub

An approved Principal Hub company will enjoy the following facilities:

Bring in raw materials, components or finished products with customs duty exemption into free industrial zones, Licensed Manufacturing Warehouse, free commercial zones and bonded warehouses for production or repackaging,

cargo consolidation and integration before distribution to its final consumers for goods-based companies.

No local equity/ownership condition.

Expatriate posts based on requirements of applicant's business plan subject to current policy on expatriates.

Use foreign professional services only when locally owned services are not available.

A foreign-owned company is allowed to acquire fixed assets so long as it is for the purpose of carrying out the operations of its business plan.

- Foreign Exchange Administration flexibilities will be accorded in support of business efficiency and competitiveness of companies under the Principal Hub.

Mechanism

- Incentives to be provided under section 127(3)(b) and 127(3A) of the Income Tax Act, 1967 and approved through the National Committee on Investment (NCI).
- Commitments on annual business spending and high value jobs creation will be given flexibilities to comply by end of Year 3 of first block under each tier. Failing to do so claw back on tax will be taken from Year 1. This relaxation is not applicable for existing company who already enjoyed IPC/RDC/OHQ incentives.
- Company must submit yearly report to MIDA for evaluation of performance. Failing to do so, the incentive will be withdrawn.
- For existing companies that have completed IPC, OHQ or RDC incentive can be considered for the Principal Hub incentive by complying with the criteria of Tier 1 for a maximum incentive period of 5 years with corporate tax rate of 10%. Consideration is subject to the following commitment under Tier 1:
  - 20% incremental commitment of the existing employment; and
  - 30% incremental commitment of the existing business spending.

Effective Date of Application

- Application can be made to MIDA and InvestKL.
- New applications received by Malaysian Investment Development Authority (MIDA) from 1 May 2015 until 30 April 2018 are eligible to be considered for this incentive.
- Application for the extension of the incentive period must be submitted to MIDA six (6) months before the expiry of the initial incentive period.
- The extended incentive period shall begin from the date following the end of the initial incentive period and continue for a period of five (5) years.

For more information please visit www.mida.gov.my

Labuan International Company under Labuan Companies Act 1990

Depending on the nature of business, not all types of companies in Malaysia are allowed foreign controlled ownership of more than 50% shareholding. Business nature such as import, export, trading, consultancy, and restaurant businesses may require the permission of the Ministry of Consumerism Trade and Cooperatives for foreign ownership.

However, there are some attractions for Labuan International Companies:

- Incorporation can be 100% foreign owned, without Malaysian partners
- Paid-up capital of the company is low
- Simple structure with only one director and one shareholder required and both positions can be held by the same person
- Incorporation is fast and is often completed within 14 days
- No trade licenses are required for trading, e-commerce, import, export and consultancy businesses
- Corporate bank account and personal account can be opened anywhere in Malaysia in Ringgit Malaysia and in any other foreign currencies
- No Sales and Services Tax and GST applicable for sales transaction
- No Withholding Tax for dividend, interest, management, technical, royalty, lease rental
- Yearly taxation on profit for trading company is only 3% on net profit with audit report or maximum MYR 20,000 (USD 5,200) based upon election
- No tax and no audit is applicable on Investment Holding Company structure
- Business visa is available for application, immediately after the incorporation of a Labuan International Company
- Business visa application takes approximately 30-60 days only
- Business visa is 2-year multiple entry and is renewable
- Spouses and children can join as dependents in the business visa
- Business visa holders can reside anywhere in Labuan and West Malaysia

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Equity policy in the manufacturing sector

Equity policy for new, expansion or diversification projects Since June 2003, foreign investors can hold 100% of the equity in all investments in new projects, as well as investments in expansion/diversification projects by existing companies, regardless of the level of exports and without excluding any product or activity.

The equity policy also applies to:

- Companies previously exempted from obtaining a manufacturing license but whose shareholders' funds have now reached MYR 2.5 million (USD 650,000) or have now engaged 75 or more full-time employees and are, thus, required to be licensed
- Existing licensed companies previously exempted from complying with equity conditions, but are now required to comply due to their shareholders' funds having reached MYR 2.5 million (USD 650,000) Equity policy applicable to existing companies Equity and export conditions imposed on companies before June 17, 2003 will be maintained. However, companies can request for these conditions to be removed and approval will be given based on the merits of each case.

For more information, go to www.mida.gov.my

Foreign employment in Malaysia

The main legislations that regulate the employment relationship of foreign nationals working in Malaysia are:

- Employment Act 1955 (Act 265);
- Employees Provident Fund Act 1991 (Act 452);
- Industrial Relations Act 1967 (Act 177);
- Workmen's Compensation Act 1952 (Act 273);
- Immigration Act 1959/63 (Act 155);
- Employment (Restriction) Act 1968 (Act 353); and
- Employment (Restriction) (Employment Permit) Regulations 1969.

Depending on the sector or industry, applications for employment of expatriates have to be submitted to the relevant agencies and approved before applications for work permits or submissions of employment passes for endorsement are submitted to the Immigration Department. There are six authorised bodies/agencies which can approve such applications/submissions based on the core business of the applying company. The agencies and the corresponding sectors are as follows:

- Malaysian Industrial Development Authority (MIDA)
  - manufacturing company that is involved in expansion plans
  - manufacturing related services - regional office, operational headquarters, overseas mission, international procurement center, etc.
  - hotel and tourism industry
  - R&D sector
- Multimedia Development Corporation (MDeC)
  - expatriate posts and skilled foreign workers in Information Technology based companies which have been granted "Multimedia Super Corridor" (MSC) status.
- Public Service Department (PSD)
  - doctors and nurses in government hospitals or clinics
  - lecturers and tutors employed in government institutes of higher education (IPTA)
  - contract posts in public services
  - recruitment process (job offer by Public Sector Commission (SPA) or government related agencies)
- Central Bank Malaysia (BNM)
  - employment in the banking, finance and insurance sectors
- Securities Commission (SC)
  - employment in the securities and share market
- Expatriate Committee (EC)
  - employment in private and public sectors that are not under the jurisdiction of MIDA, MDeC, PSD, BNM or SC.

Application to MIDA

Companies undertaking manufacturing activities, R&D activities, hotels with 4-star rating or higher, tourism projects and other services may employ expatriates, subject to a minimum paid-up capital of the companies as follows:

- 100% Malaysian-owned company: MYR 250,000 (USD 65,000
- Jointly-owned by foreign and Malaysian: MYR 350,000 (USD91,000)
- 100% foreign-owned company: MYR 500,000 (USD130,000).

For more information, go to www.mida.gov.my

Application to the EC

In relation to the application to the EC, there are a few criteria that will be considered. They are:

- Minimum paid-up capital
- The minimum paid-up capital for private limited companies and public listed companies, effective 1 January 2009, is based on the percentage of equity held

by local/foreigners. For 100% locally owned companies, the paid-up capital is MYR 250,000 (USD65,000); for local and foreign owned companies, the paid-up capital is MYR 350,000 (USD 91,000); for 100% foreign owned companies, the paid-up capital is MYR 500,000 (USD130,000); and for foreign owned company running wholesale, retail and trade, the paid-up capital is MYR 1,000,000 (USD260,000.)

- Recommendations from ministry/monitoring agencies

Depending on the field/sector, the related ministry/agencies have the discretion/responsibility to make recommendations to the EC in relation to any application to employ expatriates. The related agencies and the corresponding field/sector are as follows:

- Ministry of Higher Education/Ministry of Education - lecturer, tutor and teacher
- Ministry of Health - medical doctor, nurse and traditional medical practitioner
- Football Association Malaysia - footballer
- National Sports Council - athlete and coach
- Civil Aviation Department, Malaysia - pilot and civil aviator
- Ministry of Tourism - tourism agencies
- Malaysian Professional Golf Associates - golf related activities
- Biotechnology Corporation of Malaysia - biotechnology related activities
- Central Bank of Malaysia (BNM) - the financial, insurance and banking sectors works
- MIDA - manufacturing and its related services sectors
- Equestrian Association – Jobs related to equestrian sports
- Securities Commission (SC) for securities, commodities and futures market
- EC for expatriate posts in sectors other than the above mentioned sectors

- Registration with the ministry/monitoring agencies

Depending on the field/sector, the applying company is required to register with the related ministry/agencies.

The related ministry/agencies and the corresponding field/sector are as follows:

- Construction Industry Development Board ("CIDB")
- for companies that undertake activities related to construction and maintenance
- Ministry of Domestic Trade, Co-operatives and Consumerism ("MDTCC") - for companies with foreign equity involving in wholesaling, marketing and retailing (including restaurants) and direct selling

- The EC also consider the following criteria:
  - the company's equity;
  - the company's activities;
  - local human resource;
  - relevance of the post to the company's activities;
  - monthly income; and
  - age and working experience.

Application to MDeC

This type of work permit enables a foreign knowledge worker (FKW) to take up employment under a contract of service with an organisation in Malaysia. A FKW must hold a tertiary qualification from an institution of higher learning (in any field); or holds a diploma in multimedia/ICT or another specialised ICT certification plus at least 2 years' relevant experience in multimedia/ICT or an equivalent field; or has held a professional, executive, management or technical work position in information technology ("IT") enabled services (e.g. IT / IS Professionals, Finance / Accounting, Business Administration).

However, special exemptions are given to foreign knowledge workers who do not meet the above criteria but are to be employed in the following:

- Global Business Services - foreign workers with knowledge-based skills that are not prevalent in Malaysia, but required by MSC Malaysia Status companies.
- Creative Content and Technologies - workers who are utilised for their creative talent to produce value-added creative work for MSC Malaysia Status companies

The duration varies from a minimum of 12 months to a maximum of 60 months depending on the nature of employment and the need of such employment. The Immigration Department of Malaysia will issue an employment pass upon approval of employment positions by MDeC in MSC Malaysia. A FKW issued with the Employment Pass shall not, without the consent of Immigration Department of Malaysia, engage in any form of paid employment in any business or professional occupation in Malaysia other than the particular employment specified in the Employment Pass. A dependant pass may be issued to any person being the spouse or dependent child to accompany the foreign knowledge worker while in Malaysia and a permission to study may be issued to the child to take up schooling in Malaysia.

For more information, go to http://www.imi.gov.my/

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Foreign investment incentives

Tax incentives, direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act 1990. These acts cover investments in the manufacturing, agriculture, tourism (including hotel) and approved services sectors as well as R&D, training and environmental protection activities.

Direct tax incentives grant partial or total relief from income tax payment for a limited period, while indirect tax incentives come in the form of exemptions from import duty, sales tax and excise duty.

Manufacturing sector

Major tax incentives for companies investing in the manufacturing sector are "pioneer status" and "investment tax allowance". Eligibility for pioneer status and investment tax allowance is based on certain priorities, including the level of value add, technology used and the industrial linkages. Eligible activities and products are termed as "promoted activities" or "promoted products". These promoted activities & products include agriculture production, processing of agriculture produce, manufacture of rubber products, manufacture of palm oil products & their derivatives, manufacture of chemicals & petrochemicals, manufacture of pharmaceutical & related products, manufacture of wood-based products, manufacture of pulp, paper & paperboard, manufacture of kenaf-based products, manufacture of textiles & textile products, manufacture of clay-based, sand-based & other non-metallic mineral products, manufacture of iron & steel, manufacture of non-ferrous metal & their products, manufacture of machinery & machinery components, supporting products or services, manufacture of electrical & electronics products & component, parts thereof & related services, manufacture of professional, medical, scientific & measuring devices or parts, manufacture of plastic products, protective equipment & devices, manufacturing related service, hotel business & tourism industry, and miscellaneous.

- Pioneer Status
  - Companies granted pioneer status pay tax on only 30% of their statutory income, with the exemption granted for five years commencing from the start of production day (defined as the day its production level reaches 30% of its capacity).
  - Unabsorbed capital allowances as well as accumulated losses incurred during the pioneer period can be carried forward and deducted from the post pioneer income of the company.
  - Applications for Pioneer Status should be submitted to MIDA.
- Investment Tax Allowance ("ITA")
  - As an alternative to pioneer status, a company may apply for an ITA. Companies granted an ITA will be given a stipend of 60% on its qualifying capital expenditure (factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date on which the first qualifying capital expenditure is incurred. The allowance is restricted to a maximum of 70% of their statutory income for each year of assessment.
  - Any unutilised allowance can be carried forward to subsequent years until fully utilized. The remaining 30% of their statutory income will be taxed at the prevailing corporate tax rate.
- Reinvestment Allowance ("RA")
  - RA is given to existing companies engaged in manufacturing and selected agricultural activities that reinvest for the purposes of expansion, automation, modernization or diversification of its existing business into any related products within the same industry operating for at least 36 months effective from the Year of Assessment 2009.
  - The RA is 60% of qualifying capital expenditure, and can be offset against 70% of the company's statutory income for each year of assessment. Any unutilized allowance can be carried forward to subsequent years until fully utilized.
  - A company can offset the RA against 100% of its statutory income for the year of assessment if the company attains a productivity level exceeding the level determined by the Ministry of Finance.
  - The RA will be given for 15 consecutive years commencing from the year the first reinvestment is made.
  - Assets acquired for the reinvestment cannot be disposed off within a period of five years from the time of the reinvestment and effective from the Year of Assessment 2009.
  - Companies that intend to reinvest before the expiry of its tax relief period, can surrender their Pioneer Status or Pioneer Certificate for the purpose of cancellation and be eligible for RA.
  - Applications for RA should be submitted to the Inland Revenue Board (IRB), while applications for the surrender of Pioneer Status or Pioneer Certificate for RA should be submitted to MIDA.

- Accelerated Capital Allowance (ACA)
  - After the 15-year period of eligibility for RA, a company reinvests in the manufacture of promoted products is eligible to apply for ACA.
  - The ACA provides a special allowance, whereby the capital expenditure can be written off within three years, i.e. an initial annual allowance of 40% plus annual allowance of 20% for first year and an annual allowance of 20% for the following two years.

Other additional incentives are also available, the details of which can be accessed from www.mida.gov.my.

Research and development (R&D)

Major tax incentives for R&D are as follows:

- Pioneer status
  - Tax exemption of 100% of the statutory income for five years is given to contract R&D companies (i.e. a company that provides R&D services in Malaysia to a company other than its related company).
- ITA
  - For contract R&D companies and R&D companies - 100% of the qualifying capital expenditure incurred within ten years can be offset against 70% of the statutory income in the year of assessment.
  - For companies that undertake in-house research to further enhance their business - 50% of the qualifying capital expenditure incurred within ten years can be offset against 70% of the statutory income in the year of assessment.
- Second-round incentives of pioneer status for another five years or ITA for a further ten years
  - For contract R&D companies, R&D companies and companies that undertake in-house research.
- Incentives for commercialisation of public sector R&D
  - The subsidiary company that undertakes the commercialisation is eligible for pioneer status with income tax exemption of 100% of statutory income for ten years.
  - A company that invests in its subsidiary company engaged in the commercialisation of the R&D findings is eligible for tax deduction equivalent to the amount of investment made in the subsidiary company.
- Double deduction for R&D
  - A company can enjoy a double deduction on its revenue (non-capital) expenditure for research which is directly undertaken and approved by the Minister of Finance.
  - Double deduction can be claimed for cash contributions or donations to approved research institutes, as well as payments for the use of the services of approved research institutes, approved research companies, R&D companies or contract R&D companies.
  - Approved R&D expenditure incurred during a tax relief period for companies with pioneer status can be accumulated and deducted after the tax relief period.
  - Expenditure on R&D activities undertaken overseas, including training Malaysians, will be considered on a case-by-case basis.
- Incentives for researchers to commercialise research findings
  - A 50% tax exemption is given for five years on the income they receive from the commercialization of research findings. The undertaking has to be verified by the Ministry of Science, Technology and Innovation.

Multimedia super corridor (MSC)

MSC Malaysia status is recognition by the government of Malaysia through the Multimedia Development Corporation (MDeC) for information and communications technology (ICT) and ICT-facilitated business that develop or use multimedia technologies to produce and enhance their products and services. The status can only be awarded to private limited companies, institutions of higher learning and incubators.

- Financial incentives for MSC Status companies are as follows:
  - Pioneer status – Companies setting up new businesses in an MSC Malaysia-designated cyber city will receive exemption from tax on their statutory income for five years. A company may reapply to renew the exemption for a second five-year term.
  - Alternatively, new companies will receive a 100% ITA which allows a 100% deduction on the qualifying capital expenditure from its statutory income for five years.
  - Freedom to source capital and borrow funds globally.
  - Duty-free importation of multimedia equipment.
  - Eligibility for R&D grants (for majority Malaysian owned MSC Malaysia status companies).
- Non-financial incentives include:
  - Intellectual property protection and a comprehensive framework of cyber laws.
  - No censorship of the Internet.
  - A high-powered implementation agency (MDeC) to act as an effective one-stop super shop.

- World-class physical and IT infrastructure within MSC Malaysia.
- Globally competitive telecommunication tariffs and services for companies located within MSC Malaysia.
- Excellent R&D facilities and green environment protected zones within MSC Malaysia.

For more details on incentives, please visit www.mida.gov.my

More details on the MSC can be obtained at www.mscmalaysia.my

Foreign property ownership

In line with the announcement made by the government on 30 June 2009 to liberalize property acquisition by foreigners, the Foreign Investment Committee (FIC) guidelines were repealed. Previously, any acquisition of property by foreign interest requires the approval of the FIC under the FIC guidelines.

The approval for property acquisitions will now only be required from the Economic Planning Unit of the Prime Minister's Department (EPU) where the acquisition involves a dilution of bumiputera or government interests for properties valued at MYR 20 million (USD 520,0000million) and above, whether acquired directly or indirectly (via the acquisition of shares in the company that holds the property). All other property transactions (be it residential or commercial), including those between foreigners and non-bumiputeras, will no longer require FIC or EPU approval, subject to a general pricing threshold of MYR 1,000,000 (USD260,000) and above per unit.

Financing from external and internal sources are allowed for all acquisition of properties.

Conditions if EPU approval is required

Where approval from the EPU is required, the proposed acquisition is subject to equity and paid-up capital conditions as follows:

Equity condition

- Companies to have at least 30% bumiputera interest shareholding

Paid-up capital conditions

- Local company owned by local interest to have at least MYR 100,000 (USD26,000) paid-up capital
- Local company owned by foreign interest to have at least MYR 250,000 (USD65,000) paid-up capital

For direct acquisition of property, the equity and paid-up capital conditions imposed by the EPU must be complied with before the transfer of the property's ownership.

- For indirect acquisition of property, the equity and paid-up capital conditions imposed by the EPU must be complied with within one year after the issuance of written approval.

Foreign interest is not allowed to acquire:

- properties valued less than MYR 1,000,000 (USD260,000) per unit;
- residential units under the category of low and low medium cost as determined by the state authority;
- properties built on Malay reserved land;
- properties allocated to bumiputera interest in any property development project, as determined by the state authority;

The following transactions are exempted from requiring the approval of the EPU:

- Any acquisition of residential unit under the "Malaysia My Second Home" Programme;
- Multimedia Super Corridor (MSC) status companies are allowed to acquire any property in the MSC area provided that the property is only used for their operational activities including as residence for their employees;
- Acquisition of properties in the approved area in any regional development corridor by companies that have been granted the status by the local authority as determined by Government;
- Acquisition of properties by a company that has obtained the endorsement from the Secretariat of the Malaysian International lslamic Financial Centre (MIFC);
- Acquisition of residential units to be occupied as a hostel for company's employees. However, local companies owned by foreign interest are only allowed to acquire residential units valued at MYR 100,000 and above and this matter is under the jurisdiction of the relevant state authorities;
- Transfer of property to a foreign interest pursuant to a will and court order;
- Acquisition of industrial land by manufacturing company;
- Acquisition of properties by Ministries and Government Departments (Federal and State), Ministry of Finance Incorporated, Menteri Besar Incorporated or Chief Minister Incorporated, State Secretary Incorporated and listed Government Linked Companies;
- Acquisition of properties under the privatization projects, whether at the Federal or State level, provided that it involves the companies that are the original signatories in the contracts for the privatized projects;
- Acquisition of properties by companies that have been granted the status of International Procurement Centers,

Operational Headquarters, Representative Offices, Regional Offices, Labuan offshore companies and Bio-Nexus or other special status by the Ministry of Finance, Ministry of International Trade and Industry and other ministries Economic Planning Unit, Prime Minister's Department;

- Acquisition of residential unit for accommodation purpose by: foreigner with expatriate status who is serving the Government; or
  - foreigner with expatriate status who is serving nongovernment organization and receiving a minimum monthly salary of MYR8,000, or Permanent Resident who holds a red Identity Card.

They are allowed to purchase only one residential unit valued at minimum MYR 250,000 (except in Kuala Lumpur, Johor Bahru and Penang) and the matter are under State Authorities jurisdiction.

State Authority's Consent is still required despite the repeal of the FIC guidelines and the limited applicability of the need to obtain EPU approval, acquisition of properties by foreigners is still governed by section 433B of the National Land Code 1965, which stipulates the need to obtain the prior approval upon an application in writing to the relevant state authority for any acquisition of interest in property (other than land categorized for industrial use) by foreigners. In granting its approval, the state authority is at liberty to impose any other conditions and the payment of such levy as it deems fit. The application will usually be submitted on the acquirer's behalf by the local solicitors handling the proposed acquisition. It should be noted that several states in Malaysia have adopted the EPU's requirement that the property purchased by a foreigner must be valued at least MYR 1,000,000 (USD260,000) while some other states have maintained the threshold limit at the lower level. As land matters are within the jurisdiction of each state, it is advisable to check with local solicitors on the actual threshold limit applicable to each state in Malaysia, as the threshold limit may vary from state to state and from time to time without much publicity.

Item	Effective date	Minimum threshold
Johor	January 1, 2017	MYR 1 million (USD 260,000) for all types of property [1]
Penang	April 1, 2017	MYR 1 million (USD260,000) for all types of property on the mainland MYR 3 million (USD 780,000) for land property on the island.
KL/Putrajaya/ Labuan	March 1, 2014	MYR 1 million (USD 260,000) for all types of property[2]
Selangor	September 1, 2014	MYR 2 million (USD 520,000) for property in Zone 1 and 2 Zone 1 District of : 1. Petaling 2. Gombak 3. Hulu Langat 4. Sepang Zone 2 District of: 1. Kuala Selangor 2. Kuala Langat MYR 1 million (USD 260,000) for property in Zone 3: District of: 1. Hulu Selangor 2. Sabak Bernam Foreigners, permanent residents and foreign companies are only permitted to acquire commercial and industrial properties at a minimum price of MYR 3 million (USD 780,000) in all three zones. These groups of people are not permitted to buy landed properties unless such properties are in a gated community, which has a landed strata title.[3]

[1] See Circular by Director of Johor Lands and Mines Office Bill 01 Year 2017 (Pekeliling Pengarah Tanah Dan Galian Johor Bil.1 Tahun 2017)
[2] See Guideline on the Acquisition of Properties 2014
[3] See Guidelines for Acquisition of Property by Foreign Nationals/ Permanent Residents/Foreign Companies in the State of Selangor

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Malaysia My Second Home Program (MM2H)

The MM2H program is promoted by the government of Malaysia to allow foreigners who fulfill certain criteria, to stay in Malaysia on a multiple-entry social visit pass. The social visit pass is granted according to the validity of the passport for a maximum period of ten years and is renewable. The program allows applicants to bring with them their spouses, parents and unmarried children below the age of 21. Foreign spouses of Malaysians and expatriates who wish to retire in Malaysia after expiry of their employment passes are also eligible to apply to stay in Malaysia on this program. Purchase of residential units is exempted from EPU's approval under the MM2H program, but such purchase is subject to the minimum price established for foreigners by the different states. This program also allows foreigners to apply for one domestic maid and bring in their own personal car, or to purchase a locally-assembled car. On or after April 1, 2015, any car which is purchased in or imported into Malaysia under this programme is subject to Goods and Services Tax unless it is given exemption by the Ministry of Finance.

The participants must maintain their fixed deposit at all times at any bank in Malaysia. Withdrawal of fixed deposit must have the prior approval of the MM2H Centre under the Ministry of Tourism and Culture Malaysia. Failure to comply with this condition could result in the immediate cancellation of the MM2H Social Visit Pass (Multiple Entry). An approved participant under the MM2H Programme with first MM2H visa approved from 1 January 2017 until 31 December 2017, is eligible for:

1. exemption of excise duty to purchase a new locally assembled vehicle (Completely Knocked-Down-CKD); or
2. exemption of import duty and excise duty to import a pre-owned private vehicle (Completely Built-Up-CBU) into Malaysia.

The Ministry of Finance will give special consideration to MM2H participant with first MM2H's Visa approved beginning 1 January 2017 until 31 December 2017 to submit complete application not later than 31 December 2018.

More details are available from www.mm2h.gov.my

Foreign exchange controls

A non-resident is permitted by the Controller of Foreign Exchange to undertake direct or portfolio investment in Malaysia, subject to certain rules and guidelines. A non-resident refers to:

- Any person other than a resident
- An overseas branch, a subsidiary, regional office, sales office or representative office of a resident company
- Embassies, consulates, high commission, supra-national and international organisations
- A Malaysian citizen who has obtained permanent resident status of a country or territory outside Malaysia and is residing outside Malaysia.

Among the main exchange control requirements are:

Foreign direct investment

- There are no restrictions for non-residents to purchase ringgit assets, such as landed properties and securities, and the settlement of investment in ringgit can be undertaken either in ringgit or foreign currency.
- Foreign direct investors are freely allowed to repatriate their investment, including capital, profits and dividends from divestment upon conversion into foreign currency, without being subject to any levy.

Buying or selling of currency

- Ringgit
  - Non-residents are free to buy or sell ringgit against foreign currency with licensed onshore banks (excluding licensed international Islamic banks), on spot and forward basis, for both current and financial account transactions.
  - Non-residents may also buy or sell ringgit against foreign currency with any non-resident financial institution for settlement of trade in goods or services or the purchase or sale of ringgit assets with a resident or with an appointed overseas' office of a licensed onshore bank's banking group.
- Foreign Currency
  - Non-residents are only free to buy or sell foreign currency against another foreign currency in Malaysia with a licensed onshore bank or a person who is licensed under the Money Services Business Act 2011 on spot basis.

More details are available from:

http://www.bnm.gov.my/microsite/fxadmin/new_fea_rules/FEA_rules_Part_2_Non-residents.pdf

Extension of credit facilities to non-residents

- Ringgit borrowing
  - Resident non-bank companies, licensed onshore banks (excluding licensed international Islamic banks), employers or individuals who are immediate family members may extend any amount of Ringgit credit facilities to a non-resident (other than financial institutions) provided the utilisation of such borrowings is to finance activities in the real estate sector in Malaysia or finance/refinance the purchase

of residential and commercial properties in Malaysia, excluding the purchase of land only, subject to their own internal credit assessment guidelines.
  - Resident entities with a stockbroking licence may extend margin financing, where else licensed insurer the attained cash surrender value of any life insurance policy or family takaful certificate purchased by the non-resident.
  - Non-resident custodian banks or non-resident stock broking corporations may obtain overdraft facilities to facilitate the settlement of shares or ringgit instruments traded on Bursa Malaysia or through the Real Time Electronic Transfer of Funds and Securities, from licensed onshore banks (excluding licensed international Islamic banks).
- Import and Export of Ringgit and Foreign Currency by Non-Resident Travellers
  - Non- residents travellers are allowed to carry ringgit only up to USD 10,000 equivalent upon arriving or leaving Malaysia. However, there are no limitations on the import or export of foreign currency notes and traveller's cheques by non-residents. A written application to the Foreign Exchange Administration Department must be made for any import and export of ringgit exceeding permitted limits.
- Opening of Foreign Currency Accounts (FCA) and Ringgit Accounts (External Accounts)
  - Non-residents are free to open foreign currency accounts with licensed onshore banks in Malaysia and ringgit accounts in Malaysia. Funds in these accounts are free to be remitted abroad in foreign currency.
  - There are also no limitations in opening External Accounts by non-residents with financial institutions in Malaysia, and non-residents are allowed to convert the funds into foreign currency with licensed onshore banks for repatriation abroad. The funds in the External Account can be used for a number of purposes, including, among others, to pay for goods or services in Malaysia or to purchase ringgit assets in Malaysia. The payment in ringgit by residents to non-residents must be made into an external account of the non-resident or an external account of a non-resident financial institution. However, there shall be no ringgit financing provided by a non-resident intermediary or non-resident financial institution to its non-resident clients.
- Iskandar Development Region (now known as Iskandar Malaysia) (IDR)
  - Companies approved by the Ministry of Finance and awarded IDR status by the Iskandar Regional Development Authority (IDRA) to undertake qualifying activities under the six targeted service based sectors in the IRDA approved zones, i.e. creative, education, financial advisory and consulting, healthcare, logistics and tourism, are granted exemption from most of the provisions of the foreign exchange administration rules and are afforded certain flexibilities.

More details on foreign exchange administration can be obtained at www.bnm.gov.my, www.sc.com.my, www.mifc.com, www.irda.com.my,www.mida.gov.my and iskandarmalaysia.com.my.

Taxes on possession and operation of real estate

Quit rent

No specific tax is levied on property owners. However, individual state governments levy a land tax known as "quit rent" which is payable yearly. The rate varies with land category and size.

Assessment

Properties within local authorities' boundaries are also required to pay an "assessment". This tax is calculated as a percentage of annual value and varies with the property type and the location of the property.

Taxes on acquisition and transfer of real estate

Stamp duty and legal Costs

The stamp duty payable by purchasers of property is based on the higher of the money value of the consideration or current market value at the following rates:

Consideration or Current Market Value	Scale of Rates
For the first MYR 100,000 (USD 26,000)	1%
For the next MYR 400,000 (USD 104,000)	2%
Remainder (Excess of MYR 500,000) (USD 130,000)	3%

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Legal fees for sales, purchases or other forms of conveyances for completing any transaction involving immovable properties are fixed at rates based on the consideration or adjudicated value:

Consideration or Adjudicated Value	Scale of Fees
First MYR 150,000 (USD 39,000)	1% [subject to a minimum of MYR 300 (USD 78) or MYR 250 (USD 65), if the consideration is below MYR 45,000 (USD 11,700)]
Next MYR 850,000 (USD 221,000)	0.7%
Next MYR 2,000,000 (USD 520,000)	0.6%
Next MYR 2,000,000 (USD 520,000)	0.5%
Next MYR 2,500,000 (USD 520,000)	0.4%
Remainder (Excess of MYR 7,500,000) (USD 195,0000)	Negotiable, but shall not exceed 0.4% of such excess

Capital gains tax

Malaysia does not tax capital gains from the sale of investments or capital assets other than those related to land and buildings. Capital gains are generally not subject to income tax in Malaysia. However, real property gains tax (RPGT) is levied on chargeable gains arising from the disposal of real property situated in Malaysia, or on any interest, option or other rights in or over such land, as well as the disposal of shares in real property companies.

The RPGT rates for non-resident individuals are as follows:

Time of Sale	Tax Rate
Disposal within five years after the date of acquisition	30%
Disposal in the sixth year after the date of acquisition or thereafter	5%

For foreign companies, the rates are as follows:

Time of Sale	Tax Rate
Disposal within two years after the date of acquisition	30%
For the next MYR 400,000 (USD104,000)	20%
Disposal in the fourth year after the date of acquisition	15%
Disposal in the fifth year after the date of the acquisition or thereafter	5%

Goods and Services Tax (GST)

Introduction

GST was implemented in Malaysia since 1st April 2015 and it has replaced the sales tax and services tax with a rate of 6% (standard rate).

GST shall be levied and charged on the taxable supply of goods and services made in the course or furtherance of business in Malaysia by a taxable person. It is also charged on the importation of goods and services.

A taxable supply is a supply which is standard rated or zero rated. Exempt supplies (such as financial services, education services, childcare service, healthcare services, residential land, agricultural land and general use land, accommodation, transport services, tolled highway or bridge, funeral, burial and cremation services, supplies made by societies and similar organisation) and out of scope supplies (such as supply from a place outside Malaysia to another place outside Malaysia) are not taxable supplies. GST will be levied and charged on the value of taxable supply.

In order to collect GST from customers, the business must be registered under GST. Registration is compulsory if its annual turnover of taxable supplies is more than MYR 112,171 (USD 291,6446). Nevertheless, a business can apply to be registered voluntarily when the annual turnover is less than MYR500,000 (USD 130,000).

Property investor

As the sale and letting out of residential properties are exempt, a person is liable to be GST-registered only if the annual turnover from letting out commercial property and, in some circumstances, the disposal of commercial property exceeds MYR 500,000 (USD 130,000). When a GST-registered person lets out or disposes of commercial properties, he has to issue a tax invoice and account for GST. This may not disadvantage the tenant or purchaser if such tenant or purchaser is a GST-registered person since he can claim input tax credit.

Property management corporations

Property management fees, sinking fund contributions, maintenance fee, rental of hall and other charges imposed by a management corporation or joint management body to provide services to the occupants are standard-rated, regardless whether they relate to a residential property or commercial property.

Construction company

Construction services, regardless whether they relate to residential or commercial property, are charged standard rated. If the building materials are supplied (regardless whether at cost or with profit basis) by the developer to the construction company, the developer should issue a tax invoice and account for output tax. The construction company can claim input tax credit on such "acquisition". In exceptional situation where the construction contract requires the materials to be provided by the developer without any charge, the developer does not have to account for output tax on the materials.

Property developer

The supply of residential properties is GST exempt.

However, care is needed to distinguish between the supply of such property or land from supply of closely associated taxable supplies. For example, the Royal Malaysian Customs (RMC) is of the opinion that the sale of a car park in an apartment and administrative charges are subject to GST. For sale of residential properties with furniture and fittings, GST may also be imposed.

The supply of commercial and industrial properties is standard-rated. The recently developed concept of small office home office (SoHo), small office virtue office (SoVo) and small office flexible office (SoFo) are regarded as commercial properties by the RMC. An acquirer of commercial or industrial properties can claim input tax credit on the GST incurred if he is a GST-registered person.

GST does not have to be accounted for on booking deposits until they are applied to the supply, which usually occurs when the sale and purchase agreement is signed. However, GST is accounted for on the first stage of payment made on the signing of the sale and purchase agreement and then on each of the subsequent progress payments at the earlier of the invoice date and the date payment is received. The date of architect certification on the degree of completion is irrelevant.

Income tax

Income of any person including a company accrued in or derived from Malaysia is subject to income tax. The self-assessment system is applicable and the assessment of income tax is based on a current year basis. Chargeable income is derived after adjusting for allowable expenses incurred in the production of the income, capital allowances and incentives, where applicable.

The following sources of income are liable to tax:

- Gains and profits from a trade, profession and business
- Gains or profits from employment (salaries, remunerations, etc.)
- Dividends, interests or discounts
- Rents, royalties or premiums
- Pensions, annuities or other periodical payments
- Other gains or profits of an income nature

Section 34 of the Income Tax Act 1967 allows specific provisions for bad or doubtful debts. However, no deduction for book depreciation is allowed, although capital allowances are granted. Unabsorbed business losses may be carried forward indefinitely to offset against business income including companies with pioneer status, provided that the cessation of the period falls on or after September 30, 2005.

Corporate taxation

A company, whether resident or not, is assessed on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is exempted from tax, except in the case of the banking and insurance business, and sea and air transport undertakings. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia. Resident and non-resident companies are taxed at 24% on taxable income while the small and medium sized resident companies [i.e. companies capitalised at MYR 2.5 million (USD 650,000) and less] are taxed at 18% on the first MYR 500,000 (USD130,000) chargeable income, and the range of 20 to 24% (subject to certain conditions being fulfilled) on subsequent chargeable income.

Personal taxation

The rate of tax of an individual depends on the individual's resident status, which is determined by the duration of his or her stay in Malaysia. Generally, an individual who is in Malaysia for at least 182 days in a calendar year is regarded as a tax resident. Income remitted to Malaysia by a resident individual is exempted from tax. A non-resident individual will be taxed only on income earned in Malaysia.

A resident individual is taxed on his chargeable income after deducting personal reliefs at a graduated scale ranging from 0% to 28%, which has remained for the same from the year 2016. Non-resident individuals are liable to tax at a rate of 28% without any personal relief.

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For Budget 2018, the government has proposed to reduce the individual income tax rates for resident individuals by 2% for three of the chargeable income bands (ranging from MYR 20,001 to MYR 70,000), as follows:

Chargeable income bands (MYR)	Current tax rates (%)	Proposed 2018 tax rates (%)
0–5,000	0	0
5,001–20,000	1	1
20,001–35,000	**5**	**3**
35,001–50,000	**10**	**8**
50,001–70,000	**16**	**14**
70,001–100,000	21	21
100,001–250,000	24	24
250,001–400,000	24.5	24.5
400,001–600,000	25	25
600,001–1 million	26	26
Above 1 million	28	28

The projected income tax savings for individuals resulting from the tax rate reduction is between MYR 300 and MYR 1,000. The reduction would be effective as from year of assessment (YA) 2018.

Tax treaties: Avoidance of double taxation

The effective Double Taxation Agreements which seek to avoid double taxation by defining the taxing rights of each country with regard to cross border flows of income and providing for tax credits or exemptions are as follows:

Albania
Argentina
Australia
Austria
Bahrain
Bangladesh
Belgium
Bosnia & Herzegovina
Brunei
Canada
Chile
China
Croatia
Czech Republic
Denmark
Egypt
Fiji
Finland
France
Germany
Hong Kong
Hungary
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kazakhstan
Korea, Republic
Kuwait
Kyrgyz, Republic
Laos
Lebanon
Luxembourg
Malta
Mauritius
Mongolia
Morocco
Myanmar
Namibia
Netherlands
New Zealand
Norway
Pakistan
Papua New Guinea
Philippines
Poland
Qatar
Romania
Russia
San Marino
Saudi Arabia
Seychelles Republic
Singapore
Slovak Republic
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syria
Taiwan
Thailand
Turkey
Turkmenistan
United Arab Emirates
United Kingdom
United States of America
Uzbekistan
Venezuela
Vietnam
Zimbabwe

More details on taxation can be obtained at www.mida.gov.my and www.hasil.gov.my

Real Estate Investment Trusts (REIT)

Introduction

The Securities Commission issued a new set of Guidelines on Listed Real Estate Investment Trusts on 15 March 2018 with the effective date of 9 April 2018 ("Listed REITs Guidelines") and a new set of Guidelines on Real Estate Investment Trusts on 15 March 2018 with the effective date of 9 April 2018 ("Unlisted REITs Guidelines"). Prior to the issuance of the Listed REITs Guidelines and Unlisted REITs Guidelines, the previous Guidelines on Real Estate Investment Trusts that came into force on 21 August 2008 applied to both listed and unlisted REITs. Following the issuance and effective date of the Listed REITs Guidelines, all requirements in relation to the listed REITs in the previous REITs Guidelines are superseded. Consequently, the Unlisted REITs Guidelines will apply to unlisted REITs only, i.e. unlisted conventional and Islamic REITs.

(A) Unlisted Real Estate Investment Trusts

Equity structure of an Unlisted REIT manager

The Unlisted REITs Guidelines allow up to 70% foreign shareholding in the REIT manager. The REIT Guidelines updated on July 13, 2011 introduced an eligibility requirement for a management company of a REIT to have a minimum of 30% local equity and it is required to have minimum shareholder funds of MYR1.0 million at all times.

Permitted Investments of Unlisted REIT

Unlisted REITs Guidelines imposes the restriction that at least 50% of a REIT's total asset value must be invested in real estates and/or single-purpose companies at all times. However, investment in non-real estate-related assets and/or cash, deposits and money market instruments must never exceed 25% of a REIT's total asset value. In addition, REIT managers are given more freedom to manage their REITs' portfolio mix, including investment in foreign real estate.

Investment in real estate where it does not have a majority ownership and control is permitted provided that their respective requirements are met. To safeguard investors' interest a REIT is not allowed to conduct:

- Extension of loans, financing facilities or any other credit facility.
- Acquisition of vacant land
- Property development

However, the restriction on property development does not apply to refurbishment, retrofitting, renovations or extensions carried out on existing real estates within a fund's investment portfolio.

Borrowings and raising fund by issuance of units pertaining to Unlisted REIT

Subject to certain rules of the Unlisted REITs Guidelines, REIT managers are able to raise funds speedily for acquisitions or capital expenditure purposes. The Unlisted REITs Guidelines expressly permits a REIT, in addition to other conventional means of financing from licensed institutions, to raise funds through the issuance of debentures or sukuk. Total borrowings of a fund should not exceed 50% of the total asset value of a REIT at the time the borrowings are incurred. Where this limit is exceeded the sanction of unit holders by way of an ordinary resolution is required. To secure borrowings, the REIT manager may pledge the fund's property with the consent of the REIT trustee.

The Unlisted REITs Guidelines specifically prohibit REIT units from being placed to interested persons of the REIT manager, persons connected to the said interested persons, or nominee companies. Otherwise, the REIT manager must obtain unit holders' approval for the precise terms of such issue or placement, and interested persons must also abstain from voting on the resolution.

(B) Listed Real Estate Investment Trusts

Eligibility of a Listed REITs Manager

The Listed REITs Guidelines abolished both the minimum local equity requirement and the minimum shareholder's funds requirement of a REIT management company. To be eligible as a management company of a Listed REITs, the company only needs to fulfil the following conditions, i.e. (a) must be an entity incorporated in Malaysia; and (b) must hold a Capital Markets Services Licence for the regulated activity of fund management in relation to asset management restricted to REITs.

Permitted Investments of a Listed REITs

In contrast with unlisted REITs, at least 75% of a listed REIT's total asset value must be invested in real estate that generates recurrent rental income at all times. In relation to the investment in non-real estate assets, the value of REITs investments in securities must not exceed (a) 5% of the REITs total asset value in securities issued by any single issuer; and (b) 10% of the REITs total asset value in securities issued by any group of companies.

Investment in the acquisition of vacant land is now permitted under the new Listed REITs Guidelines, provided (a) such acquisition is undertaken for the purposes of property development activities; and (b) aggregate investments in property development activities and real estate under construction not exceeding 15% of the total asset value; and (c) the developed real estate is intended to be held for at least two years upon completion.

In addition, a management company must ensure that all REITs have a marketable legal and beneficial title in all its real estate and it has majority ownership of and control in the real estate acquired. Investment in real estate where it does not have a majority ownership and control is permitted provided that their respective requirements are met.

In relation to procurement of a legal and beneficial title, the Listed REITs Guidelines now allows an investment in a real estate through a lease arrangement, provided the requirements set out are met.

Borrowings and raising fund by issuance of units pertaining to Listed REITs

REIT managers are allowed to use borrowings or financing facilities to invest in real estate and for capital expenditure purposes. The Listed REITs Guidelines expressly permits

a listed REIT, in addition to other conventional means of financing from licensed institutions, to raise funds through the issuance of debt securities or sukuk. However, the total borrowings or financing facilities, including borrowings or financing through issuance of debt securities or sukuk, must not exceed 50% of the total asset value of the REIT at the time the borrowings are incurred. In contrast with unlisted REIT, there is no option to increase the limit by obtaining unit holders' approval.

Special tax exemptions applicable to both unlisted and listed REITs

Generally, after deducting tax allowable expenses, a REIT income comprising rental, interest and other investment income derived from or accrued in Malaysia will be taxable at the normal corporate tax rate of 24%. Nevertheless a REIT is exempted from such taxes in an assessment year if the REIT distributes at least 90% of its total taxable income to its unit holders in the same assessment year.

Special treatment has been accorded to the taxation of rental income from the letting of real property received by REIT. Rental income is now treated as business income, but there are limitations imposed.

Where 90% or more of the REIT's total taxable income is distributed, dividends paid by the REIT to its unit holders will be subject to a withholding tax as follows:

- A 10% withholding tax – all individuals and non corporate investors such as institutional investors (regardless of whether they are tax resident or not)
- A 24% withholding tax – non-resident company (incorporated body)

The above reduced withholding tax of 10% on individual and non-corporate investors was initially available up to December 31, 2011 only. The government had then extended the incentives for a period of five years commencing January 1, 2012 up to December 31, 2016. It is now extended to 31 December 2019.

The withholding tax will be withheld by the REIT before paying out the dividends to unit holders. In other words, unit holders will be receiving dividends, net of withholding tax.

All instruments of transfer or assignment relating to the purchase of real property between a REIT and the vendor are exempted from stamp duty.

Gains on disposal of investments by a REIT will not normally be subject to income tax. However, where the investments represent real property and shares in real property companies, then such gains will be subject to RPGT. With effect from January 1, 2014, a company is required to pay RPGT of 30% when a disposal is made within three years after the date of acquisition, 20% in the fourth year, 15% in the fifth year and 5% in the sixth year and beyond, on the gains of disposal of share in real property companies. Likewise, a foreigner is required to pay RPGT of 30% when disposal of shares is made within 5 years and 5% in the sixth year and beyond.

GST (applicable to both listed and unlisted REIT)

For the services supplied by a management company of a REIT, the management fee will be subject to GST at 6% from April 1, 2015.

Services provided by the property manager to a REIT are property management services, lease management services and marketing services. These services are subject to GST at 6% as well. For GST purposes, the services of a trustee to a REIT are also subject to GST at 6%.

An investor is entitled to receive income distributions from the REIT. The income distribution in the form of dividend is not subject to GST. For REIT units listed and traded on Bursa Malaysia, the buying and selling of REIT units is also an exempt supply and is not subject to GST. However, any brokerage commission or clearing fee on the buying and selling of the REIT units is subject to GST at 6%. The investor is not entitled to claim the GST incurred on the buying and selling of the REIT units since it is an exempt supply.

Malaysia

KADIR ANDRI & Partners
Advocates & Solicitors

Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of Measurement	Square Feet (Sq Ft) of Gross Floor Area and Net Lettable Area (NLA) as defined by Uniform Method of Measurement of Buildings (The Institution Of Surveyors Malaysia)
Rental payments	
Rents	Net Rent – MYR/Sq Ft/Month of Net Lettable Area Gross Rent – MYR/Sq Ft/Month of NLA, inclusive of service charge Service Charge – Between MYR 1 – 2 /Sq Ft/Month of NLA
Typical lease term	3 years or longer
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	3 months
Security of Tenure	For the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No
Basis of rent increases or rent review	Open market rental value (Fixed increases are less common)
Frequency of rent increase or rent review	Every 3 years
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity and telecommunication consumption are usually separately metered and payable by each tenant
Car parking	Allocation is usually on a per sq ft ratio based on 1 parking lot per 1000 sq ft leased
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord (charged back via service charge)
Responsibility for external/structural repairs	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Generally full assignment to third parties is accepted (subject to landlord approval)
Tenant early termination rights	Only by break clause
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

* The exchange rate used in this document is MYR 1.00 to 0.26 USD (on the date of 12th April 2018)

Source: JLL

Mongolia

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Property Tenure/Ownership

Property tenure/ownership in Mongolia is interesting because of its history and distinctions. In most countries, real estate usually includes both the land and the buildings. In Mongolia, there are different levels of ownership for properties on land. For example, land is usually owned by the government, whereas the title to the land belongs to an individual holding possession right, and the building on top of the land may be owned by another individual. "Immovable property" is, as its name indicates, a property that cannot be moved and an important distinction in a country populated by nomads. Essentially, it refers to buildings and houses. The precise legal definition for the ownership of immovable property in Mongolia is termed as "floating freehold". It signifies that the property owners hold a freehold interest over the property, but not over the land on which it sits.

Major Property Legislation

In respect of the real estate sector, the following laws are the most relevant:

- The Constitution
- Civil Code
- General Law on Taxation
- Law on Registration of Immovable Property
- Law on Investment
- Law on Immovable Property Tax
- Law on Personal Income Tax
- Law on Land
- Law on Land Fees
- Law on Allocation of Land to Mongolian Citizens for Ownership
- Law on State Registration of Property Ownership Right and Other Related Property Rights
- Law on Urban Planning
- Company Law
- Law on Licensing

Laws on Mongolian property rights protect foreign investors' rights and interests.

Operational requirements for foreign corporations

As provided by law, a foreign investor is a foreign legal person or citizen (a foreign citizen or stateless person who is a non-resident in Mongolia or a citizen of Mongolia who is residing in a foreign country permanently) making an investment in Mongolia.

To invest in Mongolia, a foreign legal person/citizen may:

- Incorporate a company or a representative office
- Purchase shares, bonds and other securities
- Establish agreements specified by law

One of the sectors where foreign direct investment is usually channeled is "movable and immovable property".

Foreign-investment entities are able to own, use their properties (except land) and dispose of the income derived from their properties.

Foreign investors have the following rights with respect to their property:

- To possess, use, and dispose of their property
- To repatriate investments that contributed to the equity of a business entity with foreign investment
- To manage or participate in the management of a business entity with foreign investment
- To transfer their rights and obligations to others, as provided for by legislation
- To remit income, such as profit and payments, abroad
- To pay shareholders' income and dividends
- To transfer service fees and charges for letting others use their intellectual property
- To receive income after sale of assets and securities
- To transfer their property rights to others
- To terminate an investment agreement and liquidate a business entity
- To pay principal debts and interest as well as other equivalent payments
- To receive compensation payment for confiscated property
- To receive other income gained in conformity with the legislation of Mongolia
- To enjoy such other rights as conferred by legislation Foreign investors are required to:
- Observe the laws of Mongolia
- Perform the obligations set forth in the investment agreement and statutes of the business entity with foreign investment

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- Implement measures to ensure the protection and restoration of the natural environment Mongolia
- Respect the national tradition and custom of the people of Mongolia

Investment, including foreign investment, in Mongolia is regulated primarily through the Law on Investment, which was enacted by the Parliament on 3 October 2013. This Investment Law removed most requirements and restrictions on foreign investors and aims to support and encourage investors, as well as attract more investments to Mongolia. The main objectives of the Law on Investment are:

- Not to distinguish between foreign and domestic investors
- To issue stabilisation certificates to qualifying entities. The holders of stabilisation certificates will enjoy stable treatment with respect to certain tax rates and amounts
- To establish relevant approval process for foreign investments by foreign state-owned entities Under this Law, state administrative body in charge of investment affairs has wide powers. For example, the state administrative body in charge of investment affairs (i.e. "National Development Agency", the Government Implementing Agency) has the power to issue:
- Approvals to state-owned entities holding 33% or more of the total issued shares in a Mongolian legal entity to operate in the mining, banking and finance, media and communication sectors; and
- Stabilisation certificates to legal entities that satisfy the certain requirements.

In addition, a foreign investor that satisfies certain requirements may enter into an investment agreement to enjoy certain stable tax rates and amounts with the Cabinet member in charge of investment affairs under which the government guarantees that any change in taxation laws to increase the relevant tax rates and amounts will not apply to the investor during the term of the investment agreement.

The basic requirement to establish a foreign investment entity is to have at least MNT 239.1[2]million (USD 100,000) invested by each foreign investor, where more than 25% of the total issued shares are owned by the foreign investor.

Stages for incorporation of a foreign-owned limited liability company are as follows:

- Secure proposed name of the company at the State Registration Office (SRO);
- Open temporary bank account;
- Transfer the statutory investment to the company's bank account;
- Submit all application materials, including a bank statement, to SRO;
- Obtain local tax registration;
- Obtain a company registration certificate;
- Make the company seal;
- Seal registration and notarization;
- Bank account becoming operational; and
- Notify the local tax office of the jurisdiction that applies to the company.

Restrictions on foreign property ownership

Except for land, there are currently no restrictions on foreign residents or non-residents owning property (building, apartment) in Mongolia. Certified copies of the buyers' passports have to be submitted to the Property Registration Office, along with the demand for a new certificate.

While immovable property can be owned outright by foreign investors, land can only be leased by foreign investors.

According to the Article 6.3 of the Constitution of Mongolia and Law of Mongolia on Land, dated June 7, 2002, the land may only be owned by Mongolian citizens with a license. However, as provided by clause 21.5 of the Law on Investment, "land may be possessed or used with an agreement for up to 60 years, with a single extension of up to 40 years on the same conditions as the original agreement".

Foreign exchange controls

All transactions within the territory of Mongolia are legislatively required to be carried out using national currency, togrog (MNT)/except transaction in free zone. However, it is usual for prices to be quoted in other currencies (predominantly USD), particularly in international trade and the tourism industry and there are presently no restrictions on foreign exchange transactions. No restrictions are placed on the inflow and outflow of foreign capital to and from the country provided that relevant taxes are paid[3]. Currency risks associated with Mongolia are usually considered relatively low, as both the economy and the political environment are stable.

[1] Formerly known as 'Invest Mongolia'.
[2] The denominated rate in MNT is based on the rate of Central Bank of Mongolia as of April 9, 2018.
[3] 20% tax is applicable on any fund transferred abroad (be it dividend or service fee, for example), whereas 10% tax is applicable if such fund is transferred locally.

Mongolia

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Taxation

Property tax

Mongolian property taxes are easy to understand and follow.

In general, there are only a few applicable taxes. The tax regime will differ depending on whether the property is owned by a corporate or personal entity. The tax regime will also differ if the entity is a registered Mongolian resident entity or a nonresident foreign entity.

The differences between the various tax regimes can be significant. For instance, a legal resident in Mongolia who holds the property in his/her own name will only be liable for a 10% income tax on the rental income. The government is becoming increasingly apt at communication between its different departments. Inspectors are sent to conduct regular checks on the status of tax payments.

Real estate tax

Persons who own immovable property in Mongolia have to register their ownership with the tax authority. An annual tax rate fluctuates between 0.6% and 1.0% of the total value of immovable property and is payable by the owner depending on its location, size, market demand and supply of such immovable property. The value is determined with its state registration valuation or insurance on the property or based on the book value. Apartments are exempt from such tax.

Property purchase tax

Property purchase tax is relatively straightforward. A 2% stamp duty is payable on the declared purchase price. Payment can be easily made in most banks. Property purchase tax is normally split between the buyer and the seller, but is also generally open to negotiations.

Real estate leasing tax

A 10% income tax on the amount derived from the property, essentially on the lease amount and payable quarterly.

Value added tax

Mongolian registered corporate entity, a citizen and a permanent establishment of foreign legal entity can become a "VAT payer" if revenues derived from a property amounting to MNT 50 million (USD 20,911[4]) or above for a quarter. Such legal persons are issued a registered Mongolian VAT payer certificate and payer number can be obtained from the Mongolian Tax Authority. This certificate entitles the holder VAT refund. However, VAT also applies to fund remitted to abroad and the foreign recipient is not entitled to refund.

Land fees

The government determines the land base rate, and land fees are calculated from this rate. Land fees are determined according to the type of the land, such as pasture land, cultivation land or land for household needs.

Tax treaties: Avoidance of double taxation

As of April 2018, the effective double taxation agreements are as follows:

Country

1. People's Republic of China
2. The Republic of Korea
3. The Federal Republic of Germany
4. The Republic of India
5. The Socialist Republic of Vietnam
6. The Republic of Turkey
7. The United Kingdom of Great Britain and Northern Ireland
8. The Republic of Hungary
9. Malaysia
10. The Russian Federation
11. The Republic of Indonesia
12. The Republic of France
13. Czech Republic
14. The Kingdom of Belgium
15. The Republic of Kazakhstan
16. The Republic of Kyrgyz
17. The Republic of Poland
18. The Republic of Bulgaria
19. The Swiss Confederation
20. Ukraine
21. Canada
22. The Republic of Singapore
23. The Democratic People's Republic of Korea
24. The Republic of Austria
25. The Republic of Belarus
26. Italian Republic

[4] The denominated rate in USD is based on the rate of Central Bank of Mongolia as of April 9, 2018

Mongolia

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Real estate investment trusts

Though property trust is permitted under Mongolian law (Article 406 of the Civil Code), the real estate investment trusts concept is not known in Mongolia, and such trusts have not been established in Mongolia.

Tax on transfer of land possession or use rights

In 2017, the Parliament of Mongolia made amendments to the Corporate Income Tax Law and Personal Income Tax Law regarding land possession or use rights transfer (became effective from January 1, 2018).

Pursuant to amendments to the Corporate Income Tax Law, share transfer transactions carried out by the ultimate shareholder[5] of a legal entity holding a land possession or use rights is deemed a taxable event and subject to corporate tax at 30% rate. Taxable income shall be determined on a pro rata basis of shares or participation rights transferred by the ultimate shareholder and the value of the land right.

Pursuant to amendment to the Personal Income Tax, transfer of land possession or use right by a person shall be taxable and is subject to 10% tax whether the transfer was free of charge or under gift contracts.

The determination and calculation methodologies of tax for transfer of land possession or use rights are regulated by the Order #379 of the Minister of Finance issued in 2017.

[5] Ultimate shareholder is (Article 3.1.11 of the Legal Entities Registration Law) any of following entities that directs the control, management and assets of a legal entity directly or indirectly through shares or participation rights in one or more linked legal entities:
[a] entity holding the majority of voting rights of a legal entity;
[b] entity holding the majority of shares or market value of a legal entity; and
[c] equivalent of the above.

Mongolia

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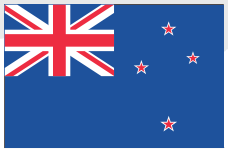
Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of measurement	Square meters (sqm)
Rental payments	
Rents	Quoted in MNT/m2/year (net area)
Typical lease term	1-3 years, with 4-10 years for larger tenants
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	Three months gross net – generally payable by tenant in advance
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed by the landlord or specified in the lease
Basis of rent increases or rent review	Open market rental value
Frequency of rent increase or rent review	Generally, at lease renewal, but can be any time if market rent has substantially increased or decreased
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Generally open to negotiation, but the landlord is responsible for fees such as heating, water and apartment owners' association. Electricity, communication and Internet consumption is payable by each tenant.
Responsibility for internal repairs	Landlord, unless damage is caused by tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Usually apartment owners' association or landlord
Responsibility for building insurance	Rare, and landlord is responsible for it if it is required
Disposal of leases	
Tenant subleasing & assignment rights	Usually not permitted
Tenant early termination rights	Subject to landlord's approval, with one month's written notice and subject to penalty payment
Tenant's building reinstatement responsibilities at lease-end	Original condition, allowing for wear and tear – major damage cost will be deducted from the deposit

Source: JLL

New Zealand

KensingtonSwan



Property Tenure/Ownership

New Zealand has a well-established and transparent land ownership system. There are relatively few barriers to purchasing land. However, the exceptions to this general proposition may involve considerable complexities (for example: buying land from government bodies, land that triggers the Overseas Investment Office review and Maori land).

New Zealand operates under the Torrens land registration system. The ownership of land under this system is created by registration under the Land Transfer Act 1952 and recorded against the title to the land. A copy of the title is readily accessible, and searching the title is always the first step in reviewing what interests affect the land. There are also interests in land that are not registered. These may or may not bind the persons taking interest in the land.

Almost all titles, plans and instruments are converted into an electronic format, allowing up-to-date searching and electronic registration of land transactions. The New Zealand government guarantees the accuracy of the title register, further enhancing its reliability.

The types of land ownership in New Zealand are:

- Freehold title
- Leasehold title
- Unit title
- Strata title
- Cross-lease

The majority of land in New Zealand is freehold, often referred to as an estate in fee simple.

Major Property Legislation

- Land Transfer Act 1952
- Property Law Act 2007
- Building Act 2004
- Public Works Act 1981
- Resource Management Act 1991
- Unit Titles Act 2010
- Te Ture Whenua Maori Act/Maori Land Act 1993
- Overseas Investment Act 2005 (OIA)

There are currently a number of legislative reviews and reforms taking place that will change the law and have implications on overseas investment in real estate in New Zealand.

Operational Requirements for Foreign Corporations

Office

Modes of entry

Overseas entities proposing to set up business in New Zealand have four main structures available:

- Register a branch
- Form a subsidiary company
- Acquire an existing New Zealand company
- Form a limited partnership

Registration/licencing requirements

Companies and limited partnerships incorporated in New Zealand are registered under the Companies Act 1993 and the Limited Partnerships Act 2008, respectively. Overseas companies and overseas limited partnerships are also registered under these acts.

An overseas company or an overseas limited partnership wishing to register a branch in New Zealand must file an application for registration with the Registrar of Companies within ten working days of commencing business in New Zealand.

Certain other rules apply to "overseas persons" and businesses operating in New Zealand. For example, an overseas person or business considering merging with or buying a New Zealand business must be aware of the restrictions on business acquisitions contained in the Commerce Act 1986 and the OIA.

If the New Zealand company is listed on the New Zealand Stock Exchange (NZX), or has more than 50 shareholders, the Takeovers Code is also likely to apply.

Foreign employment limitations

Anyone who is not a New Zealand resident or an Australian national needs a visa to work in New Zealand. Temporary work visas may be granted to people:

- Who have a job offer from a New Zealand employer
- Skilled in occupations that are in demand
- Coming to New Zealand for a particular purpose, season or event
- Who want to gain work experience or work after studying in New Zealand
- Who are students and want to work in New Zealand
- Who want to join a partner or family in New Zealand and work

Certain types of work do not require a work visa. If the employment in New Zealand involves visits for business negotiations, short-term sales trips, work for official trade missions recognized by the New Zealand government or work for overseas governments, a visitor visa may be sufficient.

Retail and industrial trade New Zealand has legislation specifically regulating business activities. This legislation applies equally to New Zealand investors and to overseas investors. An overseas person or business may be able to take advantage of the mutual recognition arrangements that New Zealand has in place with other countries through government regulations and treaties.

Foreign investment incentives

New Zealand has no specific economic incentive regime because of its free trade policy. The New Zealand government, through its bodies such as Tourism New Zealand and New Zealand Trade and Enterprise, provides assistance in certain sectors such as tourism and the export of locally manufactured goods.

Restrictions on foreign property ownership

Certain types of investment in New Zealand property and business assets by "overseas persons" require the prior consent of the Overseas Investment Office (OIO). An "overseas person" is defined as an individual or business who/that is not a New Zealand resident, or a New Zealand resident company, partnership, unincorporated joint venture, trust or unit trust that is 25% or more owned or controlled by an overseas person or business entity. The principal legislation governing the investment in New Zealand by overseas persons is the OIA and the Overseas Investment Regulations 2005.

The approval by the OIO is required for large business/share acquisitions [more than NZD 100 million (USD 72.4 million)] or the acquisition of an interest (including leasehold interest for a term of three or more years) in certain types of land referred to as "sensitive land". In general, consent will be required where an interest is to be acquired (whether directly or indirectly, such as on the acquisition of shares in a company holding that interest) in:

- Nonurban land that exceeds 5 hectares in area
- Land located on specified islands
- Land exceeding 0.4 hectares in an area that includes or adjoins lakes, or adjoins the foreshore and seabed, reserves, historic areas and other listed features

The application is by way of completing template documents which are submitted to the OIO, providing specified details of the applicant, the vendor, the nature of the investment and the likely benefits to New Zealand. Unless there is an intention to permanently reside in New Zealand, each applicant must show that the investment will, or is likely to, benefit New Zealand. Benefit must be shown to be substantial and identifiable where the “sensitive land” is non-urban land that exceeds 5 hectares in area.

The investor must also be of good character and have relevant business experience and acumen.

Where the "sensitive land" is "farmland", any consent is conditional upon the land first being advertised for sale to the public on the open market.

The OIO and the relevant minister must observe the specified criteria when considering an application and assessing the benefit to New Zealand. This includes applying a “counterfactual test” which requires comparison of what is likely to happen with the investment and what is likely to happen without the investment.

The OIO has issued guidance, setting down a 50-working day period for straightforward applications; however, this time frame is often exceeded in the case of farmland. Consent may be granted, but it is subject to conditions and compliance, which will be monitored by the OIO.

However, major changes to the OIA take effect from 22 October 2018. One significant change is that residential land will be classified as “sensitive land”, requiring the consent of the OIO. ‘Residential land’ is defined broadly to include lifestyle land, and bare or substantially unimproved land which is likely to be subdivided for housing. Essentially, these broad definitions will capture land within the definition of ‘residential land’ even if there is no house or dwelling on the land.

The purpose of the amendments is to restrict the acquisition of residential land to overseas investors to make home ownership more accessible to New Zealanders. Accordingly, an overseas investor will need to satisfy one of the following tests to obtain OIO consent:

- The commitment to New Zealand Test: where the overseas person must prove a commitment to residing in New Zealand , which includes holding a residence visa and having New Zealand tax residency.
- The increased housing on residential land test: where the overseas person must develop the land in a way which increases housing supply in New Zealand.

- The non-residential land test: where the overseas person must show that the land is likely to be used for non-residential purposes.
- The incidental residential use test: where the overseas person must show that the land will be used for residential purposes but only in support of the relevant business.

Some concession is available for overseas investors who intend to develop housing in Zealand but do not yet have a specific parcel of land. A more limited "standing consent" is available where the overseas visitor can satisfy satisfy most of the new residential land tests (other than proving a benefit to New Zealand).

The amendments also narrows the definition of being "ordinarily resident" in New Zealand to capture more instances of overseas investment in residential land. In order that to be ordinarily resident in New Zealand, an investor must now hold a permanent resident visa and have been residing in New Zealand for at least a year and have been present in New Zealand for at least 183 days in the past year. Being domiciled in New Zealand will not necessarily mean that the investor is ordinarily resident in New Zealand.

Forestry rights or profits a prendre (rights to acquire part of land, such as logs, minerals or produce) will now come within the ambit of "sensitive land". The acquisition of such rights did not previously require the consent of the OIO. As forestry is an important industry in New Zealand, overseas investors acquiring forestry rights need only satisfy a less stringent "benefit test".

For further information on overseas investment in New Zealand, please refer to the Land Information New Zealand – OIO website (https://www.linz.govt.nz/regulatory/overseas-investment).

Additional conditions

A business venture or transaction involving an overseas person's acquisition or holding of fishing quota within New Zealand's exclusive economic zone will also require the consent of the OIO.

Foreign exchange controls

New Zealand has revoked all foreign exchange controls. Accordingly, there are no such restrictions on the transfer of capital, profits, dividends, royalties or interest into or from New Zealand. However, withholding taxes apply to certain payments out of New Zealand—for example: dividends, interest and royalties (see further at the Personal Taxation section below). In addition, withholding taxes also apply to returns of capital gains to nonresidents in certain circumstances and on the payment of profits to certain nonresident contractors.

Taxes on possession and operation of real estate

No land tax is payable, but the local government authorities are empowered to levy taxes, termed as "rates", on all properties within their territorial boundaries. Rates are assessed on either assessed annual rental value, land value or capital value.

Stamp duty

There is no stamp duty in New Zealand.

Value-added Tax/Goods and Services Tax (GST)

GST is charged on the supply of goods and services made in New Zealand by a registered person in the course or furtherance of a taxable activity, provided that the supply made is not an exempt supply (for example, the supplies of financial services and residential rental accommodation). Registration is optional if supplies do not exceed NZD 60,000 (USD 43,685) in any 12-month period. The standard rate of GST is currently 15%. In certain circumstances, supplies are zero-rated, which means that GST is calculated at the rate of 0%.

GST on property transactions

When commercial property is sold, GST may need to be added to the purchase price. A purchaser who pays the tax may be entitled to a refund.

When land is transferred between GST-registered parties, the transaction must be zero-rated for GST, provided that the purchaser intends to use the land to make taxable supplies and the land is not intended to be used as a principal place of residence by the purchaser or an associate. If all these conditions are not satisfied, GST must be charged by a GST-registered vendor, unless the sale is part of a sale of a business as a going concern, which may be zero-rated. A mortgagee sale is subject to GST if the mortgagor would be liable to pay GST on the sale.

Capital gains tax

There is no comprehensive capital gains tax in New Zealand. However, a profit made on the sale of any asset (including land) is assessable as income, where (1) the asset is purchased as part of a dealing or investment business, or for the purpose of resale or where there was an undertaking or scheme entered into for the purpose of making a profit, or (2) a residential property that was acquired after 1 October 2015 is sold within two years of

acquisition. From 29 March 2018, that period increases to five years for land purchased after that date. Income tax must be paid on the gains from the sale, unless:

- it is their main home;
- they inherited the property; or
- they received the property as a part of a relationship settlement.

Profits from the sale of land are taxable, where construction, development or subdivision is involved, and if a consent or zoning change has or will benefit the land, and if the land is sold within ten years. Certain exemptions apply in respect of residential land and business premises.

Tax Information Collection

Due to recent changes to the Land Transfer Act 1952 to address potential taxation issues, overseas buyers are now required to provide an Inland Revenue Department number ("IRD Number") and any foreign equivalent of IRD Numbers at the time of purchase. In order for overseas buyers to apply for an IRD Number they must have a fully functioning New Zealand bank account.

Residential land withholding tax

A residential land withholding tax ("RLWT") has recently been implemented. Where an overseas person sells residential property within two years of acquisition, a RLWT will now apply. In most cases, the vendor's conveyance will withhold the RLWT from the purchase price for the property to pay to IRD before releasing the balance of the funds. The amount of RLWT to be withheld will be the higher of:

- 10% of the sale price
- (The sale price less the purchase price the seller originally paid for the property) x the RLWT rate (33% for individuals or trusts, 28% for companies or incorporated societies)

In some cases, offshore vendors may be able to apply for a certificate of exemption where they would otherwise have to pay RLWT.

Tax depreciation

Depreciation can be claimed on building fit outs, but not on most buildings or land.

Until April 1, 2011, buildings acquired after March 31, 1993 could be depreciated at 4% diminishing value or 3% straight-line, based on an estimated useful life of 50 years. The plant and capital equipment are depreciated at different rates, reflecting their economic life. Any depreciation claimed in the past is clawed back as income if a building is sold at a profit over the tax book value.

Fit outs on commercial premises are depreciable at the rates listed in Determination DEP 1. Residential building fit out is not depreciable. If a fit out has been historically depreciated at the same rate as the building, 15% of the tax book value of the building is treated as equal to the fit out, and depreciation at 2% straight-line is permitted.

Corporate taxation

Corporate taxation for New Zealand resident companies is at the rate of 28% on their worldwide income. An overseas company is taxed at the same rate, but only in respect of income that has a New Zealand source.

Personal taxation

Residents are taxed on their worldwide income with certain allowances for foreign taxes paid, while nonresidents are taxed only on income deemed to be derived from New Zealand. New tax residents enjoy a four-year tax exemption on foreign passive income.

Income tax is assessed on taxable income, which can be described as assessable income less allowed deductions.

The current personal income tax rates are:

Income	Tax Rate
Up to NZD 14,000 (USD 10,196)	10.5%
NZD 14,001 – 48,000 (USD 10,197 – 34,958)	17.5%
NZD 48,001 – 70,000 (USD 34,959 – 50,981)	30%
NZD 70,001 (USD 50,982) and above	33%

Resident withholding tax (RWT) is imposed on the residents' interest and dividend income at rates that reflect personal tax. Dividends are also subject to RWT to bring the rate up to 33% after allowing for the benefit of imputation credits reflecting tax paid by the company.

Payments to nonresidents

Dividends, interest and royalties paid by a New Zealand resident company to nonresidents are subject to nonresident withholding tax (NRWT), which is generally payable at 15% on interest and royalties, and 30% on dividends. These rates are subject to modification by Double Tax Agreements (DTAs) between New Zealand and the nonresident's country of residence, i.e. the dividend rate has been historically reduced to 15% and interest/royalty rates to 10% (although the new/revised United States, Australia, Hong Kong, Singapore, Turkey, Canada,

Mexico and Chile DTAs reduce these rates even further in a confirmed new trend indicating that each must be individually reviewed as rates frequently differ).

A 0% rate of NRWT applies:

- To fully imputed dividends paid to a foreign shareholder with a 10% or greater direct voting interest in the New Zealand company paying the dividend
- Where the foreign shareholder has a portfolio interest (less than 10%) in a New Zealand company, and the rate of tax that can be imposed on the dividend is less than 15% (under the terms of a DTA)

Approved Issuer Levy (AIL)

NRWT does not need to be deducted from the interest paid on borrowings when:

- The New Zealand borrower and overseas lender are not associated
- The borrower is registered as an approved issuer
- The debt instrument is registered
- The borrower pays a tax-deductible AIL equal to 2% of the interest paid and which cost may be passed on contractually to the holder
- The rate of AIL reduces to 0% on bonds that meet certain requirements, e.g. offered to the public issued in NZD and listed on a recognized stock exchange or are widely held, and other requirements

Tax treaties: Avoidance of double taxation

New Zealand currently has DTAs with 40 countries, and many are under negotiation. The DTAs take precedence over the provisions of the Income Tax Act 2007 and contain "tie-breaking" provisions to determine residence and which country has the primary right to tax income. New Zealand has also entered into 21 tax information exchange agreements, with more being frequently added.

Double taxation agreements

Australia
Austria
Belgium
Canada
Chile
China
Czech Republic
Denmark
Fiji
Finland
France
Germany
Hong Kong
India
Indonesia
Ireland
Italy
Japan
Korea
Malaysia
Mexico
Netherlands
Norway
Papua New Guinea
Philippines
Poland
Russian Federation
Samoa
Singapore
South Africa
Spain
Sweden
Switzerland
Taiwan
Thailand
Turkey
United Arab Emirates
United Kingdom
United States of America
Vietnam

Information Exchange Agreements

Anguilla
Bahamas
Bermuda*
British Virgin Islands
Cayman Islands
Cook Islands
Curacao
Dominica
Sint Maarten
St Christopher and Nevis*
St Vincent and Grenadines
Gibraltar
Guernsey
Isle of Man
Jersey
Marshall Islands
Netherland Antilles
Niue
Samoa
Turks and Caicos Islands
Vanuatu

*signed, but not in force as at 6 April 2018

Real Estate Investment Trusts

There is no specific real estate investment trust (REIT) legislation to regulate the activity of REITs in New Zealand. Listed property trusts and companies on the NZX are governed by the NZSX/NZDX Listing Rules, the Financial Markets Conduct Act 2013, the Companies Act 1993 and by their trust deed or constitution. REITs in other forms (for example, unlisted property trusts) are also governed by the Financial Markets Conduct Act 2013 (if offers are made to the public) and the legislation specific to their legal form (unit trusts in operation before commencement of the Financial Markets Conduct Act 2013, for example, are governed by the Unit Trusts Act 1960).

New Zealand

KensingtonSwan

Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of Measurement	Square Meters
Rental payments	
Rents	NZD/sqm/year. In Auckland, rents are charged on a net basis. In Wellington, rents are typically charged on a gross basis
Typical lease term	6–9 years for existing buildings; 9–12 years for new buildings
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	2 months
Security of Tenure	No guarantee, varies according to contract
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed at the outset and specified in the lease
Basis of rent increases or rent review	Open market rental value (with ratchet). Fixed increases are less common but, can be 2–4% or linked to CPI
Frequency of rent increases or rent review	3, yearly
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity and telecommunication consumption are usually separately metered and payable by each tenant
Car parking	Separate lease/license agreement for an additional rent, although it can be linked to the office lease
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord (charged back via service charge)
RESPONSIBILITY FOR EXTERNAL/STRUCTURAL REPAIRS	Landlord (charged back via service charge with the exception of structural repairs)
Responsibility for building insurance	Landlord (charged back via service charge)
Disposal of leases	
Tenant subleasing & assignment rights	Generally full assignment to third parties is accepted (subject to landlord's approval)
Tenant early termination rights	Only by break clause, usually subject to penalty
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

Source: JLL

Philippines

SyCip Salazar Hernandez & Gatmaitan

Property Tenure/Ownership

Two types of tenure exist:

- Freehold
  - Private freehold land is only available to Philippine nationals (e.g. Filipino citizens or corporations at least 60% of the equity of which are held by Filipinos).
  - Foreigners and foreign corporations may own condominium units subject to the provisions of the Condominium Act (see Restrictions on Foreign Property Ownership below).

Operational Requirements for Foreign Corporations

Office

Modes of entry

- Subsidiary domestic corporation
- Branch or representative office
- Regional operating headquarters or regional or area headquarters
- Leasehold
  - All public land is available to Philippine nationals on a leasehold tenure only.
  - Private land may be leased by foreign corporations subject to certain restrictions.
  - Leasehold rights acquired under long-term lease contracts may be sold, transferred or assigned.

Major Property Legislation

1987 Constitution	Public Land Act (C.A. 141), as amended
Property Registration Decree (P.D. 1529), as amended	Urban Development and Housing Act (R.A. 7279)
Land Ownership by Filipinos Overseas (B.P.185)	Investors' Lease Act (R.A. 7652)
Local Government Code (R.A. 9640)	Special Economic Zone Act (R.A. 7916), amended by R.A. 8748
Condominium and Lot Buyers Protective Act (P.D. 957)	National Internal Revenue Code (NIRC) of the Philippines (P.D. 1158), amended by R.A. 8424, R.A. 7716, R.A. 9337, R.A. 9361, R.A. 9504, and R.A. 9648
National Building Code (P.D. 1096)	Regional Headquarters Act (R.A. 8756), amending the Omnibus Investment Code (E.O. 226)
The Subdivision Development Act (P.D. 1216)	Retail Trade Liberalization Act (R.A. 8762)
Urban Land Reform (P.D. 1517)	Rental Reform Act (R.A. 9161)
Rent Control Act of 2009 (R.A. 9653)	Special Purpose Vehicle Act (R.A. 9182)
Condominium Act (R.A. 4726), amended by R.A. 7899	Land Use Ordinance
Comprehensive Agrarian Reform Program (R.A. 6657), as amended by R.A. 9700	Zoning Ordinance
Foreign Investments Act (R.A. 7042), amended by R.A. 8179	Real Estate Investment Trust (REIT) Act of 2009 (R.A. 9856)
Realty Installment Buyer Protection Act (R.A. 6552)	Indigenous Peoples' Rights Act (R.A. 8371)
Intellectual Property Code (R.A. 8293), as amended by R.A. 9502	

- Where the buyer, transferee or assignee is a foreigner or a foreign-owned enterprise, conditions and limitations for use of the leased property apply.

Ownership is generally evidenced by:

- Transfer certificate of title (TCT) - mother title for land
- Condominium certificate of title (CCT) – for condominiums and townhouse properties

Registration/Licencing Requirements

- Registration with the Securities and Exchange Commission (SEC)
- Registration with other government agencies is required for some types of industries
- Registration of business to obtain tax and other incentives – Philippine Economic Zone Authority (PEZA) or Board of Investments (BOI), depending on the proposed office location (e.g. PEZA-accredited buildings, IT parks or economic zones) and the type of industry (e.g. call centers, business process outsourcing or other "pioneer" or "sunshine" industries)
- Business permit from the appropriate local government unit
- Registration with the Bureau of Internal Revenue
- Membership in the Philippine Social Security System
- Membership in the government healthcare benefits program – Philippine Health Insurance Corporation
- Membership in the Home Mutual Development Fund

Requirements for Employment of Foreigners

- Visa – Bureau of Immigration
- Alien employment permit – Department of Labor and Employment

Foreign Employment Limitations

Foreigners can only be employed in positions for which there is no available Filipino who is competent, able and willing at the time of the application to perform the services for which the foreign employee is desired. Certain businesses are subject to nationality requirements that restrict the hiring of foreign employees.

Retail trade

Retail Trade Liberalization Act of 2000

Retail enterprises may be wholly owned by foreigners, provided such enterprise has a paid-up capital of at least PHP 107.73 million (USD 2.5 million) and that the investment for establishing a store is at least PHP 35.78 million (USD 830,000), unless the enterprise specializes in high-end or luxury products, in which case, the required minimum paid-up capital per store is PHP 10.78 million (USD 250,000).

Industrial trade

Registration/Licencing Requirements

- Registration of export firms – PEZA or BOI
- Import duty-free certification – BOI
- Certificate of origin/authority to load - Bureau of Customs
- Registration of operation of customs bonded manufacturing warehouse – Bureau of Customs
- Environmental compliance certification – Department of Environment and Natural Resources
- Trademarks and patents registration – Intellectual Property Office
- Special permits/clearances for selected export businesses

Foreign investment incentives

BOI and PEZA incentives for registered enterprises

Firms that register with either the BOI or the PEZA are entitled to incentive privileges.

BOI incentives include a corporate income tax holiday for three to six years (depending on the type of project), which is extendible in some cases, exemptions from certain taxes, additional tax credits, additional deductions from tax income and non-fiscal incentives.

PEZA incentives include a corporate income tax holiday of four to eight years, after which the registered enterprise may opt to pay a preferential tax of 5% of gross income in lieu of all national and local taxes (except for real property tax on land owned by developers). PEZA-registered enterprises also enjoy exemptions from certain types of taxes, additional tax credits, additional deductions from taxable income and non-fiscal incentives.

Incentives for regional headquarters (RHQs)/regional operating headquarters (ROHQs)

RHQs and ROHQs also enjoy tax incentives. RHQs are exempted from the payment of corporate income tax and value added tax, and their purchases of goods and services and lease of goods and property are zero-rated. ROHQs enjoy a 10% preferential income tax rate. Additionally, both ROHQs and RHQs are exempt from all kinds of local taxes, fees and charges (except for real property tax on land improvements and equipment) and may import training materials and equipment free of taxes and customs duties.

Restrictions on foreign property ownership

Foreigners are not permitted to own land in the Philippines, except in cases of hereditary succession. However, foreigners investing in the Philippines are allowed to lease private land for 50 years, renewable once

for a maximum period of 25 years.

The Condominium Act allows for the ownership of condominium units by foreign investors or multinational corporations in some situations. If the common areas of a condominium project are co-owned by the owners of individual units, the units may be conveyed or transferred only in favor of Filipino citizens (except in cases of hereditary succession) and Filipino corporations.

Where the common areas are held by a corporation, the transfer or conveyance of units to non-Filipinos is allowed, provided that the foreigners' interest in the project does not exceed the 40% limit provided under the existing laws.

Foreign exchange controls

Foreign investments must be registered with, and foreign loans approved by, the Bangko Sentral ng Pilipinas so these can be serviced, repatriated or paid back using the foreign currency sourced from the local banking, system. Certain types of foreign loans must be approved by the Bangko Sentral ng Pilipinas, regardless of the source of foreign exchange that will be tapped to service and repay the loan. Outside the banking system, foreign exchange is freely traded.

Taxes on Possession and Operation of Real Estate

Real Property Tax

An annual ad valorem tax is levied on real property such as land, buildings, machinery and other improvements attached to real property. The total tax rates vary by municipality/local government unit. A range of 1–2% of assessed value can be imposed on residential, commercial and industrial properties.

Special Education Fund Tax (SEFT)

One percent of assessed value in addition to the basic real estate tax.

Taxes and fees on the acquisition and transfer of Real Estate

The following taxes are imposed on the acquisition, transfer and other transactions involving real estate:

- Documentary stamp tax (DST)
- Local government transfer taxes
- Registration fees to the Register of Deeds
- Capital gains tax (imposed on sales, transfers or exchange of real property that is a capital asset)
- Creditable withholding tax (imposed on sales, transfers or exchange of real property that is not a capital asset)
- Notarial fees (imposed on the notarization of the sale or transfer document)
- Value added tax (see Value Added Tax/Goods and Services Tax section)

Value Added Tax/Goods and Services Tax

A uniform 12% value added tax (VAT) applies to businesses with annual gross receipts/sales over PHP 3 million (USD 57,862). Professional services, including brokers in the real estate industry and those rendered by financial and nonfinancial intermediaries, are generally subject to this uniform 12% VAT.

As a general rule, the sale, barter or exchange of property held primarily for sale to customers or for lease in the ordinary course of trade or business and the use or lease of property are subject to VAT.

Tax depreciation

In the case of tangible property, depreciation applies to a property that is subject to wear and tear, to decay or decline from natural causes, to exhaustion and to obsolescence due to the normal progress of the art (as where machinery or other property must be replaced by a new invention) or because of the inadequacy of the property in meeting the growing needs of the business. Property kept in repair may, nevertheless, be the subject of a depreciation allowance. The deduction of an allowance for depreciation is limited to property used in the taxpayer's trade or business.

Corporate taxation

In general, income received from equity investments, savings and time deposits as well as deposit substitutes, is the received net of withholding taxes imposed at source and is excluded from taxable income.

Domestic corporations are taxed on their worldwide income, while foreign corporations are taxed on income derived from sources within the Philippines.

The corporate income tax for domestic and foreign corporations is 30%. A minimum corporate income tax rate of 2% of gross income is imposed, beginning in the fourth taxable year, if the minimum income tax is greater than the tax computed under normal tax rules.

Passive income derived by domestic and foreign corporations is also taxed, with the rates varying depending on the type of passive income involved.

A resident foreign corporation is taxed based on its taxable income. After-tax profits remitted by its Philippine branch to its head office abroad are taxed at a fixed rate of 15%. However, remitted profits of corporations registered with the PEZA are tax-exempt.

Philippines

SyCip Salazar Hernandez & Gatmaitan

A non-resident foreign corporation not engaged in trade or business in the Philippines is taxed on its gross income.

Enterprises in the Subic Bay Freeport are exempted from all national and local taxes, but are required to pay a 5% final tax on gross income earned.

Personal taxation

Individual resident citizens are taxed on their worldwide income, while nonresident citizens as well as resident and nonresident foreigners are taxed on income derived in the Philippines only.

Individual income is categorized as compensation income, business income and passive income. Different tax rates apply to each category, and sub-categories are, at times, also taxed differently. Individual taxpayers also enjoy certain types of personal exemptions.

Nonresident aliens not engaged in trade or business are subject to a flat tax rate of 25% on gross income derived from sources within the Philippines, if their stay in the country does not exceed 180 days in a calendar year.

Otherwise, they are taxed on the basis of graduated rates.

Tax treaties: Avoidance of double taxation

Treaties in existence

Australia	Korea
Austria	Malaysia
Bahrain	New Zealand
Bangladesh	Norway
Belgium	Pakistan
Brazil	Poland
Canada	Romania
Chile	Russia
China	Singapore
Czech Republic	Spain
Denmark	Sweden
Finland	Switzerland
France	Thailand
Germany	The Netherlands
Hungary	Turkey
India	United Arab Emirates
Indonesia	United Kingdom
Israel	United States of America
Italy	Vietnam
Japan	Yugoslavia

Real Estate Investment Trusts (REITs)

Requirements

RA 9856 allows the creation of REITs, which are investment vehicles through which indirect investments in real property can be made. The principal purpose of a REIT must be the ownership of income-generating real estate assets. A REIT must have a paid-up capital of at least PHP 300 million (USD 6.96 million). It must also be a public company as defined under RA 9856, which means that:

It has to maintain its status as a listed company

It must have at least 1,000 public shareholders, each owning at least 50 shares and who, in the aggregate, own at least 1/3 of the REIT's outstanding capital stock

Taxation

A REIT is subject to the regular corporate income tax rate of 30% on its taxable net income, but is not subject to the minimum corporate income tax. Moreover, dividends distributed by a REIT out of its distributable income are treated as allowable deductions. The DST on the sale or transfer of a real property to REITs and the registration and annotation fees for such transfers are 50% less than the DST and registration/annotation fees normally imposed on transfers of real property. However, the sale, exchange, or other disposition of real property, including security interest thereto, to a REIT shall, unless otherwise exempt, is subject to income tax or capital gains tax, if applicable, imposed under the National Internal Revenue Code depending on whether the subject property is classified as capital asset or ordinary asset.

Philippines

SyCip Salazar Hernandez & Gatmaitan

Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of Measurement	Square Meters
Rental payments	
Rents	PHP/sqm; Rent escalation is incorporated into the lease, usually 5% per annum. Depending on market conditions, the rate of escalation can be higher or lower. (subject to value-added tax and witholding tax)
Typical lease term	3–5 years
Frequency of rent payable (in advance)	Monthly or quarterly
Typical rent deposit (expressed as x months' rent)	3 months Security Deposit and 3 months Advance Rent. The basis could either be the first year rental rate or the last year rental rate.
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No
Basis of rent increases or rent review	Rent increases are specified in the lease. For example, P500/sqm/month subject to 5% annual increases commencing on the 3rd year of the lease.
Frequency of rent increase or rent review	Rent increases are specified in the lease.
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	The Landlord subscribes directly to the utilities and distributes these to tenants. Electricity, telecommunication and water consumption are separately metered and payable by each tenant
Car parking	Allocation is usually one parking slot per 75–100 sqm leased
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord (charged back via service charge)
Responsibility for external/structural repairs	Landlord (charged back via service charge whenever possible)
Responsibility for building insurance	Landlord (charged back via service charge)
Disposal of leases	
Tenant subleasing & assignment rights	Generally prohibited, unless to a subsidiary company of the tenant (subject to landlord's approval)
Tenant early termination rights	Only by break clause (subject to penalty notice period)
Tenant's building reinstatement responsibilities at lease-end	Unless otherwise agreed with the Landlord, leased premises are reinstated to its original condition by Tenant. It is possible for Tenant to negotiate the waiver of this provision.

Source: JLL

Singapore

ADTlaw

Property Tenure/Ownership

Two main types of land tenure are granted:

- Freehold title
  - Fee simple – known as the grant in fee simple (GFS), grant or indenture
  - Estate in perpetuity - known as the statutory land grant (SLG)
- Leasehold title (mainly 30, 60, 99 and 999 years)

Generally, the ownership of land and buildings are not separate from each other.

Major Property Legislation

Building Control Act	Building Maintenance and Strata Management Act	Conveyancing and Law of Property Act
Executive Condominium Housing Scheme Act	Goods and Services Tax Act	Housing Developers (Control and Licensing) Act
Income Tax Act	Land Acquisition Act	Land Titles Act
Land Titles (Strata) Act	Planning Act	Property Tax Act
Registration of Deeds Act	Residential Property Act	Sale of Commercial Properties Act
Stamp Duties Act	State Lands Act	Street Works Act

Operational Requirements for Foreign Corporations

Modes of entry

- Incorporated company – Accounting and Corporate Regulatory Authority (ACRA)
- Branch office – ACRA
- Representative office – Monetary Authority of Singapore (MAS) (for finance-related industries) or International Enterprise (IE) Singapore
- Limited Liability Partnership – ACRA
- Limited Partnership – ACRA

Registration/Licensing Requirements

Generally, there is no restriction on the type of business that can be set up in Singapore, but some types of businesses have to apply for special licenses from the government (e.g. banks, finance companies, insurance companies and stock-broking firms).

All businesses carried out in Singapore must be registered with ACRA (unless exempt under the Business Names Registration Act). This also applies to any firm, individual or corporation that carries on business as a nominee, trustee or agent for any foreign corporation.

Foreign Employment Limitations

Foreigners are required to obtain the permission of the Controller of Immigration to enter Singapore to take up or continue employment or to engage in business.

Foreigners (excluding permanent residents) may apply for an employment pass if they have a fixed monthly salary of at least SGD 3,600 and the acceptable qualifications.

Midlevel skilled foreigners may apply for an "S" pass if they have a fixed monthly salary of at least SGD 2,200. This minimum qualifying salary will increase to SGD 2,300 on 1 January 2019 and SGD 2,400 on 1 January 2020. Applicants will be assessed on a points system, which takes into account multiple criteria, including salary, educational qualification, skills, job type and work experience.

Foreigners with an employment pass or "S" pass will need to earn a fixed monthly salary of at least SGD 6,000 to sponsor the stay of their spouses and unmarried children under 21 years of age in Singapore.

Those who do not satisfy either the basic monthly income or education criteria are required to apply for work permits.

Tax Incentives

The major incentive schemes available to investors include:

- Productivity and Innovation Credit Scheme
- Land Intensification Allowance
- Research Incentive Scheme for companies
- Pioneer Incentive
- Integrated Investment Allowance
- Development and Expansion Incentive
- Finance and Treasury Centre Tax Incentive
- Writing-down allowances for intellectual property acquisition
- Global Trader Programme
- Double tax deduction for Internationalisation Scheme
- Fund Management Incentive Schemes
- Mergers and Acquisitions Scheme

Restrictions on Ownership of Property by Foreigners

Residential properties in Singapore are subject to foreign ownership restrictions, as set out in the Residential Property Act. A foreign person (as defined below) is

restricted from owning certain types of residential properties, including:

- Vacant land
- Any house, building or other premises or any part thereof that is permitted to be used pursuant to the Planning Act or any other written law as a dwelling house or that is lawfully used as such
- Land zoned for residential purposes
- Any property zoned for any use, where the approved use has, by notification in the Government Gazette, been declared to be residential property for purposes of the Residential Property Act

Any foreign person may purchase:

- Any flat that is part of any building in a development permitted to be used for residential purposes under the Planning Act, and that is not a landed dwelling house
- Any unit in a development that is shown in an approved plan bearing the title "condominium" issued by the competent authority under the Planning Act
- Any unit in a development comprising housing accommodation sold under the executive condominium scheme established under the Executive Condominium Housing Scheme Act

Notwithstanding the above, no foreign person shall, without the prior approval of the Land Dealings Approval Unit, purchase or acquire (whether in a single transaction or a series of transactions):

- All the flats in every building in a development permitted to be used for residential purposes under the Planning Act
- All the units in a development approved by the competent authority under the Planning Act as a condominium development
- All the units in a development sold under the executive condominium scheme established under the Executive Condominium Housing Scheme Act

A foreign person is a person who is not any of the following:

- A Singapore citizen
- A Singapore company
- A Singapore limited liability partnership
- A Singapore society

A foreign person must obtain approval from the Land Dealings Approval Unit to buy restricted properties.

A special arrangement is applicable for Sentosa Cove, but does not apply to the rest of Singapore. Although approval from the Land Dealings Approval Unit is still required, applicants only have to submit a shorter application form.

It should be noted that approvals granted by the Land Dealings Approval Unit are typically accompanied with the condition that the restricted properties have to be owner-occupied.

Foreign exchange controls

There are no restrictions on the remittance or repatriation of capital or profits in or out of Singapore. Non-residents can also borrow Singapore dollars to invest in real estate.

In 2004, the MAS lifted the requirement on non-resident, non-financial institution issuers of Singapore dollar bonds and equities to convert their Singapore dollar proceeds into foreign currencies before remitting it abroad. With this latest relaxation of Singapore dollar restrictions, only the non-resident financial institutions will be subject to this requirement.

In addition, banks are not allowed to extend Singapore dollars credit facilities to non-resident financial institutions if there is reason to believe that the Singapore dollar proceeds may be used for Singapore dollars currency speculation.

Taxes on Possession and Operation of Real Estate

Property tax

Property tax is levied on all immovable properties in Singapore, including houses, offices, factories, shops, land and Housing and Development Board (HDB) flats. The amount of tax payable by the owner of the property is computed based on a percentage of the annual value of the property.

Owners who occupy their residential properties are eligible for owner-occupiers' tax rates.

Generally, the annual value (which is determined by the Chief Assessor) is the estimated gross annual rent of the property, excluding the rent for furniture, fittings and service charge.

However, the annual values of the following categories of properties are determined differently:

- For land and development sites, the annual value shall be 5% of the estimated freehold market value of the land (notwithstanding that the land may be leasehold)
- Where properties are leased for the payment of a premium, the annual value shall at the option of the Chief Assessor, be the annual equivalent of the gross rent paid, with consideration given by the Chief Assessor to the premium or lump sum consideration paid for the tenancy

- For hotels, the annual value of the hotel rooms and food and beverage outlets located in hotel premises will be determined at 25% of the gross hotel room receipts and food and beverage receipts respectively in the preceding year. For all other areas in the hotels that are not hotel rooms (such as retail shops and car parks), the annual values are based on their estimated prevailing market rentals.

The property tax rate for all non-residential properties, is 10% of the annual value.

Progressive property tax rates apply to all residential properties as follows:

Non-owner occupied residential properties (excluding residential land undergoing development)

Annual Value	Tax Rate
First SGD 30,000	10%
Next SGD 15,000	12%
Next SGD 15,000	14%
Next SGD 15,000	16%
Next SGD 15,000	18%
Above SGD 90,000	20%

Owner-occupied residential properties

Annual Value	Tax Rate
First SGD 8,000	0%
Next SGD 47,000	4%
Next SGD 15,000	6%
Next SGD 15,000	8%
Next SGD 15,000	10%
Next SGD 15,000	12%
Next SGD 15,000	14%
Above SGD 130,000	16%

Vacant land undergoing a housing development intended for owner-occupation can be taxed at the owner-occupier tax rates for residential buildings for the duration of the housing development (up to a maximum of two years). The house must be owner-occupied for at least one year after the completion of the development of the house. All other vacant land will continue to be taxed at 10% during the development period.

Taxes on acquisition and transfer of real estate

Stamp duty and legal costs

Stamp duty is generally payable on the documents relating to transactions involving immovable property, including all sales and sub-sales, mortgages and leases of such property. This applies to all types of properties, regardless of whether the construction of the property has been completed.

Stamp duty must be paid within 14 days of the execution of the agreement or contract (that is, the date any option to purchase is exercised, or the date of signing the sale and purchase agreement if the date of exercise of any option is not available).

Stamp duty is payable by the relevant parties at fixed rates on the selling/purchase price or market value of the property, whichever is the higher.

Buyer's stamp duty

Stamp duty, or buyer's stamp duty (BSD), is charged on the sale and purchase agreement and is payable by the buyer, unless the parties agree otherwise. The ad valorem stamp duty is computed based on the total consideration of the transaction. The graduated rates for agreements executed on or after 20 February 2018 are as follows:

Amount or Value of Consideration	BSD Rate for residential properties	BSD rates for non-residential properties
First SGD 180,000	1%	1%
Next SGD 180,000	2%	2%
Next SGD 640,000	3%	3%
Remainder	4%	

If the consideration for a residential property is SGD 2,000,000, the method of computation of the ad valorem stamp duty is therefore:

Stamp duty = SGD 1,800 (1% of SGD 180,000) + SGD 3,600 (2% of SGD 180,000) + SGD 19,200 (3% of SGD 640,000) + SGD 40,000 (4% of SGD 1,000,000) = SGD 64,600

Additional buyer's stamp duty

Additional buyer's stamp duty (ABSD) is also payable by certain buyers of residential properties (including residential land). ABSD is payable in addition to the existing buyer's stamp duty. ABSD will apply to contracts or agreements (whichever is earlier), or documents of transfer (where contracts or agreements are not applicable), dated on or after December 8, 2011.

The affected buyers are:

- Foreigners (excluding nationals of the United States of America and nationals and permanent residents of Switzerland, Liechtenstein, Norway and Iceland, all of whom will be accorded the same treatment as a Singapore citizen) (FR) and non-individuals
- Singapore permanent residents (SPR)
- Singapore citizens (SC) who already own one or more residential property, whether owned wholly, partially or jointly with others

Singapore Rider – Section 1

The ABSD rate is set out as follows:

Profile of buyer	ABSD Rates From January 12, 2013 to July 5, 2018	ABSD Rates From July 6, 2018
FR buying residential property	15%	20%
Non-individuals buying residential property	15%	25%[1] plus additional 5% for Housing Developers (non-remittable)
SPR buying first residential property	5%	5%
SPR buying second and subsequent residential properties	10%	15%
SC buying second residential property	7%	12%
SC buying third and subsequent residential properties	10%	15%

If the property is bought jointly by buyers with different profiles, the higher ABSD rate will apply.

There is a transitional remission for residential properties acquired on or before 6 July 2018 such that the former ABSD dates, instead of the new ABSD rates, will apply. For buyers to be eligible, each of the following conditions must be strictly met:

- The option to purchase (OTP) is granted on or before 5 July 2018
- The OTP is exercised on or before 26 July 2018 or the date of expiry of the OTP validity period, whichever is earlier
- The OTP is not varied (including any extension of the validity period) on or after 6 July 2018

The buyer must e-mail a typewritten application form in the prescribed form to IRAS within 14 days from the execution of the contract, agreement or document of transfer (as the case may be).

Seller's stamp duty (SSD)

Stamp duty is also payable by:

- Except for certain exempted sellers, a seller of a residential property who acquires residential property and sells or disposes of the property within one or four years (depending on when the seller acquired the residential property) from the date of acquisition the SSD rate will be as follows:

Date of Purchase	Holding Period	SSD Rates
20 February 2010 to 29 August 2010 (both dates inclusive)	Up to one year	1% on first SGD 180,000, 2% on next SGD 180,000 and 3% on remainder
	More than one year	No SSD payable
30 August 2010 to 13 January 2011 (both dates inclusive)	Up to one year	1% on first SGD 180,000, 2% on next SGD 180,000 and 3% on remainder
	More than one year and up to two years	0.67% on first SGD 180,000, 1.33% on next SGD 180,000 and 2% on remainder
	More than two years and up to three years	0.33% on first SGD 180,000, 0.67% on next SGD 180,000 and 1% on remainder
	More than three years	No SSD payable
14 January 2011 to 10 March 2017 (inclusive)	Up to one year	16%
	More than one year and up to two years	12%
	More than two years and up to three years	8%
	More than three years and up to four years	4%
	More than four years	No SSD payable
On and after 11 March 2017	Up to one year	12%
	More than one year and up to two years	8%
	More than two years and up to three years	4%
	More than three years	No SSD payable

[1] Housing Developers may apply for upfront remission on the ABSD rate of 25% under the Stamp Duties (Non-Licensed Housing Developers) (Remission of ABSD) Rules and the Stamp Duties (Housing Developers) (Remission of ABSD) Rules. The conditions for the remission include commencement of the housing development within 2 years from the date of acquisition, and completion and sale of all the units of housing accommodation in the development within 3 or 5 years from the date of acquisition.

- A seller of an industrial property, who acquires industrial property and sells or disposes of the property within three years, from the date of acquisition on or after 12 January 2013, the SSD rate will be as follows:

Holding Period	SSD Rates
Up to one year	15%
More than one year and up to two years	10%
More than two years and up to three years	5%
More than three years	No SSD payable

The material date of acquisition or disposal is the date on which the contract is made, rather than the date of transfer or date of delivery of possession of the property. Where there is an option to purchase, the material date shall be the date on which the option to purchase is exercised.

Where the SSD is payable, the buyer should ensure that the SSD is paid by the seller as the agreement for the sale and purchase would not be considered duly stamped if the SSD was not paid.

Mortgages

The stamp duty payable on the mortgage instrument (other than for an equitable mortgage) is 0.4% of the amount of facilities granted on the mortgage, subject to a maximum of SGD 500.

The stamp duty payable on the mortgage instrument for an equitable mortgage is 0.2% of the amount of facilities granted on the mortgage, subject to a maximum of SGD 500.

Leases

Stamp duty is charged on a lease instrument. The ad valorem stamp duty payable varies with the average annual rent (AAR) during the lease period and the length of the lease period. The rates of stamp duty are as follows:

Lease/Tenancy	SSD Rates
Where AAR does not exceed SGD 1,000	Exempted

Where AAR exceeds SGD 1,000, stamp duty is based on the contractual rent or market rent, whichever is higher. The following stamp duty rates apply:

Lease period of 4 years or less	0.4% of total rent for the period of the lease
Lease period of more than 4 years or for any indefinite term	0.4% of 4 times the AAR for the period of the lease

- Leases involving premium:

Stamp duty payable on lease documents involving premium will be computed on the gross rent of the rented property and premium paid for the tenancy term or market rent, whichever is higher. Stamp duty is payable on the premium based on the BSD rates.

- Leases involving variable/unknown rental:

Stamp duty payable on lease documents with variable/unknown rental will be computed on the total contractual and other consideration or market rent, whichever is higher.

Income Tax

No tax is imposed on capital gains from the sale of real property, which includes any land and building, as well as any interest, option or other right over such land or building. On the other hand, gains from property sales made by property traders and property developers are subject to income tax as their ordinary income.

Whether the gains from the sale of real property amounts to non-taxable capital gains or taxable income is a matter of contention between the Comptroller of Income Tax and the taxpayers. The Comptroller considers a multitude of factors (e.g., the period of holding the property, the frequency and the number of transactions made by the taxpayer, the financial capacity of the taxpayer) in deciding whether a gain is a capital gain or taxable income.

Where the seller of the property is a non-resident property trader for income tax purposes, the buyer or the buyer's lawyer will be responsible for the withholding tax on the gains from the sale of the property, at 15% of the sale price.

Goods and Services Tax

The goods and services tax (GST) is essentially a tax on domestic consumption. It is charged on the supply of goods and services in Singapore made by a GST-registered person and on goods imported into Singapore. Persons whose annual business turnover from taxable supplies of goods and services in Singapore exceeds SGD 1 million are required to register for GST.

For the supply of goods and services made in Singapore, the tax (output tax) is collected on the value of supply by the GST-registered person from his or her customers. The GST-registered person, after setting off the GST incurred on his or her inward supplies needed for the business (input tax), then reports the excess of the output tax over the input tax to the Comptroller of GST, normally in a quarterly cycle.

For imports of goods, GST is collected directly by the Singapore Customs at the point of importation into Singapore.

All taxable supplies of goods and services are subject to a standard rate of GST at 7%, unless they are zero-rated (GST rate of 0%). Currently, the export of supplies of goods and the provision of international services are zero-rated.

Not all real estate transactions are subject to GST. The sale and lease of the following types of property are exempt supplies and do not attract GST:

- Any vacant land zoned "residential" in the master plan under the Planning Act and used, or to be used, for residential purposes or for the purposes of condominium development
- Any vacant land approved exclusively for residential or condominium development
- Any land, or part thereof, with any building, flat or tenement thereon, being a building, flat or tenement that is used, or to be used, principally for residential purposes

Where the transacted property is approved for mixed use, i.e. both residential and non-residential use, the value of the non-residential proportion of the property is subject to GST. However, where vacant land is being transacted and is not zoned exclusively for residential use, GST is chargeable for the full selling price.

In addition, GST is still payable for the supply of movable furniture and fittings in a sale or lease of a residential property.

Corporate Tax

Companies are taxed on profits derived from sources in Singapore and income received in Singapore from sources outside the country, which are subject to certain exemptions stated below. Income tax is calculated on the basis of the company's chargeable income, i.e. taxable revenues less allowable expenses and other allowances (e.g., capital allowances). The corporate income tax rate from year of assessment (YA) 2010 is 17%. However, companies are entitled to the following tax exemption schemes:

1. Tax exemption for qualifying start-up companies

From YA 2010 to YA 2019, tax exemption is given to qualifying start-up companies on normal chargeable income for each of the first three consecutive YAs of up to SGD 300,000, as follows:

Exempt Amount		
First SGD 100,000	@ 100%	= SGD 100,000
Next SGD 200,000	@ 50%	= SGD 100,000
Total SGD 300,000		= SGD 200,000

With effect from YA 2020, tax exemption is given to qualifying start-up companies on normal chargeable income for each of the first three consecutive YAs of up to SGD 200,000, as follows:

Exempt Amount		
First SGD 100,000	@ 75%	= SGD 75,000
Next SGD 100,000	@ 50%	= SGD 50,000
Total SGD 200,000		= SGD 125,000

With effect from YA 2010, this scheme has been extended to include companies limited by guarantee. Please note that this scheme does not apply to companies whose principal activity is that of investment holding, developing properties for sale, for investment, or for both investment and sale. A company that does not qualify for a tax exemption for new start-up companies will be given partial tax exemption.

2. Partial tax exemption for companies

From YA 2010 to YA 2019, a partial tax exemption is given to companies on normal chargeable income of up to SGD 300,000, as follows:

Exempt Amount		
First SGD 10,000	@ 75%	= SGD 7,500
Next SGD 290,000	@ 50%	= SGD 145,000
Total SGD 300,000		= SGD 152,500

With effect from YA 2020, a partial tax exemption is given to companies on normal chargeable income of up to SGD 200,000, as follows:

Exempt Amount		
First SGD 10,000	@ 75%	= SGD 7,500
Next SGD 190,000	@ 50%	= SGD 95,000
Total SGD 200,000		= SGD 102,500

3. Corporate income tax rebate

A corporate income tax rebate of 40% and 20% of corporate tax payable, subject to a cap of SGD 15,000 and SGD 10,000, is given to companies for YA 2018 and 2019 respectively. This rebate extends to tax resident companies, registered business trusts, non-tax resident companies that are not subject to a final withholding tax and companies that receive income taxed at a concessionary tax rate.

4. Foreign Tax Credit (FTC)

FTC is granted by allowing the Singapore tax resident company to claim a credit for the tax paid in the foreign country against the Singapore tax that is payable on the same income. FTC comes in the form of double tax relief or unilateral tax credit.

Double Tax Relief (DTR)

- DTR is the credit relief provided under the Avoidance of Double Taxation Agreements that Singapore has concluded with other countries. A company is a tax resident in Singapore if the control and management of its business is exercised in Singapore. The countries and territories with which Singapore has tax treaties are listed below:

Albania
Australia
Austria
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Brazil (limited treaty)
Brunei
Bulgaria
Cambodia
Canada
Chile (limited treaty)
China
Cyprus
Czech Republic
Denmark
Ecuador
Egypt
Estonia
Ethiopia
Fiji
Finland
France
Georgia
Germany
Guernsey
Hong Kong (limited treaty)
Hungary
India
Indonesia
Ireland
Isle of Man
Israel
Italy
Japan
Jersey
Kazakhstan
Kuwait
Laos
Latvia
Libya
Liechtenstein
Lithuania
Luxembourg
Malaysia
Malta
Mauritius
Mexico
Mongolia
Morocco
Myanmar
Netherlands
New Zealand
Norway
Oman
Pakistan
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russian Federation
Rwanda
San Marino
Saudi Arabia
Seychelles
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Taiwan
Thailand
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States of America (limited treaty)
Uruguay
Uzbekistan
Vietnam

Unilateral Tax Credit (UTC)

- For countries with which Singapore does not have a Double Taxation Agreement, UTC may be allowed for foreign tax paid by Singapore tax residents on certain types of income derived from the foreign country, if such income is repatriated to Singapore.

A Singapore tax resident company can enjoy tax exemption on its foreign-sourced dividends, foreign branch profits and foreign-sourced service income remitted into Singapore effective YA 2009, if the foreign income had been subjected to tax in the foreign country from which they were received.

With effect from YA 2012, a Singapore tax resident company may elect the FTC pooling system when claiming FTC on income for which it has paid foreign tax. Under the FTC pooling system, a tax resident may elect to pool foreign

taxes paid on any items of his or her foreign income, if the highest corporate tax rate of the foreign country from which the income was received is at least 15%. The amount of FTC to be granted is based on the lower of the total Singapore tax payable on the foreign income (net of expenses) and the pooled foreign taxes paid on this income.

Withholding tax

Non-resident individuals and companies are subject to withholding tax. Some of the more common types of income and the rates at which withholding tax apply are shown as follows:

Nature of Income	Tax Rate
Interest, commission, fee or other payment in connection with any loan or indebtedness	15%[1]
Royalty or other lump-sum payments for the use of movable properties	10%[1 2]
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	10%[1 2]
Rent or other payments for the use of movable properties	15%[1]
Technical assistance and service fees	Prevailing corporate tax rate3
Management fees	Prevailing corporate tax rate3

[1] These withholding tax rates apply when the income is not derived by the non-resident person through its operations carried out in Singapore. They are to be applied on the gross payment, and the resultant tax payable is a final tax. For operations carried out in Singapore, the tax rates applicable on the gross payment are as follows:

- Non-resident person (other than individuals): Prevailing corporate tax rate
- Non-resident individuals: 22%

[2] The reduced withholding tax rate of 10% applies to payments due and payable on or after January 1, 2005.

[3] If the year in which the services were rendered is different from the year of payment, the withholding tax is to be based on the prevailing corporate tax rate for the year where the services were rendered. For example, if the service was rendered in December 2008 and the payment was made in year 2009, the prevailing corporate tax is that for year 2008 (YA 2009), which is 18%. For payments made to non-resident individuals, tax is to be withheld at 22% on the gross payment.

Personal taxation

In general, the Comptroller of Income Tax treats individuals as tax residents if they are:

- Singaporeans
- Singaporean Permanent Residents
- Foreigners who have stayed/worked in Singapore for at least 183 days in the previous year

Otherwise, they will be treated as non-residents for tax purposes, and their employment income is taxed at 15% or at the resident rate, whichever is higher. Any director's fees, consultation fees and all other income received by a non-resident will be taxed at 22%.

Tax residents are taxed on all income derived in Singapore, after provisions are made for certain tax deductions and personal reliefs. From YA 2018, the total amount of personal income tax reliefs which can be allowed is subject to an overall relief cap of SGD 80,000 per YA.

From YA 2017 onwards, income tax is levied on a graduated scale ranging from 0% to 22%, as follows:

Chargeable Income	Rate (%)	Gross Tax Payable
First SGD 20,000	0	0
Next SGD 10,000	2	SGD 200
First SGD 30,000	-	200
Next SGD 10,000	3.50	350
First SGD 40,000	-	550
Next SGD 40,000	7	2,800
First SGD 80,000	-	3,350
Next SGD 40,000	11.5	4,600
First SGD 120,000	-	7,950
Next SGD 40,000	15	6,000
First SGD 160,000	-	13,950
Next SGD 40,000	18	7,200
First SGD 200,000	-	21,150
Next SGD 40,000	19	7,600
First SGD 240,000	-	28,750
Next SGD 40,000	19.5	7,800
First SGD 280,000	-	36,550
Next SGD 40,000	20	8,000
First SGD 320,000	-	44,550
Above SGD 320,000	22	

No personal income tax rebate is given to individual tax residents for YA 2018.

Real estate investment trusts

Introduction

A real estate investment trust (REIT) is a vehicle dedicated to owning income-producing real estate. It allows individuals and institutions to make equity investment in real estate without incurring high transaction costs related to direct investment. REITs are regulated by the MAS guidelines contained in the Code on Collective Investment Schemes.

Restrictions

1. Investments and activities

Unless it is stated clearly in the prospectus that it will not have a diversified portfolio of real estate, a REIT must be reasonably diversified in terms of the type of real estate (e.g., residential/commercial/industrial), location/country and/or the number of real estate investments, as appropriate, taking into account the type and size of the fund, its investment objectives and the prevailing market conditions.

A REIT may only invest in:

- Real estate, whether freehold or leasehold, in or outside Singapore
- Real estate-related assets, wherever the issuers/assets/securities are incorporated/located/issued/traded
- Listed or unlisted debt securities and listed shares of, or issued by, local or foreign non-property corporations
- Government securities (issued on behalf of the Singapore government or the governments of other countries) and securities issued by a supranational agency or a Singapore statutory board
- Cash and cash-equivalent items

A REIT should comply with the following essential requirements:

- At least 75% of its deposited property should be invested in income-producing real estate
- It should not undertake property development activities, unless it intends to hold the developed property upon completion
- It should not invest in vacant land and mortgages (except for mortgage-backed securities)
- The total contract value of property development activities undertaken and investments in uncompleted property developments should not exceed 10% of its deposited property
- For investments in listed or unlisted debt securities and listed shares of, or issued by, local or foreign non-property corporations, or government securities (issued on behalf of the Singapore government or the governments of other countries) and securities issued by a supranational agency or a Singapore statutory board, or cash or cash-equivalent items, not more than 5% of its deposited property can be invested in any one issuer's securities or any one manager's funds
- It should not derive more than 10% of its revenue from sources other than rental payments from the tenants of real estate held by it, or the interest, dividends and other similar payments from special purpose vehicles and other permissible investments of the REIT

2. Borrowings

A REIT may borrow for investment or redemption purposes, and it may mortgage its assets to secure such borrowings.

Under the revised Code on Collective Investment Schemes issued by the MAS, a REIT can borrow up to 45% of its deposited property.

Taxation

Income distributions from REITs to individuals are generally exempt from tax. The tax rate applicable to distributions made to foreign non-individual investors is 10% for the period till March 31, 2020.

A foreign non-individual investor is one who is not a resident of Singapore for income tax purposes and:

- Who does not carry on business through a permanent establishment in Singapore, or;
- Who carries on any operation in Singapore through a permanent establishment in Singapore, where the funds used to acquire units in the REIT are not obtained from that operation.

A REIT that makes distributions to unit holders in the form of units can continue to enjoy tax transparency subject to certain conditions being met.

Goods and Services Tax (GST)

There is a GST concession allowing REITs to claim input tax on their business expenses regardless of whether they hold the underlying assets directly or indirectly through multi-tiered structures such as SPVs or sub-trusts for the period till March 31, 2020.

ADTLaw

Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of Measurement	Square Metres
Rental payments	
Rents	SGD per sq ft or sqm per month
Typical lease term	3 years. Longer terms in excess of 5 years are available for large-space users
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	3 months gross rent
Security of Tenure	For the duration of the tenancy. No guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No, unless an option to renew is agreed at the outset and specified in the lease
Basis of rent increases or rent review	Open market rental value
Frequency of rent increase or rent review	At least renewal or agreed rent review periods
Service charges, operating costs, repairs and insurance	
Responsibility for service charge/management fee	Tenant responsible in addition to the rent - payable monthly
Responsibility for utilities	Payable by tenant. Electricity, telecommunication and water consumption which are separately metered
Car parking	Allocation is usually based on sq ft leased at seasonal charges
Responsibility for internal repairs	Tenant
Responsibility for outgoings	Landlord (charged back via service charge)
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Generally prohibited to third parties. Unless to related companies under the Companies Act (subject to landlord approval), assignment typically not allowed.
Tenant early termination rights	Subject to negotiation on case-by-case basis, although not commonly granted in the market.
Tenant's building reinstatement responsibilities at lease-end	Original condition

Source: JLL and ADTLaw

South Korea

법무법인 信友
SHINWOO LAW OFFICE

Property Tenure/Ownership

Property tenure/ownership in South Korea is as follows:

- Fee simple or freehold title
- Strata title – Sub-division of air space to provide the equivalent of freehold ownership on a floor-by-floor basis.
- Leasehold – Short-term nature and land are rarely leased.
  - Land: Maximum is ten years with possible extension for a further ten years.
  - Commercial buildings: Essentially 12 months, but can be up to five years.
  - Housing (government-built apartments): Generally 24 months, but for government-built or government-authorized long-term housing, the minimum lease term is five years. For government-built or government-authorized permanent rent housing, the minimum term is 50 years.

Major Property Legislation

- Real Estate Brokerage Act
- Act on Planning and Use of National Territory
- Urban Redevelopment Act
- Industrial Placement and Factory Construction Act
- Real Estate Investment Company Act
- Asset Liquidity Act (Temporary Act)
- Building Act
- Cadastral Act
- Property Registration Act
- Residential Tenant Protection Act
- Appraisal Act
- Alien Property Ownership Act
- Foreigner's Land Acquisition Act
- Foreign Investment Promotion Act
- Foreign Exchange Transactions Act
- Act on Business of Operating Indirect Investment and Assets

Operational Requirements for Foreign Corporations

Office

Modes of entry

- Stock company (JooSikhoesa)
- Limited liability company (YooHanChaekImhoesa)
- Partnership company (HapMyunghoesa)
- Limited partnership company (HapJahoesa)
- Limited company (YooHanhoesa)
- Branch
  - Regular branch conducting profit-generating activities in Korea.
  - Liaison office, which does not carry on profit generating activities, but merely undertakes nonprofit-making functions such as liaison of business affairs, market research and research and development (R&D).

Stock companies are typically the investment vehicles chosen by foreign investors. However, some foreign investors prefer investing in a limited liability company given that it is easier to set up than a stock company, and restrictions can be put on the transfer of shares.

Registration/Licensing Requirements

- Notification of branch establishment – a notification of branch establishment should be made to the Ministry of Strategy and Finance (MOSF) or foreign exchange banks.
- Registration of branch establishment – a "liaison office" is not subject to the registration requirement as it cannot engage in profit-making business activities. However, a regular "branch" needs to file the registration to operate profit-generating business activities in Korea.
- Nontaxable tax number (liaison-type branch office) or business tax number (income-earning branch office).
- Registration of business – commercial registry, local district court.
- Work permit – Bureau of Immigration.

Industrial Trade

Industrial complexes are classified into two types. One is a free site, in which enterprises may select the sites individually for the construction of factories. The other is a planned site, where the state or local government develops the site according to the national industry plan.

Industrial complexes in planned sites are leased out to corporations according to the type of industry, qualifications, procedures etc. Corporations with completed contracts with property management to lease a factory site need not obtain separate approval from that city or district.

Laws such as the Agricultural Act, Factory Act and Cultural Properties Protection Act may govern the establishment of a factory on a free site. In addition to these acts, there are areas where factory establishment is prohibited.

Large-scale foreign investors tend to prefer planned sites because of the relatively straightforward and transparent factory establishment procedures. Conversely, small-scale foreign investors tend to prefer leasing individual sites with preconstructed factories.

The relevant authority for factory establishment approval is the mayor, the provincial or the county magistrate in the location of the identified site.

The relevant authority to attain a factory construction permit is the mayor, the provincial or the county magistrate in the location of the identified site.

The relevant authority for the factory establishment declaration and registration is the mayor, the provincial or the county head in the locality of the site.

The above information has been obtained from the Korea Trade Investment Promotion Agency.

Foreign investment Incentives

Tax incentives for foreign-invested companies

With respect to certain requirements for a foreign With respect to certain requirements for a foreign investment, the customs duties on corporate tax, income tax and capital goods imports of the business and dividend income, exchange technologies, earned income and so forth will be reduced or exempted in accordance with the Tax Incentive Limitation Law. In addition, with respect to the property possessed or acquired to operate a tax-exempted business, the acquisition tax, registration tax and property tax will all be reduced or exempted in accordance with the local government regulations mandated by the Tax Incentive Limitation Law.

Tax exemption

By applying the ratio of foreign investment, the income derived from the business qualifying for a tax exemption shall be subject to corporate tax exemption for foreign invested companies in accordance with the Tax Incentive Limitation Law. However, in the case that the 5% or more shares with voting rights of the foreign corporations or foreign companies investing in the business qualifying for a tax exemption are either directly or indirectly possessed by a Korean (including corporations), the ownership ratio of such shares invested will not qualify for tax exemption.

In other words, the shares owned by local residents on the bypass overseas investment (round trip) is excluded from tax exemption.

The record date of the tax exemption will be either the first income tax year or the fifth year from the start date of the business operation, whichever is the earlier tax year.

Calculating the start date of business operation

- For a manufacturing business, the first day of manufacturing goods from each base.
- For a mining business, the first day of mining or extracting of minerals from each site.
- For other businesses, the first day of supplying the goods or services.

In the case of a capital increase, the registration will be deemed as the start date of the business operation, and such provision shall be applied accordingly. In addition, with respect to the shares acquired by foreigners through capitalization including, but not limited to, revaluation and capital reserve, the exemption period and the exemption or reduction rate will be determined based on the precedent exemptions or reductions on such types of shares. In the case that the capital increase occurs and the tax exemption or reduction is filed within five years after the paid-in capital, the exemption or reduction will be determined on the foreign-invested portion of the surplus made from the capital decrease. In the case that capital reduction occurs after the capital increase, it will be deemed that the capital increase was first reduced.

However, in the event that a purely domestic company receives investment from foreigners through a capital increase, and through such an investment the firm becomes the foreign-invested company, the company will be considered a new foreign-invested company rather than having an increased capital.

In the case of mergers, if a foreign-invested company merges with a domestic corporation (excluding a foreign invested company in the exemption period) during the exemption period, and the ratio of the foreign investment of the merged entity is reduced, the foreign direct investment (FDI) rate before the merger on the foreign invested company will be applied.

In the event that the capitalization of the revaluation and capital reserve remains the same, the exemption ratio will not change from the year that the capital increase occurred to the next business year.

Calculating the Tax Exemption

Tax Exempted Rate X Foreign Invested Ratio → Reflecting Progressive Rate X Calculated Tax

Category	Calculation Methods
Tax Exemption	Tax exemption = (calculated tax X business subject to exemption tax rate standard/the total tax standard) X exemption ratio - General case (in the case of primary investment) (Capital of foreign investment subject to exemption/total capital) X exemption rate of fiscal year (100% or 50%) - Calculation of exemption rate for cash or dividends increase • Fiscal Year (Capital of foreign investment before the capital increase X exemption rate of fiscal year) + (foreign capital increased X number of business days from the registered capital increase date until end-fiscal year/number of business days in the fiscal year X exemption rate)
Exemption Rate (Investment Rate Progressive Rate)	Total capital before the capital increase + capital increase X number of business days from the registered capital increase date until end-fiscal year/number of business days in the fiscal year • Following business year after the capital increase (Capital of foreign investment before the capital increase X exemption rate of fiscal year) + (foreign investment capital from the capital increase X exemption rate)

Total capital

In the event that a foreign-invested company that has a business not qualifying for a tax exemption increases the capital of a business qualifying for a tax exemption, and in the event that the assets, liabilities and income of such a newly established business place qualifying for a tax exemption are separately accounted based on such business place qualifying for a tax exemption, an FDI rate will be applied. In addition, the reduction of income, the reduction ratio and the tax reduction can be calculated separately.

Local tax exemption (acquisition tax, registration tax, property tax)

With respect to a property acquired or possessed by the foreign-invested company to operate a business qualifying for tax exemption, the corporate tax exemption period as well as the acquisition, registration and property taxes will be exempted or reduced by 50% or 100% based on standard tax.

With respect to a property acquired after commencing a business, for three to five years from the date of commencing the business, the sum (qualifying for tax exemption) of the calculated tax on such property multiplied by the FDI rate as well as the acquisition, registration and property taxes will be 100% exempted. In addition, 50% reduction will be applied over the next two years. Even if the property qualifying for the tax exemption is acquired after the start of the business, if such property is acquired before the receiving the decision for tax exemption, then the acquisition and registration taxes cannot both be reimbursed.

However, with respect to the acquisition and registration taxes on the property acquired before commencing a business, the property acquired after the decision of tax exemption will be 100% tax exempted. In addition, the property tax will be 100% exempted for three to five years from the date acquired, and 50 % tax reduction will be applied for the following two years.

The local tax reduction period can be extended within the period of 15 years in accordance with the ordinances, and a reduction or exemption rate may be increased accordingly.

The above information has been obtained from the Korea Trade Investment Promotion Agency.

Restrictions on Foreign Property Ownership

In a bid to reactivate South Korea's real estate market after the financial crisis in 1997–1998, the government fully deregulated the market.

However, where foreign nationals acquire land in military installation reservations, cultural property protection zones and ecosystem reservation districts as well as on islands deemed necessary for military purposes, they are required to obtain prior permission.

The main principles of the deregulation of the real estate market are:

- Business of constructing buildings for the purpose of leasing out: Fully permitted (April 1998)
- Business of developing land for supply: Fully permitted (May 1998)
- Business of real estate brokerage: Permitted to operate the business as a corporation formed by joint capital contribution with the local government, Korea Land Corp, Korea National Housing Corporation and the Central Government (September 1999)

The percentage of private sector investment (including local and foreign investment) must be less than 50%.

Foreign Exchange Controls

Individuals and corporate residents can hold unlimited amounts of foreign currency in local foreign-currency bank accounts. South Korean firms can maintain foreign currency accounts abroad through their overseas branches.

Non-residents can open Korean won (KRW) bank accounts for the following purposes:

- Withdrawal of KRW after depositing KRW acquired in South Korea
- Purchase of certificate of deposit, repurchase agreement and cover bill for investment returns
- Only for stock investment purposes, to invest in South Korean securities

Foreign-invested companies are able to attain a loan (maturity greater than one year) through foreign creditors via the Korea Exchange Bank. If the loan is more than KRW 32.22 billion (USD 30 million) approval from the MOSF is required. The permitted amount of overseas short-term borrowing is 50% of the foreign-invested amount for companies engaged in the manufacturing business, and 75% for firms engaged in high-technology business. Where a foreign-invested company invests more than 50% of its total assets and takes a long-term loan (maturity greater than five years) from its parent company located abroad, no restrictions on the amount are applied based on the Foreign Investment Facilitation Act.

There is no restriction on real estate purchases by foreign investors, but the remittance of any revenue/profit generated by the property offshore is not permitted. Only proceeds from the sale of the property can be remitted offshore. A foreign investor seeking to remit rental income offshore is required to set up a holding company, typically known as a special purpose company (SPC), and remit the rental income offshore in the form of dividends.

The above information has been obtained from the Economist Intelligence Unit.

Taxes on possession and operation of real estate

Taxes to be paid for the holding of real estate are:

- Property tax
  - Building: 0.25–4% of the building price (taxation standard price determined by the government)
  - Land: 0.07–4% of the official land price (taxation standard price determined by the government)
- Aggregate real estate tax: 0.5–2.0% of the price of the competent property (determined by the government
- Regional education tax: 20% of property tax
- Special tax for rural development: 20% of aggregate real estate tax

In the case of construction or expansion of factories in an over-concentration control region, property tax shall be imposed at a multiple of five times the standard rate for five years. Property tax shall be reduced for advanced technology-related businesses or businesses located in a Foreign Investment Zone (FIZ).

Those engaged in the leasing business shall pay a value added tax of 10% of the rent and a corporate tax (10%, 20% or 25%) or an individual income tax (6–38%) on income generated from the leasing transaction.

Taxes on acquisition and transfer of real estate

Stamp Duty and Legal Costs

Stamp duty is levied on the preparation of documents and account books that certify the establishment, transfer, change or lapse of rights to property. It ranges from KRW 100 (USD 0.1) to KRW 350,000 (USD 325.7).

Legal costs vary between lawyers and cases.

Acquisition of Real Estate

In general, the acquisition of real estate is subject to the following taxes:

- Acquisition tax: 1–4% of purchase price
- Special tax for rural development: 0–0.2% of purchase price
- Education tax: 0.1–0.4% of purchase price
- Value added tax: 10% of purchase price for building (corporations will be reimbursed)
- Purchase of National Housing Bonds (NHBs)
  - In the case of an FDI company, the NHB purchase requirement shall be reduced according to the FDI ratio of the company.

Where the acquisition of real estate is by an FDI company that is carrying an advanced technology and services business that support the domestic industry, or by an FDI company that is located in an FIZ, the acquisition, registration and property taxes shall be reduced according to the sum amount of the corresponding calculated tax, multiplied by FDI rate by 100% for the first five years and 50% for the following two years. The period and ratio of reduction may be extended 7 - 15 years in accordance with ordinances of local governments.

In the case of construction permission and real estate registration for a building of an FDI company, the duty of purchasing NHBs shall be reduced.

Disposition of real estate

Taxes to be paid for the disposition of real estate are:

- Value added tax: 10% of the building's sale price
- Individual
  - Transfer income tax: 6–40% of capital gains
  - Individual local income tax: 0.6–4% of capital gains
- Corporation
  - Corporation tax: 10% (40% for gains from the transfer of unregistered land, etc.) of capital gains (the gains generated from transfer are included in nonoperating profits and are thus subject to corporation tax)
  - Corporation local income tax: 1% (4% in case of the transfer of unregistered land, etc.) of corporation tax

The surcharge on transfer income tax shall be increased by 70% when an individual transfers without filing a registration.

Value Added Tax/Goods and Services Tax

A standard 10% value added tax is levied on all goods and services except for specified exempt goods and services, including:

- Unprocessed foodstuff
- Certain professional services
- Banking services

The following goods are zero-rated:

- Goods and services for export
- Services rendered outside South Korea
- International transportation
- Other goods or services supplied for foreign exchange earnings

Tax depreciation

In general, expenses are deductible if they are incurred for business purposes and are adequately documented.

The straight-line and declining balance methods are allowed under the Corporate Income Tax Act (CITA) for most depreciable assets. The unit-of-production method is also permitted for fixed assets used in mining. For buildings and intangible assets, only the straight-line method of depreciation is permitted.

Corporations must notify the tax authorities of the depreciation method adopted. Depreciation allowed under the CITA is deductible only if the amount is recorded in the appropriate accounting records and reflected in the official financial statements.

Corporate taxation

Corporations are classified as "domestic", "resident foreign" and "nonresident foreign" for tax purposes:

- Domestic corporations – corporations with their head office located in South Korea, regardless of the place of incorporation, are subject to corporate tax on their worldwide income.
- Resident foreign corporations – corporations whose parent company is not incorporated in South Korea are subject to corporate tax only on their Korean income.
- Nonresident foreign corporations – corporations without a permanent establishment in South Korea are subject to a withholding tax on their Korean income.

Corporate income tax is levied on a sliding scale:

Taxable income	Tax rate
Below KRW 200 million (USD 186,220)	10%
KRW 200 million (USD 186,220) – 20 billion (USD18.62 million)	KRW 20 million (USD 18,622) + 20% [on the amount exceeding KRW 200 million (USD 186,220)]
KRW 20 billion (USD 18.62 million) – 300 billion (USD279.33 million)	KRW 3.98 billion (USD 3.71 million) + 22% [on the amount exceeding KRW 20 billion (USD 18.62 million)]
Above KRW 300 billion (USD279.33 million)	KRW65.58 billion (USD61.06 million) + 25% [on the amount exceeding KRW 300 billion(USD279.33 million)

Personal Taxation

For income tax purposes, all individuals are classified as "citizens", "residents" or "non-residents". South Korean citizens or resident individuals are subject to an income tax on their worldwide income. Nonresident individuals are subject to an income tax only on income derived from sources within South Korea, unless a bilateral taxation treaty stipulates otherwise. A person is considered to be a resident if his or her occupation would normally require continuous residence in South Korea for one year or more.

Taxable income derived by individuals is grouped into four categories:

- Global income, which includes salaries and wages, termination payments, interest, dividends, rental income and income derived from business and other sources
- Severance payments
- Capital gains from the sale or transfer of property and

shares in unlisted companies

- Individual income is subject to global and scheduler taxation.

Global income" denotes income that is subject to global taxation at the following tax rates:

Taxable income	Tax rate
Up to KRW 12,000,000 (USD 11,173)	6%
KRW 12,000,001–46,000,000 (USD 11,174 - 42,830)	KRW 720,000 (USD 670) + 15% on the additional amount
KRW 46,000,001–88,000,000 (USD 42,830–81,937)	KRW 5,820,000 (USD 5,419) + 24% on the additional amount
KRW 88,000,001–150,000,000 (USD 81,937–139,665)	KRW 15,900,000 (USD 14,804) + 35% on the additional amount
KRW 150,000,001-300,000,000 (USD 139,665-279,330)	KRW 37,600,000 (USD 35,009) + 38% on the additional amount
KRW 300,000,001–500,000,000 (USD 279,330–465,549)	KRW 94,600,000 (USD 88,082) + 40% on the additional amount
Over KRW 500,000,000 (USD 465,549)	KRW 174,600,000 (USD 162,570) + 42% on the additional amount

Under scheduler taxation, severance payments and capital gains are taxed separately at varying rates.

Tax treaties: Avoidance of Double Taxation

Treaties in existence:

Albania
Algeria
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Belarus
Belgium
Brazil
Brunei
Bulgaria
Canada
Chile
China
Colombia
Croatia
Czech Republic
Denmark
Ecuador
Ethiopia
Germany
Greece
Hong Kong
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Japan
Jordan
Kazakhstan
Kenya
Kuwait
Kyrgyz
Laos
Latvia
Lithuania
Luxembourg
Malaysia
Malta
Mexico
Mongolia
Morocco
Myanmar
Nepal
Norway
Oman
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russia
Saudi Arabia
Serbia
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Tajikistan
Thailand
Tunisia
Turkey
Turkmenistan
Ukraine
United Arab Emirates
United Kingdom
United States of America
Uruguay
Uzbekistan
Venezuela
Vietnam

Real Estate Investment Trusts

Introduction

A real estate investment trust (REIT) is a corporation defined by the Commercial Act. Both the Real Estate Investment Company Act (REICA) and the Commercial Law are applicable to REITs. When REIT stocks are publicly traded on the stock market, the Securities Exchange Act is also applicable.

There are two types of REITs—CR-REITs and ordinary REITs. Both types of REITs are under the control of one incorporated REICA.

A CR-REIT is just like a mutual fund for stock investment, i.e., a paper company that distributes the majority of its profits to investors in the form of dividends. Being a paper company, a CR-REIT has no standing staff, and its management is entrusted to a specialized asset management company ("AMC").

In contrast, an ordinary REIT is established and managed by a real company with standing staff. Although it also distributes the majority of its earnings to investors, an ordinary REIT is not entitled to the tax incentives available to CR-REITs. However, the government eased the restrictions to facilitate the ordinary REIT market. The revised REICA, passed by the National Assembly at end-2004 and implemented on April 2005, contains more benefits for an ordinary REIT.

Restrictions

1. Establishment of REIT

- Under the revised REICA of 19 January 2016, the minimum start-up capital requirement is KRW 300 million for a self-managed real estate investment company and KRW 500 million for a consignment of a management real estate investment company and a corporate restructuring of a real estate investment company.
- With a business license, the minimum capital requirement for the self-managed real estate investment company is KRW 7 billion, and the minimum capital requirement for a consignment of a management real estate investment company and a corporate restructuring of a real estate investment company is KRW 5 billion.
- Compared to a securities company, the role of a general shareholders' meeting and the board of directors for a CR-REIT is strengthened.

2. Distribution of Stocks

- A shareholder as well as a particular party of a REIT company cannot hold more than 50% of issued and outstanding shares. From September 21, 2017, if the possession of shares exceeds 50% within six months from the mentioned date, the exceeding portion of the shares should be disposed. In addition, in the case of investment in kind, the deputy minister of transport and maritime may order the exceeding portion of the shares to be disposed according to the investment in kind during the specified period between more than one year from the issuing date of the shares, and less than one year and six months.
- More than 30% of shares should be publicly diversified to individual investors. (No limit for CR-REIT.)

3. Business Scope

- Acquisition, management, amelioration and disposal of property
- Real estate development projects
- Lease and rent of real estate
- Sale and purchase of securities
- Deposit in financial institutions
- Acquisition, management and disposal of the rights to the use of real estate, such as superficies, right to lease
- Acquisition, management and disposal of right to benefit of real estate, the trusted property of which is wholly attributed to the beneficiary at the time the trust expires.

4. Composition of Assets

- More than 80% of a REIT company's total assets must be real estate, real estate securities (domestic and foreign) or cash on the last day of each quarter.
- In case of above mentioned, at least 70% of a REIT company's total assets must be real estate (including buildings under construction).
- In case of CR-REIT, more than 70% of total assets must be corporate restructuring-related properties.

5. Disposal of Real Estate

- A REIT company cannot sell its properties within five years of purchase. (No limit for CR-REIT.)
- A REIT company cannot sell vacant land void of development. (No limit for CR-REIT.)

6. Dividends

- A REIT company must return more than 90% of its profit to shareholders. (No limit for CR-REIT.)

Taxation

- CR-REIT
  - Corporate tax: Exempted on corporate tax when over 90% of profit is returned to shareholders.

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Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of measurement	Pyung (1 pyung = 3.3 sqm = 35.58 sq ft)
Rental payments	
Rents	₩/pyung/month on the gross area
Typical lease term	3–5 years
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	10 months or Chonse lease
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No (unless an option to renew is agreed at the outset and specified in the lease)
Basis of rent increases or rent review	Based either on market rates or inflation rates (CPI rate); Landlords of Grade A buildings have accepted a cap of 3% in fixing rent reviews
Frequency of rent increase or rent review	Annual
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity, telecommunication and water consumption are separately metered and payable by each tenant
Car parking	Allocation is usually based on proportion to the area leased
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
RESPONSIBILITY FOR EXTERNAL/STRUCTURAL REPAIRS	Landlord
Responsibility for building insurance Landlord	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Generally prohibited unless to a subsidiary company of the tenant (subject to landlord approval)
Tenant early termination rights	Only by break clause
Tenant's building reinstatement responsibilities at lease end	Reinstated to original condition

Source: JLL

Sri Lanka

Julius & Creasy

Property Tenure/Ownership

There are two types of property tenure in Sri Lanka:

- Freehold
- Leasehold

The terms of Leases granted by the government and/or private individuals may vary and may depend on the purpose for which the land is to be used and the agreement between the parties.

Major Property Legislation

Some of the main legislations are as follows:

- Land (Restriction on Alienation) Act No.38 of 2014
- Apartment Ownership Law No.11 of 1973, as amended;
- Ceiling on Housing and Property Law;
- Prevention of Frauds Ordinance;
- Registration of Documents Ordinance;
- Stamp Duty Act;
- Land Reform Law; and
- Registration of Title Act No. 21 of 1998.

Subject to the restrictions on the transfer of land under the Land (Restrictions on Alienation) Act ("the Land Act"), property can be owned either by the state, by private individuals or by corporate entities. In respect of private land, ownership is obtained by the execution of deeds of transfer or gifts in the presence of a notary public and two witnesses, in accordance with the provisions of the Prevention of Frauds Ordinance.

All other transactions in respect of land, such as leases, mortgages and other dispositions, should also comply with the provisions of the Prevention of Frauds Ordinance. Accordingly, such documents would have to be executed before a notary public and two witnesses. The executed instrument would have to be registered under the provisions of the Registration of Documents Ordinance. In Sri Lanka, registration under the Registration of Documents Ordinance is not a prerequisite to confer validity on such deeds, but only provides priority. The document is valid upon execution and notarization of same.

The government has also enacted the Registration of Title Act No. 21 of 1998 which is not in operation in full throughout the island as yet. Under this Act, registration of title has been introduced in pursuance of which once the certificate of title has been registered, such registration would be proof of the ownership of the land in respect of which such title has been granted.

In respect of high-rise buildings, there are additional provisions under the Apartment Ownership Law No. 11 of 1973 (as amended from time to time) for the transfer, alienation, mortgage and similar transactions in respect of units of condominium property.

Operational Requirements for Foreign Corporations

Foreign investors can, subject to the restrictions imposed by Sri Lanka's Foreign Exchange laws, establish a business presence in Sri Lanka by:

- Incorporating a fully owned subsidiary or a company in which it has majority control or a minority stake; or
- Acquiring shares in an existing Sri Lankan Company; or
- Registering as an overseas company.

Sri Lanka also permits registration of offshore companies with investment concessions provided under regulations governing "commercial hub operations".

The applicable procedural requirements in the above cases involve registering of relevant statutory forms and constitutional documents with the Department of the Registrar-General of Companies of Sri Lanka on payment of stipulated fees.

In terms of Sri Lanka's Foreign Exchange laws, foreign investment in local companies must be remitted into the country via an Inward Investment Account ["IIA"] to be opened with any local commercial bank. Repatriation of 100% of profits arising from business carried out in Sri Lanka is permissible without restriction. However, in compliance with Sri Lanka's Foreign Exchange laws, such repatriation must be routed via the IIA being the account from which the original investment had been remitted to Sri Lanka by the foreign investor.

Companies incorporated in Sri Lanka and registered overseas companies are, during the course of their corporate existence or registration respectively, subject to continuous public disclosure obligations imposed by way of filings with the Department of the Registrar-General of Companies of Sri Lanka.

The registration or licensing requirements for commercial entities in Sri Lanka would be dependent also on the type of industry and business that the foreign investor would be engaged in.

Sri Lanka's Foreign Exchange laws restrict or limits a) foreign ownership of shares of Sri Lankan companies engaged in protected business sectors and b) the type of

commercial, trading or industrial activities that may be carried out in Sri Lanka by registered overseas companies.

Prevailing Foreign Exchange regulations restrict, up to 40% foreign ownership of shares of local companies engaged in any of the following areas of activities (unless the approval of the Board of Investment of Sri Lanka has been granted for a higher percentage of foreign equity investment):

- production of goods where Sri Lanka's exports are subject to internationally determined quota restrictions;
- growing and primary processing of tea, rubber, coconut, cocoa, rice, sugar and spices;
- mining and primary processing of non-renewable national resources;
- timber-based industries using local timber;
- deep sea fishing;
- mass communication;
- education;
- freight forwarding;
- travel agencies; and
- shipping agencies.

Foreign ownership of shares of local companies carrying on or proposing to carry on business in the sectors set out below is permitted only up to the percentages that have been approved by the Sri Lankan Government or any legal or administrative authority set up for approving such investment:

- Air transportation;
- Coastal shipping;
- Industrial Undertaking in the Second schedule of the Industrial Promotion Act No.46 of 1990 namely a) any industry manufacturing arms, ammunitions, explosives, military vehicles and equipment aircraft and other military hardware; b) any industry manufacturing poisons, narcotics, alcohols, dangerous drugs and toxic, hazardous or carcinogenic materials; c) any industry producing currency, coins or security documents;
- Large scale mechanized mining of gems;
- Lotteries.

The following areas are completely restricted to investment only by Sri Lankans:

- pawn broking;
- retail trade where the capital contribution of the non-resident is less than USD 5 million;
- coastal fishing.

Foreign entities seeking investment incentives, such as concessions from customs duty etc. should secure registration under section 17 of the Board of Investment Law No.4 of 1978 or have their investment identified by the Board of Investment of Sri Lanka as a strategic development project under the Strategic Development Projects Act No.14 of 2008 (as amended). Eligibility is based on the foreign investment value and the importance of the investment sector to the Sri Lankan economy and other stipulated criteria.

In relation to foreign employment restrictions in Sri Lanka, foreign nationals are not permitted to be employed unless it can be established proved that their expertise is essential to the national economy. All foreigners working in Sri Lanka must obtain valid visas therefor.

Restrictions on Foreign Property Ownership

Transfer of land is prohibited to the following:

a. To a foreign individual

b. A foreign company

c. A incorporated in Sri Lanka where any foreign shareholding in such company either directly or indirectly is 50% or above.

It is relevant to note that where the foreign shareholding is directly or indirectly above 50% such a company would fall within the definition. Accordingly formation of a subsidiary company by a company where a foreign shareholding is over 50% for the purpose of purchasing immovable property would not be permitted.

Land is defined to mean any State or private land and includes any interest in land covered with water and any house or building which stands on that land.

The following transfers are exempted from the application of the law –

- Transfer of land to –
  - Diplomatic Missions of another State or International, Multilateral or Bilateral Organization recognized within the meaning of the Diplomatic Privileges Act
  - A condominium parcel situated on or above the 4th floor (excluding the ground floor and any common floor) of a building provided that the entire value is paid up front, through an inward foreign remittance prior to the execution of the relevant deed of transfer.
  - A foreign investor in consequent to a decision of the Cabinet taken prior to January 1, 2013 involving direct investment of foreign currency, as per the related agreements on such investment, and structured on the basis of any written law governing the tax regime prior to January 1 2013 and has ensured compliance by making inward remittances to Sri Lanka.

- Land transferred by intestacy, gift or testamentary disposition to a next of kin (who is a foreigner) of the owner of such land.
- Dual citizens of Sri Lanka
- Land transferred to any bank, in which any foreign shareholding is fifty percent or above:
  - At any auction conducted by such Bank in terms of the Recovery of Loans by Banks (Special Provisions) Act or Mortgage Act, in the discharge of a mortgage of such land to such bank
  - in execution of a decree of court to enforce the recovery of a loan given by such bank.

• Land transferred to any financial institution
  - where such land has been mortgaged to such institution
  - in order to execute a lease and an agreement to sell or a loan and an agreement to sell
  - in execution of a decree of court to enforce the recovery of a loan given by such institution

Any transfer to a Company between the period commencing on 1st January 2013 and ending on the date the Land Act was certified, if such company has been in active operation in Sri Lanka for a period of not less than 10 consecutive years prior to the date of transfer of such land.

Effect Of Increasing Foreign Shareholding

a. Where land is transferred to a company incorporated in Sri Lanka with less than 50% foreign shareholding, such company cannot increase the foreign shareholding to 50% or above for a consecutive period of 20 years from the date of such transfer

b. If the foreign shareholding is so increased the transfer of land will be void and shall have no effect in law.

c. The Land Act, however allows a company to rectify an increase of the foreign shareholding. A company listed in the Colombo Stock Exchange (with a minimum of 200 shareholders – Diri Savi Board or 1,000 shareholders – Main Board), is allowed 12 months and any other company is allowed 6 months, from the date of increasing its foreign shareholding to reduce the foreign shareholding. If the foreign shareholding is so reduced, the transfer of land shall be deemed to be legally valid, with effect from the date of restoring the foreign shareholding of such company to less than 50%.

Restrictions On Mortgaging

Any land transferred or leased to a foreigner (under the exemptions provided for above) cannot be mortgaged or pledged for a period of 5 years with effect from the date of execution of the relevant instrument after the date on which the certificate of speaker is endorsed in respect of this Act.

Secretaries Certificates

Where land is transferred to a company which is less 50% shareholding the company Secretary should furnish to the Registrar of Lands a certificate to the effect that foreign shareholding is less than 50% and the Secretary should inform every 6 months from the date of registration of the relevant deed that the foreign shareholding has not exceeded 50%.

Foreign Investment Incentives

Sri Lanka, a functioning market economy, apart from having “Investment Protection Agreements” and “Double Taxation Relief Agreements” with many countries plus “Free Trade Agreements” with India and Pakistan, also offers competitive incentives for foreign investment.

Incentives are provided to investors who register with the Board of Investment of Sri Lanka (the “BOI”) under section 17 of the Board of Investment Law No.4 of 1978 based on whether the investment constitutes a) small; medium; or large scale investment; b) Project expansion; or c) Strategic import replacement enterprise/ expansion. There are also different qualifying criteria for different sectors such as manufacturing, agriculture and services. Incentives that may be provided by the BOI consist of the grant of duty free imports for capital goods and raw materials (for export oriented services)..

Investments identified by the BOI as a strategic development project under the Strategic Development Projects Act No.14 of 2008 (as amended) would be eligible for full or partial exemptions on Income Tax; Value Added Tax; etc and other special concessions up to a maximum of 25 years.

Some sectors are not open for foreign investments or may be subject to government approval and/or regulations. Foreign investors are advised to check the website of BOI to see if their business falls into these sectors.

Enterprises which, in terms of the Agreements entered into with the BOI engage in a) entrepot trade involving import, minor processing and re-export; b) off shore business; c) providing front end services to clients abroad;

d) headquarters operations of leading buyers for the management of the finance supply chain and billing operations; (e) logistic services such as bonded warehouse or the operation of multi – country consolidation in Sri lanka; are entitled to exemptions pertaining to the Customs Ordinance (subject to specified exceptions); Import and Export Control Act.

Sri Lanka welcomes foreign investors. Further information relating to foreign investment incentives can be found on the website of the BOI - Invest in Sri Lanka.

Foreign Exchange Regulations

The Exchange Control Act has now been replaced by the Foreign Exchange Act No.12 of 2017 (FEA).

In terms of the FEA, In the event of transfer of immovable property (land and buildings) owned by a non-resident (this would include foreigners as well as Sri Lankan migrants), a licensed commercial bank is permitted to repatriate sale proceeds including capital gains (if any) of a sale of property in Sri Lanka, paid in SLR by a person resident in Sri Lanka to a person resident outside Sri Lanka. As such it possible for the non-resident (via his Bank) to:-

- Repatriate the sale proceeds via an Inward Investment Account (IIA formerly called an SIA Account) of the owner, if the original purchase of the property was made using funds in the IIA; or
- Repatriate the proceeds to an account maintained outside Sri Lanka by the owner of the property, upon furnishing proof to the Bank of inward remittances (including funds sent by the owner to an account of a third party in Sri Lanka who has facilitated the purchase of the property) for the original purchase and/or improvement of the property.

A Sri Lankan emigrant/non-resident is eligible for migration allowances, which includes proceeds realized from the sale of movable and immovable property. The Sri Lankan non-resident should therefore, upon sale of immovable property in Sri Lanka to a person resident in Sri Lanka, deposit the sale proceeds to a Capital Transactions Rupee Account (CTRA) with a licensed commercial bank in Sri Lanka. As the Bank is authorized to sanction remittance of the proceeds in the CTRA, the non-resident can do so by making an application to the Bank with whom he holds the Account, along with the tax clearance certificate obtained from the Department of Inland Revenue and any other supporting document required by the Bank.

The Bank is authorized to permit an initial remittance of USD 200,000, subject to earlier remittances, if any. Thereafter annual remittances are permitted after the lapse of 12 months from the initial transfer and except for the first allowance, subsequent allowances shall be transferable per calendar year, subject to submission of a tax clearance certificate and any other supporting documentation required by the Bank.

Taxes on Acquisition and Transfer of Real Estate

Stamp duty on a deed of transfer is as follows:

- 3% for the first SLR 100,000/-; and
- 4% for every SLR 100,000/- or part thereof.

Stamp duty on a lease agreement is SLR 10/- for every SLR 1,000/- or part thereof.

Stamp duty is usually payable in the event of a transfer by the purchaser and in the event of a Lease Agreement by the lessee, unless the lessor and the lessee have an agreement to the contrary

As per the Land (Restriction on Alienation) Act No.3 of 2017, Section 5 of the Land (Restriction on Alienation) Act No.38 of 2014 was amended. In terms of this amendment the provisions relating to the Land Lease Tax shall not apply to the lease of land by the following entities:-

a. A foreign individual

b. A foreign company

c. A incorporated in Sri Lanka where any foreign shareholding in such company either directly or indirectly is 50% or above.

in respect of any Indenture of Lease executed after 8th January 2017.

Taxes on Possession and Operation of Real Estate

Assessment rates are payable to the local authority of the area where the land is situated. This would be calculated on the basis of an annual value given by the local authority after an inspection/valuation of the property. Assessment rates are payable quarterly.

In addition, there are certain charges payable to the Urban Development Authority (UDA). However, UDA charges are not applicable to all premises and would be payable depending on the nature and use of the premises.

Sri Lanka

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Tax Treaties: Avoidance of Double Taxation

Sri Lanka has entered into double tax avoidance agreements with several countries, in terms of which tax payers may claim credits with respect to specified taxes. Below is a list of countries that Sri Lanka has entered into double tax avoidance agreements with as at 1st May 2018:

Australia
Bahrain
Bangladesh
Belarus
Belgium
Canada
Czech Republic
Denmark
Egypt
Federal Republic of Germany
Finland
France
Hong Kong
India
Indonesia
Iran
Italy
Japan
Jordan
Kuwait
Luxembourg
Malaysia
Mauritius
Nepal
Netherlands
Norway
Oman
Pakistan
Palestine
People's Republic of China
Philippines
Poland
Qatar
Republic of Korea
Romania
Russian Federation
SAARC Countries
Saudi Arabia
Seychelles
Singapore
Sweden
Switzerland
Thailand
United Arab Emirates
United Kingdom
United States of America
Vietnam
Yugoslavia

The information in this guide is current as at 1st May 2018.

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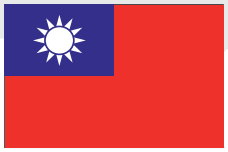

Property Tenure/Ownership

Property ownership in Taiwan, also known as the Republic of China, is mainly freehold. Long-term leaseholds are becoming more common, particularly in Taipei City and for government build-operate-transfer infrastructure projects, where superficies are granted to superficiaries.

Generally, leasehold titles cannot be longer than 20 years. However, superficies can have 35-year to 50-year terms, and some can have 70-year terms. Renewal options are dependent on specific contract terms.

Strata ownership in large urban properties is common. The Regulations on Management of Apartment Buildings were promulgated in June 1995 and are being used to standardise building management and maintenance. Property titles outline specific ownership of areas in the buildings, including ownership of the percentage of land and common areas.

The market for leasing commercial, retail and residential properties is active. Lease terms are generally for two to five years for commercial and retail properties, and one year or more for residential properties.

To make transaction prices of real estate more transparent and accessible to the public, effective on August 1, 2012, the Ministry of the Interior (MOI) established a registration system under which (1) the purchaser, land administration agent (i.e. scrivener) or broker of a real property sale and purchase transaction must register the actual transaction price within 30 days of the completion of the title transfer; and (2) the broker of a lease transaction must register the actual transaction price within 30 days of the signing of the lease agreement.

Restrictions on Foreign Ownership

Foreign individuals and companies (except for nationals and companies of the People's Republic of China (PRC) that are subject to certain restrictions) are allowed to buy real estate in Taiwan, subject to government approval. Approval is conditional on a reciprocal arrangement, whereby Taiwanese individuals and companies are allowed to buy real property in the home country of the foreign individual or the country where the foreign company maintains its head office.

Since 2002, PRC nationals and companies may also invest in real property in Taiwan if they meet certain conditions. To be eligible, PRC investors must apply to the Investment Commission of the Ministry of Economic Affairs (MOEA) and/or the MOI. On November 26, 2013, the MOI promulgated certain control measures aimed at controlling the total volume of PRC individuals' investments in real estate, which took effect from 2014. Subject to the relevant laws and regulations (such as the Regulations on Permission of the Acquisition, Creation or Transfer of Property Rights of Real Estate in Taiwan by PRC People), PRC individuals may purchase real estate in Taiwan, either individually or collectively, provided that the purchase(s) shall not exceed a total area of 13 hectares and a total of 400 units in buildings per year, and also provided that the overall purchases of real estate in Taiwan made by such PRC individuals shall not, at any given time, exceed a total land area of 1,300 hectares and a total of 20,000 units in buildings. Furthermore, to prevent PRC individuals from driving up real property prices in particular areas, the MOI introduced a new control measure on July 1, 2015 under which no more than 10% of the total number of units in the same building or community may be owned by PRC individuals; however, if the total number of units in the same building or community is less than 10, PRC individuals may not own more than one unit. Furthermore, as real estate prices in metropolitan areas in Taiwan have continued to surge since 2009 and with more and more PRC investors acquiring real estate in Taiwan, the MOI amended the said Regulations on June 9, 2017 again in order to curb real estate speculation by PRC investors and to stabilize local real estate market. Among others, the amendments to the said Regulations stipulate that PRC investors' applications to acquire, create or transfer real estate rights must be denied in any of the following events: (1) Taiwan's major infrastructure might be affected; (2) land monopolization or speculation is suspected; (3) the comprehensive development of the national territory might be affected; or (4) central competent authorities believe that national security or social security might be compromised.

Companies established in Taiwan by foreign investors, also referred to as foreign investment approval (FIA) companies, may purchase or lease real property for their operations in Taiwan.

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Major property legislation

- Land Act
- Land Tax Act
- Deeds Tax Act
- House Tax Act
- Urban Planning Act
- Regulations on Urban Renewal
- Building Act
- Regulations on Management of Apartment Buildings
- Management Rules for Hillside Buildings
- Management Rules for Interior Fixtures of Buildings
- Regulations on Permission of the Acquisition, Creation or Transfer of Property Rights of Real Estate in Taiwan by PRC People
- Rules on Superficies on State-owned Non-public Land
- Statute for Investment by Foreign Nationals
- Statute for Investment by Overseas Chinese
- List of Negative Investments by Overseas Chinese and Foreign Nationals
- Act for Promotion of Private Participation in Infrastructure Projects
- Civil Code

Forms of Foreign Corporations

A foreign company may establish a presence in Taiwan in any of the following forms:

- Subsidiary (a limited company or a company limited by shares)
- Branch office
- Representative office (for conducting non-profit generating activities only)

Different forms of companies have different tax and legal implications, particularly when remitting funds out of Taiwan.

Registration/Licencing Requirements

Before commencing operations, foreign firms are required to register with the following agencies:

- Department of Commerce, MOEA
- local city or county government where the business is to be located
- Bureau of Foreign Trade (if it is an importer/exporter)
- Local tax office

Foreign Employment Limitations

Foreign nationals have to meet certain academic and/or work experience criteria to be eligible for a work permit to engage in office work in Taiwan. To obtain a work permit, a foreign national must:

- Have a master's degree in a related field;
- Have a bachelor's degree and at least two years of experience in a related field;
- Have passed one of the exams conducted by the Taiwan government in accordance with the Act for Conducting Examinations for Professional Occupations or Technicians;
- Have worked for a multinational enterprise for at least one year and be assigned by such enterprise to Taiwan; or
- Have been trained or studied by himself/herself, and have at least five years of experience in a related field with proven track records.

Investment Incentives

The Act for Promotion of Private Participation in Infrastructure Projects provides preferential tax treatment and financing treatment for investors of infrastructure projects. Also, under this legislation, the Taiwan government will assist investors in acquiring land necessary for infrastructure projects.

Restrictions on Foreign Property Ownership

Foreigners are prohibited from owning any of the following land:

- Forestry land
- Fisheries
- Hunting grounds
- Salt fields
- Land with mineral deposits
- Sources of water
- Land within fortified and military areas
- Land adjacent to national frontiers

Foreign Exchange Controls

Each company in Taiwan may remit into and out of Taiwan USD 50 million per year. If the aggregate amount of remittances exceeds USD 50 million, approval must be obtained from the Central Bank of the Republic of China (Taiwan).

There are no foreign exchange limits for investment, trade or insurance premium payments by foreign companies in Taiwan, provided that their investments in Taiwan have been approved by the relevant authorities.

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Taxes on Possession and Operation of Real Estate

House Tax

House tax is an annual tax assessed on all buildings and houses. It ranges from 1.2% to 5% of the current assessed value of the house, depending on the type of use.

Purposes		Statutory rate (%)		Actual rates enforced (%)* - Taipei as an example
		Min. rate	Max. rate	Rate
For residential purposes	Used by the owner himself/herself, his/her spouse or relatives of a direct second lineage of the household or leased for public welfare purposes	1.2		1.2
	Not occupied by the owner, his/her spouse or relatives of a direct lineage of the household	1.5	3.6	Holding no more than 2 units – 2.4 per unit; Holding 3 units or more – 3.6 per unit
For non-residential purposes	Used for business purposes	3	5	3
	Used as the premises for the operation of a non-profit civic organisation	1.5	2.5	2

* Actual rates enforced are fixed within the minimum and maximum rates above by the government of each special municipality (i.e., Taipei City, New Taipei City, Taoyuan City, Taichung City, Tainan City and Kaohsiung City, collectively referred to as "special municipality"), county or city, approved by the local people's assembly and submitted to the Ministry of Finance (MOF) for record purpose.

Land value tax

Land value tax is payable on an annual basis to the local county or special municipality. The tax ranges roughly from 1% to 5.5%, based on a comparison of the starting cumulative value (SCV) and the current government assessed land value (LV), as follows:

Formula	Conditions	Applicable formula (land value tax)
1	LV ≤ SCV	LV x 1%
2	5 x SCV ≥ LV > SCV	(LV x 1.5%) - (SCV x 0.5%)
3	10 x SCV ≥ LV > 5 x SCV	(LV x 2.5%) - (SCV x 6.5%)
4	15 x SCV ≥ LV > 10 x SCV	(LV x 3.5%) - (SCV x 17.5%)
5	20 x SCV ≥ LV > 15 x SCV	(LV x 4.5%) - (SCV x 33.5%)
6	LV > 20 x SCV	(LV x 5.5%) - (SCV x 54.5%)

The SCV is a constant figure set by the government for each county or special municipality. The LV is assessed by the government every three years.

Taxes on Acquisition and Transfer of Real Estate

Stamp tax and legal costs

Stamp tax is charged on sales and transfers of deeds or real estate. The stamp tax is 0.1% of the contract price or the real estate value and is usually paid by the purchaser. It is usual practice for each party to bear its own legal costs in a property transfer transaction.

Deed tax

Deed tax is assessed on all immovable property located on land, including houses, buildings and other fixtures.

Different rates apply for different forms of exchange:

Conditions	Rate (% of value of the deed)
On a purchase	6%
On a Dien	4%
On an exchange	2%
On a bestowal or a donation	6%
On a partition	2%
On a possession	6%

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Capital gains tax and land value increment tax

Capital gains from the sale of real property other than land are treated as regular income and taxed at a corresponding personal or corporate income tax rate. Gains from the sale of land are generally exempt from income tax, but are assessed under land value increment tax (LVIT).

LVIT is levied on the sale of land. LVIT is based on the increase in the government-assessed value (GAV) of the land component of the property during the ownership period, adjusted by the consumer price index. LVIT rates range from 20% to 40%, depending on the amount of appreciation in GAV. The exact tax liability is established via the application of a complex formula, which takes into account the holding period (for increases in GAV of 100% or more only). The holding period discounts are available where the subject property has been held for more than 20 years, more than 30 years or more than 40 years.

Formula	Increase in GAV	LVIT rates
1	Less than 100%	20%
2	100% to less than 200%	30%
3	200% and above	40%

Despite the foregoing, it is worth noting that the Taiwan government has adopted a new tax system, which took effect on January 1, 2016 ("New Tax System"). Under the New Tax System, a seller's total capital gains from the sale of the following land and/or buildings will be subject to income tax: (1) buildings and/or land acquired on or after January 1, 2016; or (2) buildings and/or land acquired on or after January 2, 2014, and owned for no more than two years prior to sale. In addition, the tax rates that apply to non-Taiwan residents and foreign entities are different from those that apply to Taiwan residents and entities with headquarters in Taiwan. For non-Taiwan residents and foreign entities, the tax rates are (1) 45% for buildings and/or land owned for no more than one year prior to the sale; and (2) 35% for buildings and/or land owned for more than one year prior to the sale.

Value Added Tax/Goods and Services Tax

Taiwan has a 5% VAT on most goods and services.

Tax depreciation

Depreciation of fixed assets is calculated based on the depreciation periods prescribed in the Revised Table of Service Life of Fixed Assets (固定資產耐用年數表), as follows:

Description		Service life
Buildings for use as office, stores, residences, public places and others not otherwise classified.	Reinforced concrete construction, pre-fabricated concrete construction or steel construction	50 years
	Reinforced brick construction	35 years
	Brick construction	25 years
	Metal construction (with cover treatment)	20 years
	Metal construction (without cover treatment)	15 years
	Wooden construction	10 years

Current tax regulations allow the straight-line method, fixed-percentage method, sum-of-years-digits method, production method, working-hour method, and other depreciation methods approved by the competent authorities. Businesses are required to report to the national tax administration before they adopt any method other than straight-line. If no report is submitted, the business will be assumed to have opted for the straight-line method..

Corporate taxation

Except for the gains from the sale of the land and/or buildings subject to the New Tax System, FIA companies are subject to tax at the same rates as Taiwan companies. FIA companies are subject to a withholding tax on their gross income.

Corporate tax is based on a progressive scale, as follows:

Taxable income	Tax rate
Less than TWD 120,000 (USD 4,000[1])	Exempt from tax
More than TWD 120,000 (USD 4,000)	17% of total taxable income, but the tax payable shall not exceed 50% of the portion of taxable income above TWD 120,000 (USD 4,000)

Net losses can be carried forward for a maximum of ten years, and cannot be carried back.

Personal Taxation

Both residents and non-residents are taxed on Taiwan-sourced income only. Residency only determines how they will be taxed. After January 1, 2010, a Taiwan resident must include his/her non-Taiwan-sourced income in the calculation of his/her basic income, unless the sum of his/

[1] The USD amounts in this Chapter are calculated at 1 USD to 30 NTD and for reference only.

her non-Taiwan-sourced income received in a calendar year does not exceed TWD 1 million (USD 33,333).

Individuals who were in Taiwan for at least 183 days during a calendar year are treated as residents for income tax purposes and taxed at progressive marginal rates, as follows (for the taxable year of 2017):

Taxable income	Tax rate
TWD 0 – 520,000 (USD 0 – 17,333)	5%
TWD 520,001 – 1,170,000 (USD 17,333 – 39,000)	12%
TWD 1,170,001 – 2,350,000 (USD 39,000 – 78,333)	20%
TWD 2,350,001 – 4,400,000 (USD 78,333 – 146,667)	30%
TWD 4,400,001 – 10,000,000 (USD 146,667 – 333,333)	40%
TWD 10,000,001 (USD 333,333) and above	45%

The taxable income of residents includes salary, professional fees, royalties, rental income, gains from property transactions, dividends, company profits, interest, prizes and awards, and payments relating to retirement, severance and resignation. Some personal exemptions and deductions are allowed.

Individuals who are in Taiwan for less than 183 days during a calendar year (i.e. nonresidents for income tax purposes) are liable for a withholding tax on gross income at a flat rate of 6% (in the event that his/her monthly income is no more than 1.5 times the minimum w age) or 18% (in the event that his/her monthly income is more than 1.5 times the minimum wage), but if a nonresident who stays in Taiwan for 90 days or less in a taxable year receives remunerations for services provided from an offshore employer, such income will not be considered the nonresident's Taiwan-sourced income.

Meanwhile, please note that with regard to the gains from the sale of land and/or buildings that are subject to the New Tax System, the tax rates applicable to Taiwan residents are as follows:

Holding Period Prior to Sale	Tax rate
less than one year	45%
more than one year but no more than two years	35%
more than two years but no more than ten years	20%
More than ten years	15%

[Note 1] When an heir or a legatee sells a building and/or land obtained through inheritance or legacy, the period for which said building and/or land were/was held by the deceased can be included when calculating the period of his/her holding such building and/or land.

[Note 2] With regard to (i) buildings and/or land owned for less than two years prior to the sale thereof owing to a job transfer, involuntary redundancy from employment, or any other involuntary cause of a seller, or (ii) a seller who uses his/her own land to enter into a joint construction and allocation project with a profit seeking enterprise and subsequently sells his/her unit(s) in the building and/or land within two years of acquisition of land, the tax rate applicable to the gains from the sale of such buildings and/or land is 20%.

Tax Treaties: Avoidance of Double Taxation

Double taxation agreements as of February 7, 2018:

Australia
Austria
Belgium
Canada
Denmark
France
Gambia
Germany
Hungary
India
Indonesia
Israel
Italy
Japan
Kiribati
Luxembourg
Macedonia
Malaysia
Netherlands
New Zealand
Paraguay
Poland
Senegal
Singapore
Slovakia
South Africa
Swaziland
Sweden
Switzerland
Thailand
United Kingdom
Vietnam

International Transport Tax Treaties for Shipping or Air Transport* as of February 7, 2018:

For the purpose of this table, S=Shipping Transport and A= Air Transport		
Canada(A)	EU (S)	Germany (S)
Japan (S&A)	Korea (S&A)	Luxembourg (A)
Macau (A)	Netherlands (S&A)	Norway (S)
Sweden (S)	Thailand (A)	United States (S&A)

* Generally, International Transport Tax exemptions allow countries to import and export cargos to another country and allow them to avoid taxes on these products. Such treaties enhance the location as a shipping/transportation center.

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Real Estate Investment Trusts

Introduction

Taiwan passed the Real Estate Securitization Act (RESA) in 2003. The MOI has also issued administrative guidelines that support the legislation. The RESA provides for the creation of two categories of real estate securities — real estate asset trusts (REATs) and real estate investment trusts (REITs). The difference between a REAT and a REIT lies in how they are established.

A REIT is created by a trust enterprise that invites investors to participate in the trust, based on the trustees' REIT plan and prospectus. The trustee raises cash from the sale of certificates of beneficiary and then uses the funds raised to acquire real estate.

A REAT is created by the transfer of real estate from the owner (the sponsor/originator) to the trustee, who, in turn, launches a unit trust of certificates of beneficiary. These securities may then be traded, subject to certain rules and restrictions, in the same manner as REITs. Real estate contributed to a fund may be transferred back to the originator at the end of the REAT's term or sold in the open market, as stipulated by the trust agreement. To date, REATs have mainly been used in relation to commercial real estate deals.

The Fubon No. 1 REIT was the first REIT listed on the Taiwan Stock Exchange in March 2005. The Fubon No. 1 REIT raised TWD 5.83 billion (USD 194.3 million) to acquire two office buildings, an apartment building and a commercial building in Taipei City. As of April 16, 2018, there are five REITs listed on the Taiwan Stock Exchange and 16 REATs listed on the over-the-counter (OTC) market.

REITs will be closed-end funds, unless prior approval is obtained from the Financial Supervisory Commission.

The following rules apply to both REITs and REATs, unless otherwise stated.

Restrictions

1. Originators/sponsors

- The owner of the property that will be acquired by a REIT may purchase the certificates of beneficiary. However, once the REIT is established, the originator/sponsor will be subject to a lock-in period of one year.

2. Establishment of the trustee

- To be eligible to act as a trustee of a REIT, an entity must have a paid-up capital of TWD 1 billion (USD 33.33 million).
- To be eligible to act as a trustee of a REAT, an entity must have a paid-up capital of TWD 300 million (USD 10 million).

3. Fund Restrictions

- There are no specific restrictions on the minimum fund size, only practical limitations concerning where and how such securities can be traded.
- REITs with assets of TWD 3 billion (USD 100 million) or more are eligible to be listed on the Taiwan Stock Exchange. REITs with assets of TWD 2 billion (USD 66.67 million) or more are eligible to be listed on the OTC market.
- REATs with assets of TWD 500 million (USD 16.67 million) or more are eligible to be listed on the Taiwan Stock Exchange or the OTC market.
- Any five beneficiaries, except for the independent institutional investors under the RESA, must not own more than 50% of the beneficial securities in a REIT or more than 50% of the preferred stock in a REAT.

4. Asset Restrictions

- Over 75% of REIT's assets must be invested in real estate or other real estate-related rights under development or generating stable income, real estate securities, government bonds, or cash.
- Not more than 40% of REIT's assets or TWD 600 million (USD 20 million can be held in securities other than real estate securities.
- REITs and REATs cannot buy vacant land without a development plan. The RESA requires trusts to invest for the purpose of earning stable income.
- Idle funds can be invested in bank deposits, government bonds, bonds issued by financial institutions, treasury notes, negotiable certificates of time deposit, commercial papers of companies with an acceptable credit rating or guaranteed by banks with an acceptable credit rating, or other financial products approved by the competent authorities only.
- The RESA does not prohibit a trust from investing outside Taiwan.
- A fund cannot own more than 10% of another fund.
- A fund cannot invest more than 10% of its assets in another fund.

5. Dividends

- The fund's net income should be distributed as dividends within six months of the end of the financial year.

6. Borrowing

- The RESA does not specify borrowing limits.

7. Private Funds

- In addition to public offerings, the RESA provides for the creation of private funds.
- Private funds must have less than 35 members.

Individual investors of private funds must:

- Present proof of financial capacity, i.e. having at least TWD 30 million (USD 1 million), or a statement undertaking that his or her total assets exceed TWD 30 million (USD 1 million) if he/she invests in beneficiary securities worth more than TWD 3 million (USD 0.1 million), and his/her total assets at the trustee, including deposits and investments (including the said investment), is worth more than TWD 15 million (USD 500,000).
- Have sufficient professional knowledge or experience in trading financial products. Corporations investing in private funds must have assets over TWD 50 million (USD1.67 million).

• Restrictions on borrowing, liquidity ratios, appraisal regulations, investment plans, control reports and execution records and other such restrictions on public funds do not apply to private funds.

Taxation

Taiwan residents and foreign companies with a business presence in Taiwan are subject to a withholding tax of 10% on their dividend income from the trust; this income is not consolidated in their annual taxable income. A 15% withholding tax rate is levied on distributions of dividends from the trust to non-Taiwan residents and foreign companies without a business presence in Taiwan, provided, however, that this rate may be reduced under the terms of a tax treaty.

The sale and purchase of REAT and REIT securities are exempt from the Securities Transaction Tax. No capital gains tax is applied on the sale of the securities by investors or on the sale of real estate by the trusts.

The transfer of property from an originator to a REAT trustee will be exempt from LVIT, provided that the REAT is required to return the entrusted property to the originator upon termination of the trust.

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Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of Measurement	Ping (1 ping = 3.3 sqm = 35.58 sq ft)
Rental payments	
Rents	NTD/ping/month on the landlord's stated gross area
Typical lease term	3–5 years; longer terms of up to 10 years are sometimes available for large-space users (but not typical)
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	3–6 months
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No
Basis of rent increases or rent review	Consumer price index published by the government or a fixed rate agreed upon by the parties to the lease
Frequency of rent increase or rent review	At lease renewal or every 2–3 years
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges
Car parking	Held under a separate monthly lease for an additional rent
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Tenant
Responsibility for external/structural repairs	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Case-by-case
Tenant early termination rights	Case-by-case
Tenant's building reinstatement responsibilities at lease end	Case-by-case

Source: JLL

Thailand

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Property Tenure/Ownership

Land ownership, possession and use come under two types of tenure:

- Freehold
- Leasehold

Land is usually granted for either:

- Residential purposes – Maximum of 30 years, with additional 30 years renewable
- Commercial and industrial purposes – Maximum of 50 years, with additional 50 years renewable

Leasehold land interests are granted through leases, usufructs or superficies, each with its own conditions specified by the owner. These are normally granted by the Crown Property Bureau and the government or state organizations. Private landowners also offer leasehold title.

Strata-title ownership is common among residential, office and retail projects in Thailand.

The Commercial and Industrial Property Lease Act was enacted in May 1999. This Act allows foreigners doing business in Thailand to lease real property primarily for commercial or industrial purposes. Another provision in the Act allows foreigners to lease land for at least 30 years, but not exceeding 50 years, renewable for another 50 years. Prior approval is needed from the land department chief if a lease involves more than 100 rai (40 acres). The Act also allows leases to be transferred to third parties either by sale or inheritance.

The Contract Committee of the Consumer Protection Board has issued a new notification under the Consumer Protection Act designating the lease of residential property as a "contract-controlled business." The Notification of the Contract Committee Re: The Stipulation of Residential Property Leasing as a Contract-Controlled Business B.E. 2561 (A.D. 2018) will have a significant impact and impose restrictions on residential lease agreements and will come into effect on May 1, 2018.

Major Property Legislation

- Bankruptcy Act
- Act on the Establishment of and Procedure for Bankruptcy Court (or Bankruptcy Court Act)
- Civil and Commercial Code
- Commercial and Industrial Property Lease Act
- Condominium Act
- Consumer Protection Act
- Exchange Control Act
- Foreign Business Act
- General Building Construction Act
- General Building Control Act
- House and Land Tax Act
- Investment Promotion Act
- Industrial Estate Authority of Thailand Act
- Land Code
- Local Development Tax Act
- Revenue Code
- Revision of State Enterprise Corporatisation Act

Operational Requirements For Foreign Corporations

Modes of entry

- Limited liability company (public or private)
- Partnership
- Representative office
- Branch office
- Regional office
- Joint venture
- Other common business relationships, i.e. distributorships, licenses, agencies Registration/ Licencing Requirements

According to the Foreign Business Act, a foreigner refers to:

- An individual of non-Thai nationality
- An entity registered in another country
- An entity registered in Thailand with 50% or more if its shares held by non-Thai shareholders.

The law prohibits foreigners from participating in specified business activities and requires foreigners to obtain licences before engaging in such activities. The investment must be at least 25% of the average estimated operating expenses for the first three years, but not less than THB 3 million (USD 94,637.22).

Under the Commercial Registration Act, individuals or juristic persons engaging in certain businesses have to register with the Ministry of Commerce within 30 days of commencing business.

The establishment and operation of factories is governed by the Factory Act. There are three types of factories, i.e. factories that do not require licenses, factories that

are required to notify officials in advance of start-up, and factories that are required to obtain licenses before commencing operations. Licenses are valid for five years, and are renewable.

Intellectual property is protected through laws relating to patents, trademarks, copyrights, trade secrets, geographical indication, layout designs of integrated circuit and optical disk production.

Foreign Employment Limitations

The Alien Occupational Act requires all foreigners to obtain a work permit before working in Thailand. The Act also lists certain occupations that are reserved for Thai nationals.

The following two applications must be processed simultaneously:

- An application to receive a work permit, which is submitted to the Ministry of Labor
- An application for a one-year non-immigrant visa extension, which is submitted to the Immigration Bureau

Foreign investment Incentives

Revisions to Thailand's investment promotion policies, the Board of Investment (BOI) has announced adjustments in Thailand's investment promotion policies and criteria for granting tax privileges. Moreover, as per the Announcement of the BOI No. 5/2557 that came into force on December 18, 2014 and the Additional Amendment of the Announcement of the Board of Investment No. 8/2558 granting priority investment promotion to small and medium size enterprises (SMEs) that have a minimum level of investment capital of THB 500,000 (USD 15,772.87) (excluding cost of land and working capital). Each project that applies for investment promotion must not have less than 51% of the shares in the SME be held by a Thai individual with the debt to equity ratio not exceeding 3:1 and the value of imported machinery may not exceed THB 10 million (USD 315,457.41) and the total fixed assets or investment capital of the business (excluding cost of land and working capital) must not exceed THB 200 million (USD 6.30 million).

Further, the BOI criteria and privileges under the Announcement of the BOI No. 2/2557 which shall be effective for applications submitted from January 1, 2015 onward prescribe as follows:

1. Criteria for project approval

- For a project with a minimum capital investment of THB 1 million (USD 31,545.74) (excluding cost of land and working capital), the following criteria is used:
  - The value added is not less than 20% of the sales revenue, except for projects in agriculture and agricultural products, electronic products and parts, and coil centers, all of which must have value added of at least 10% of revenues.
  - Modern production processes must be used.
  - The ratio of liabilities to registered capital should not exceed 3:1 for a newly established project. Expansion projects shall be considered on a case-by-case basis.
  - Modern production processes and new machinery are used. In cases where old machinery will be used, its efficiency must be certified by reliable institutions, and the BOI's approval must be obtained.
  - Adequate environmental protection systems are installed. For projects with a potential environmental threat, the BOI shall prescribe special conditions on both the location of the project and the manner of pollution treatment.
  - A project which has investment capital of THB 10 million (USD 315,457.41) or more (excluding cost of land and working capital) must obtain ISO 9000 or ISO 14000 certification or similar international standard certification within two years from
- For a project with investment capital (excluding cost of land and working capital) exceeding THB 750 million (USD 23.65 million) shall be submitted a feasibility study of the project as prescribed by the BOI.
- For a concession project or the privatization of a state enterprise project, the following criteria are used:
  - An investment project of state enterprises, according to the State Enterprise Corporatisation Act, will not be entitled to grant promotion for concession projects operated by the private sector and the transfer of ownership to the government ("build, transfer, operate" or "build, operate, transfer"). The government agency, which owns the project and intends the concessionaire to obtain promotion privileges, will submit the project to the BOI at the time of the project's commencement and before any invitation to the private sector to join the bid. In the bidding process, it must clearly state that the bidders will be informed of any incentives entitled to them. In principle, the BOI will not grant promotion in the event that the private sector has to pay compensation to the government for the concession, unless such payment is a reasonable amount on the investment consumed by the government.
  - For government projects under the "build, own, operate" method, including those leased or managed by the private sector by paying an amount in terms of

a rental payment to the state, the BOI will apply the normal criteria.

- For the privatisation of state enterprises, if it requires governmental support, the appropriate budget should be determined after the privatisation of the state enterprise as per the State Enterprise Corporatisation Act. In the event of expansion after the privatisation, the appropriate budget will apply for promotion for only the expanding investment by granting incentives according to the normal criteria.

2. Criteria for foreign shareholding

- Thai nationals must hold shares totalling not less than 51% of the registered capital in projects relating agriculture, animal husbandry, fisheries, mineral exploration and mining and service businesses under list one of the Foreign Business Act B.E. 2542 (A.D. 1999).
- No equity restrictions for foreign investors in manufacturing projects.
- The BOI may set the amount of shares eligible to be held by foreign investors on promoted projects when deemed appropriate.

3. Investment zones

The BOI specifies investment promotion zones as follows:

- Twenty provinces with low per capita income: Kalasin, Chaiyaphum, Nakhon Phanom, Nan, Bueng Kan, Buri Ram, Phrae, Maha Sarakham, Mukdahan, Mae Hong Son, Yasothon, Roi Et, Si Sa Ket, Sakhon Nakhon, Sa Kaew, Sukhothai, Surin, Nong Bua Lamphu, Ubon Ratchatani and Amnatcharoen.
- Special economic development zones.
- Science and Technology Parks that are promoted or approved by the Board.

4. Criteria for granting tax and duty privileges

The BOI stipulates the following two types of incentives:

- Activity-based incentives which are further classified into two groups of incentives based on the importance of activities as follows:
  - Group A consists of activities that shall receive corporate income tax incentives, machinery and raw materials import duty incentives and other non-tax incentives.
  - Group B consists of activities that shall receive only machinery and raw materials import duty incentives and other non-tax incentives.
- Merit-based incentives to attract and stimulate investment or spending on activities that benefit the country or industry at large will be granted to projects according to the following:
  - Merit to be placed on competitiveness enhancement, in case the project has investments or expenditures on:
    - Research and development in technology and innovation
    - Donations to technology and human resources development funds, educational institutes
    - IP acquisition/licensing fees for commercializing technology developed in Thailand
    - Advanced technology training
    - Development of local suppliers with at least 51% Thai shareholding in advanced technology training and technical assistance
    - Product & packaging design
  - Merit to be placed on decentralization for a project located in the 20 provinces with low per capita income that shall receive additional incentives.
  - Merit to be placed on industrial area development in case a project located within industrial estates or promoted industrial zones shall be granted one additional year of corporate income tax exemption. However, the total period of corporate income tax exemption shall not exceed eight years.
  - Projects eligible for merit-based incentives may apply under Group A or B according to the conditions set out by BOI.

For details on the BOI's announcement regarding the policies and criteria for investment promotion, please refer to http://www.boi.go.th/upload/content/newpolicy-announcement%20as%20of%2020_3_58_23499.pdf

Regional Operating Headquarters (ROH) Schemes

The Revenue Code stipulates the criteria and tax privileges for two separate ROH schemes as follows:

1. Original Scheme

In 2002, the cabinet endorsed a package of tax incentives aimed at encouraging foreign companies to set up regional offices in Thailand. In order to be eligible, for the original ROH scheme the foreign company must:

- Be registered in Thailand
- Have at least THB 10 million (USD 315,457.41) of paid up registered capital
- Have at least three offshore affiliates in other countries
- Receive income from offshore affiliates accounted for at least half of the total income (the minimum is 1/3 of the income during the first three years if granted permission by the Revenue Department).

The tax incentives came into force with the issuance of a Royal Decree (No. 405) in 2002 which is still fully effective. The incentives include:

- Ten percent on corporate income derived from performing administrative, technical, research and development (R&D), and other qualifying services for ROH offshore branches or associated enterprises
- Ten percent on royalties derived from ROH foreign branches or associate enterprises for the use of R&D performed in Thailand by the ROH
- Ten percent on interest received from ROH foreign Branches or associated enterprises for loans granted, but the loans must be made from other sources (not ROH) and extended to ROH branches or associated enterprise
- Withholding tax exemptions on dividends paid out to offshore shareholders not carrying on business in Thailand, but only with regard to the percentage of the dividend which corresponds to the amount of ROH income derived from ROH offshore branches and associated enterprises
- An adjustment of personal income tax collected from foreign experts from the current progressive rate to a 15% flat rate for no more than four years from the first to the last day of employment
- Tax exemptions on dividends transferred from subsidiaries to the ROH and on those offered by the ROH to overseas branches; and
- An immediate 25% depreciation of the value of fixed assets at the time of purchase or transfer and the residual value can be depreciated at a rate not exceeding 5%, with the remaining depreciation to be incurred gradually over 20 years.

A prospective investor who wishes to qualify to obtain ROH privileges may either seek the BOI's promotion or register with the Revenue Department.

2. Alternative scheme

The new ROH package has been issued by the Royal Decree (No. 508) on November 6, 2010 and is now, also, effective. The criteria required for ROH for tax privileges are that the paid up capital of the company operating the ROH must be more than THB 10 million (USD 315,457.41) at the end of each accounting period and provide services to associated enterprises the foreign countries. The company also must have total business spending of at least THB 15 million (USD 473,186.11) per year (the business spending refers to total operating costs which are paid to individuals or companies in Thailand, but excluding operating expenses paid overseas, royalties and know-how fees, raw materials, components and packaging) or have investment spending (actual payment) of at least THB 30 million (USD 946,372.23) paid in Thailand per year which directly related to ROH. Moreover, foreign associated enterprises must have managements and employees working and have actual business operations, including maintaining skilled staff of at least 75% of total employees by the end of the third accounting period with average remuneration per worker of at least THB 2.5 million (USD 78,864.35) per annum for at least five employees by the end of the third accounting period. The investors must notify the Revenue Department about ROH's incorporation within five years from the date the law became effective.

The new benefits available are as follow:

- For a portion of income from overseas corporations
  - An exemption on corporate income tax for ten years.
- For a portion of income from local operations
  - A 10% corporate income tax on net profits for income derived from services provided to ROH's domestic branches or associated enterprises for ten years
  - A 10% corporate income tax on net profits for qualified royalties for ten years
  - A 10% corporate income tax on interest received from ROH's foreign branches or associated enterprises for loan granted, provided that such loans are made from other sources and extended to ROH's branches or associated enterprises for ten years
  - A corporate income tax exemption for dividend received by ROH from associated enterprises for ten years
  - A corporate income tax exemption for ten years for dividends paid out of ROH's concessionary profits to its juristic shareholders incorporated abroad and not carrying on business in Thailand.
- For income of expatriate employees.
  - Expatriates employed by ROH are subject to tax at the rate of 15% on remuneration deriving from ROH for four consecutive years (eight consecutive years for high level management expatriate employees working in Thailand).

Restrictions on Foreign Property Ownership

Land

Generally, foreign individuals or corporations are not permitted to hold title to land, but they are allowed to obtain leasehold interests.

However, under existing regulations, foreigners may purchase a freehold interest in land if they are:

- Joint ventures where foreign parties control not more than 49% of the company
- Foreign manufacturers promoted by the BOI
- Oil concessionaires under the Petroleum Act
- Businesses located in certain industrial estates

Foreigners may own up to one rai of land (0.4 acre) for residential purposes if granted permission by the Minister of the Ministry of Interior, and must remit a total of at least THB 40 million (USD 1,26 million) into Thailand over a minimum period of five years in specific businesses or activities. Moreover, the land to be acquired shall be located in Bangkok Metropolis, Pattaya City, or Tessaban (Municipality), or in an area specified as residential zone, according to the law on town and country planning, and shall not be located in a military safety zone, according to the law on military safety zone. However, the land may be disposed if it is not utilised for residence within two years as from the day of the land acquisition registration or if the foreigner who is granted permission to acquire such land does not comply with the rules and conditions specified.

Condominiums

Foreigners can purchase any condominium project, up to 49% of the total space of all units in that condominium at the time of the application, for condominium registration without the need for permanent residence. Eligible foreigners include:

- Those with residence permits
- Those who were granted permission to enter Thailand under the Investment Promotion Act
- Limited companies with more than 49% of its capital owned by aliens who have been registered as a foreign "juristic person" under Thai law
- Foreign juristic persons with investment promotion certificates
- Foreign individuals or juristic persons remitting foreign currency into Thailand for payment for the condominium units

A foreign individual who does not hold a permanent resident certificate or foreign company purchasing a condominium unit, is required to bring 100% of the amount of the purchase price from an overseas source into Thailand.

Prior to April 2004, foreigners could purchase up to 100% of a condominium project, provided it was located in Bangkok Metropolis, municipality area or other administrative area and the site area was less than five rai (two acres) as stipulated in the Condominium Act (No. 3), B.E. 2542 (A.D. 1999). This law was in effect between 1999 - 2004 and is still valid for condominiums purchased during that period.

Foreign exchange controls

Flows of foreign exchange are subject to declaration to or permission from the Bank of Thailand (BOT). The Exchange Control Act B.E. 2485 (A.D. 1942) and Ministerial Regulation No. 13 (B.E. 2497 (A.D.1954)) issued under the Exchange Control Act B.E. 2485 (A.D. 1942) set out the principles of controls under which Notifications of the Ministry of Finance and Notices of the Competent Officer were issued. The objectives of this foreign exchange control are to centralise foreign exchange of the country, to channel foreign exchange for public benefit, to monitor capital outflows, and to stabilize the value of the baht.

Importation and repatriation of personal funds

There is no limit on the amount of foreign currency a foreigner in transit may bring into or take out of Thailand. However, the law requires that any person receiving foreign currencies from abroad is required to sell such foreign currencies to an authorized financial institution or to deposit them in a foreign currency account with an authorised financial institution within 360 days of receipt, except for foreigners temporarily staying in Thailand for not more than three months, foreign embassies, and international organisations, including people with diplomatic privileges and immunities. Additionally, any person bringing into or taking out of Thailand an aggregate amount of foreign currency exceeding THB 651,800 (USD 20,561.51) or its equivalent must declare as such to a customs officer. Regarding Thai currency (THB), tourists may carry up to THB 500,000 (USD 15,772.87) to neighboring countries and up to THB 50,000 (USD 1,577.28) to other countries without prior BOT permission.

Import and Export of Investment Funds

Import

Remittance of foreign currency for direct and portfolio investments into Thailand is freely permitted. However, foreign inflows must be surrendered to an authorised financial institution or deposited in a foreign currency account with an authorised financial institution in Thailand within 360 days.

Export

Repatriation of investment funds, dividends, profits, loan repayments and interest payments by foreign investors may be made freely by submitting a form with the relevant documentation to a commercial bank. In case of a loan repayment, evidence of inward remittance of such loan and the loan agreement must be submitted.

Export investment fund of Thai residents applies as follows:

- Thai residents and companies, including companies registered with the Stock Exchange of Thailand are allowed to invest in or lend to affiliated business entities abroad an aggregate amount not exceeding THB 3.27 billion (USD 103.15 million) per year.
- Thai individuals or corporate investors can invest in securities abroad, other than those under employee benefit plans, through private funds, or securities companies subject to the Securities and Exchange Commission's guidelines and approval from the Bank of Thailand.
- Outward remittances to Thai emigrants who are permanent residents abroad are allowed up to THB 32.72 million (USD 1,032,176.65) per recipient per year for each purpose.
- Fund transferred to public for donation are allowed up to THB 32.72 million (USD 1,032,176.65) per person per year for each purpose
- Purchase of immovable properties abroad is allowed up to THB 327.20 million (USD 10.3 million) per person per year.

Remittances overseas are subject to withholding tax at the following rates:

	Withholding tax rate*
Dividends to offshore shareholders	10%
Fees and royalties	15%
Interest on loans to foreign banks	15%
Lease and rental payments	15%
Management fees	15%
Payment to employees	15%

* The withholding tax rates may be lower where a double taxation agreement exists.

A 10% tax is levied on remittances of corporate profit

Foreign currency account of non-residents

Non-residents may maintain foreign currency accounts with authorized banks in Thailand without limit. The accounts can be freely credited with funds originating from abroad. Other repayments from Thai residents or borrowings from authorized banks can be deposited, subject to supporting evidences. Balances on such accounts may be freely withdrawn. Regarding a non-resident baht account, non-residents may open Thai baht accounts with authorized banks in Thailand for:

- Non-resident baht account for securities (NRBS) - An NRBS account may be debited or credited for the purpose of investment in securities and other financial instruments such as equity instruments, debt instruments, unit trusts, financial derivatives transactions traded on the Thailand Futures Exchange and Agricultural Futures Exchange of Thailand.
- Non-resident baht account (NRBA) - An NRBA may be debited or credited for general purposes except funds related to investment in securities such as trade, services, foreign direct investment, investment in immovable assets, and loans.

The total daily outstanding balances for each type of account shall not exceed THB 300 million (USD 9.46 million) per non-resident and this applies to all transfers between different types of accounts.

Taxes on possession and operation of real estate

Local development tax

This tax only applies to the land owner. The tax rate varies greatly, depending on the location and assessed value of the land. Typically, it ranges from THB 0.5 (USD 0.02) to THB 80 (USD 2.52) per rai.

Note: 1 rai (a Thai traditional unit of land area) approximately equivalent to 1,600 sq.m.

House and land tax

This is a tax on assessed rental income and only applies to properties that are rented out for any commercial purposes.

Rental contracts are typically split into three components which are taxed separately as follows:

- Rental: Subject to a house and land tax of 12.5% of annual rental receipts
- Lease of furniture: Subject to a 7% VAT
- Service charge: Subject to a 7% VAT

Thailand

Taxes on acquisition and transfer of real estate Sale of freehold real estate

Fees pay able	Rates
Ownership Transfer Fee	2% of assessed value (2% of assessed value but not less than THB 20 (USD 0.63) for condo unit Ownership Transfer)
Additional Stamp Duty	THB 1 (USD 0.03) per THB 200 (USD 6.31) of declared amount, or assessed value 0.5% of declared value or assessed value, whichever higher
Specific Business Tax	3.3% of declared amount or assessed value, whichever higher
Municipal Tax	10% of specific business tax
Withholding Tax	For juristic person – 1% of declared amount or assessed value, whichever higher For individual – 5-35% of assessed value

Stamp duty is waived in transactions that are subject to specific business tax.

The ownership transfer fee for transactions under debt restructuring agreement has been reduced to 0.01% from 2%.

Disposition of leasehold real estate	
Fees payable	**Rates**
Lease Registration Fee	1% of total lease consideration or assessed rental value, whichever is higher
Stamp Duty	0.1% of the total rental throughout the lease term
	For individual – 5-35% of assessed value

Mortgage of real estate	
Fees payable	**Rates**
Mortgage Registration Fee	1% of amount declared in the mortgage agreement, subject to a maximum of THB 200,000 (USD 6,309.15)
Loan Agreement Stamp Duty	0.05% of Mortgage Registration Fee but not more than THB 10,000 (USD 315.46)

For transactions under debt restructuring agreements, a mortgage registration fee of 1% will be applied from January 1, 2005 onwards.

In addition, mortgage interest payments are tax-deductible for personal income tax purposes, subject to a cap of THB 100,000 (USD 3,154.57). The tax allowance is part of a package of tax measures aimed at boosting demand for property.

Capital Gains Tax

Capital gains from the disposal of assets by corporations are treated as ordinary business income and are taxed at the corporate tax rate of 20%.

Capital gains from the disposal of assets by individuals are treated as personal income and are taxed at the individual's tax rate.

Capital gains made on the stock exchange by foreign individual are currently not taxed. Foreign companies or other juristic persons doing business in Thailand are subject to pay corporate income tax for capital gains, but with no withholding tax. However, foreign companies or other juristic persons that do not operate business in Thailand are subject to pay 15% withholding tax.

Value Added Tax/Goods and Services Tax

Value Added Tax (VAT) is a consumption tax based on the value of goods and services offered by traders, businesses or persons in Thailand. It is calculated from the price of the goods and services. VAT is itemised separately from the price of the goods or services so that consumers know the actual amount of the goods and services.

Those liable to pay VAT include:

- Manufacturers, importers, wholesalers, retailers and any other persons selling goods in the course of their business or professional activities
- Persons rendering services
- Agents for foreign businesses conducted in Thailand
  Those exempt to pay VAT include:
  - Small enterprises with annual sales of not exceeding THB 1.8 million (USD 56,782.33 million)
  - Leasing of immovable property

There are two VAT rates:

- 0% - Persons or businesses who do not have to pay VAT are refunded the amount of VAT they had previously paid. Those eligible for the 0% rate include:
  - Exported goods
  - Services provided in Thailand for persons in foreign countries
  - International transportation by air and sea by Thai juristic persons
  - Sale of goods or services between bonded warehouses and export processing zones
- 7% - This general rate applies to all other persons or companies that conduct business in Thailand. The normal rate is 10%, however, it has been reduced to 7% from October 1, 2017 to be applied until September 30, 2018.

Thailand

Tax Depreciation

Applicable depreciation rates are as follows:

- Building
- Permanent: 5%
- Temporary: 100%
- Cost of acquiring depletable natural resources: 5%
- Cost of acquiring lease rights
  - Indefinite: 10%
  - Definite: 100% (divided by the lease period plus the renewal option period)
  - Cost of acquisition of the right in a process, formula, goodwill, trademark, business license, patent, copyright or any other rights
  - Indefinite: 10%
  - Definite: 100% (divided by number of years used)
- Others, excluding land and stock-in-trade: 20%

A company adopting generally accepted accounting principles (GAAP) methods in which the depreciation rates vary from year to year, is allowed to do so, provided that the number of years over which an asset depreciated shall not be less than 100, divided by the percentage above.

Corporate taxation

Companies incorporated under Thai law or foreign companies carrying on business in Thailand, including companies listed on the Stock Exchange of Thailand, are subject to 20% corporate income tax on net profits with effective as of 2013. However, companies incorporated under foreign laws are only taxed on income derived within Thailand. Corporate income tax is calculated from the company's net profit on the accrual basis by take into account all revenue arise from or in consequence of the business carried on an accounting period and deducting with expenses as prescribed by the Revenue Code.

Small-to-medium enterprises [defined as those having a registered capital not exceeding THB 5 million (USD 157,728.71) and having revenue generated from sale of goods and services not exceeding THB 30 Million (USD 946,372.24)] shall pay the tax based on the level of net profits as shown below:

Net profit	Tax rate
Not exceeding THB 300,000 (USD 9,463.72)	0%
THB 300,001-3,000,000 (USD 9,463.75-94,637.22)	15%
Over THB 3,000,000 (USD 94,637.22)	20%

Companies engaged in the business of international transportation of passengers or goods pay a 3% corporate income tax on gross receipts collected for services carried out in Thailand.

Foundations and associations pay corporate income tax of 2% and 10% of gross income, depending on the type of business activity.

Companies who operate a business in the Eastern Economic Corridor (EEC) area are exempted from corporate income tax for a minimum of 15 years.

Net losses may be carried forward not more than five consecutive years. No carry back of losses is allowed.

Personal taxation

Every person, resident or non-resident, who derives assessable income from employment or business in Thailand or has assets in Thailand is subject to personal income tax, whether such income is paid inside or outside the country. The tax is applied on a graduated scale ranging from 0% to 35%, based on the assessable income and subject to deductibles and allowances.

Exemptions are granted to certain persons, including United Nations officers, diplomats and certain visiting experts, under the terms of international and bilateral agreements.

To alleviate the tax burden of low-income individuals, the government raised the level of personal income that is exempt from tax to THB 150,000 (USD 4,731.86). This means that individuals will only pay tax on income at or above THB 150,001 (USD 4,731.86). Please find the personal net income tax rates as shown below.

Net income	Tax rate
THB 1-150,000 (USD 0.03-4,731.86)	0%
THB 150,001-300,000 (USD 4,731.89-9,463.72)	5%
THB 300,001-500,000 (USD 9,463.75-15,772.87)	10%
THB 500,001-750,000 (USD 15,772.90-23,659.31)	15%
THB 750,001-1,000,000 (USD 23,659.34-31,545.74)	20%
THB 1,000,001-2,000,000 (USD 31,545.77-63,091.48)	25%
THB 2,000,001-5,000,000 (USD 63,091.51-157,728.71)	30%
Over THB 5,000,000 (USD 157,728.71)	35%

Thailand

Tax treaties: Avoidance of double taxation

Treaties in existence:

Armenia
Australia
Austria
Bahrain
Bangladesh
Belgium
Beralus
Bulgaria
Canada
Chile
China, P.R
Chinese Taipei
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Great Britain and
Hong Kong
Hungary
India
Indonesia
Ireland
Israel
Italy
Japan
Korea
Kuwait
Laos
Luxembourg
Malaysia
Mauritius
Myanmar
Nepal
New Zealand
Northern Ireland
Norway
Oman
Pakistan
Philippines
Poland
Romania
Russia
Seychelles
Singapore
Slovenia
South Africa
South Korea
Spain
Sri Lanka
Sweden
Switzerland
The Netherlands
Turkey
Ukraine
United Arab Emirates
United States of America
Uzbekistan
Vietnam

Real Estate Investment Trusts

The Trusts for Transactions in the Capital Market Act B.E. 2550 (A.D. 2007) prescribes that trusts may be established in the capital market through real estate investment trust (REITs) to build up market interest and appetite for investment in real estate through the capital market as well as to permit the use of trusts as investment vehicles for capital market transactions.

The Securities Exchange Commission (SEC) has announced a real estate investment scheme as of January 1, 2013 at which time the Stock Exchange of Thailand issued rules to certify the listing of REITs as from March 18, 2013. The REITs shall fully comply with the Trust for Transactions in Capital Market Act B.E. 2550 (A.D. 2007) and any other regulations as set by the SEC.

The criteria for a REIT to invest to any assets are as follows:
Type of assets to be invested in

- Any type of real property which can generate rental revenue
- Real property located outside Thailand
- Real property that can raise capital at and over 75% of its value including debt (if any). Any reserve capital can be invested e.g. government bonds, savings account, etc.
- Investment in a greenfield projects is permissible as long as SEC conditions are complied with and the investment is for no more than 10% of total asset.

Options on receiving profits

- Contractual lease of property without engaging in other businesses e.g. hotels, hospitals, etc
- Tenant is forbidden to generate property income from immoral or illegal businesses
- In the event that the contractual lease of property, the rental fee shall be relative to the profits of the tenant but will be at or less than 50% of all fixed rental charge Leverage limit
- Thirty-five percent of total asset can be leveraged up to a maximum of 60% if the REIT obtains an investment grade credit rating
- Must comply with trust establishment contract
- Assets may be placed as collateral
- In other commitments or agreements, customary commercial transactions shall take place

For details on the Criteria for REIT, please refer to https://www.set.or.th/en/products/listing2/set_pfundreits_p1.html

*Please note that above USD foreign currency exchange calculation are based on the rate issued by the Bank of Thailand as of May 2, 2018 which was THB 31.70 per USD 1.

Thailand

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Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of Measurement	Square Meters
Rental payments	
Rents	THB/sqm/month (gross area)
Typical lease term	3 years. In case of s lease agreement exceeding 3 years such lease must be in writing and registered with the local land office in order to be enforceable
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	1 month
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No
Basis of rent increases or rent review	Open market rental value or other rate as per agreed upon by the parties
Frequency of rent increase or rent review	At lease renewal normally every 3 years or other period as per agreed
Service charges, operating costs, repairs and insurance	
Responsibility for service charge / management fee	Usually quoted with rental charge and payable monthly in advance
Responsibility for utilities	Electricity and telecommunications consumption are separately metered and payable by each tenant; water consumption is included in the management charges, unless tenants extend the water pipeline into leased premises *Any stipulation of electricity and water supply fees shall not exceed the rates specified by the relevant authorities
Car parking	Allocation is usually based on one parking lot per 100 sqm leased free of charge. Additional spaces are provided subject to availability and monthly rental charges
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
Responsibility for external/structural repairs	Landlord
Responsibility for building insurance	Landlord (charged back via service charge)
Disposal of leases	
Tenant subleasing & assignment rights	Generally prohibited, subject to landlord approval
Tenant early termination rights	*The tenant has the right to terminate the lease agreement early provided that at least 30 days' advance written notice is given to the business operator or landlord
Tenant's building reinstatement responsibilities at lease-end	Registered to original condition

*Note that the Notification of the Contract Committee Re: The Stipulation of Residential Property Leasing as a Contract Controlled Business B.E. 2561 (A.D. 2018) will be applied to the business operators that lease (or sublease) 5 or more units out to individual lessees for residential purposes.

Source: JLL

Vietnam

FRASERS LAW COMPANY

Property Tenure/Ownership

Major property legislation

Property law in Vietnam is governed by the:

- Constitution
- Law on Land[1]
- Law on Residential Housing[2]
- Law on Planning[3]
- Law on Construction[4]
- Law on Investment[5]
- Law on Real Estate Business[6]

As well as numerous other implementing decrees, circulars and other legislative instruments issued under those laws. Such laws cover:

- Investment, zoning, planning, building
- Real estate business
- Land use right and property titles
- Leasing
- Taxation

Under this legislation, the state agencies responsible for managing and monitoring land use, real estate business and construction in Vietnam include:

- The Ministry of Natural Resources and Environment (MONRE)
- The Ministry of Construction (MOC)
- Provincial/City People's Committees (Local PC)

Operational requirements for foreign corporations

Under the Law on Investment 2014, all foreign investors conducting business activities in Vietnam must undertake their investment in accordance with the Law on Investment. A foreign investor investing in Vietnam for the first time in the form of establishment of economic organization must have an investment project specifying, inter alia, the location of the project and the need for land use proposal. The licensing authority evaluates the feasibility of the investment project for the issuance of an Investment Registration Certificate (IRC) to the foreign investor itself, rather than an Investment Certificate to the foreign invested enterprise (FIE) as provided under the Law on Investment 2005. If a project falls into the criteria of important projects, then it needs to seek in-principle approval in accordance with the Law on Investment 2014 prior to issuance of an IRC[7]. The Law on Investment 2014 classifies three types of projects subject to in-principle approval comprising projects of the National Assembly (NA); projects of the Prime Minister (PM); and projects of the Local PC.

After the foreign investor has been issued with an IRC, a newly established FIE must register for issuance of its Enterprise Registration Certificate (ERC), a tax code[8] and seal with the relevant departments of the Local PC for its full and lawful operations. The FIE can then enter into the land lease agreement with the provincial people's committees or infrastructure developers.

There are three main methods, among others, in which a foreign corporation can participate in real estate business activities and/or acquire land use rights in Vietnam:

1. Establishing a wholly foreign-owned entity in Vietnam, whereby the project entity may:

- Enter into a lease agreement directly with the state authority for the duration of the investment project, with rent being paid annually or on a lump sum basis
- Be allocated with land by the state authority in the case of implementation of investment projects for the construction of residential houses for sale or for a combination of sale and lease

2. Establishing a joint venture with a Vietnamese entity that leases land from the state and subsequently contributes the value of the land use right to the joint venture.

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[1] Law No. 45/2013/QH13, entitled the Law on Land, dated 29 November 2014 of the National Assembly took effect as from 1 July 2014 ('Law on Land 2013').
[2] Law No. 65/2014/QH13, entitled the Law on Residential Housing, dated 25 November 2014 of the National Assembly, replacing Law No. 56/2005/QH11 dated 29 November 2005 of the National Assembly on Residential Housing, will take effect as from 1 July 2015 ('Law on Residential Housing 2014').
[3] Law No. 30/2009/QH12, entitled the Law on Urban Planning, dated 17 June 2009 of the National Assembly, as amended by Law No. 77/2015/QH13 dated 19 June 2015 ('Law on Planning 2009'), which will be replaced by Law No. 21/2017/QH14 dated 24 November 2017 of the National Assembly on Planning as from 1 January 2019.
[4] Law No. 50/2014/QH13, entitled the Law on Construction, dated 18 June 2014 of the National Assembly, replacing Law No. 16/2003/QH11 dated 26 November 2003 of the National Assembly on Construction, took effect as from 1 January 2015 ('Law on Construction 2014').
[5] Law No. 67/2014/QH13, entitled the Law on Investment, dated 26 November 2014 of the National Assembly, replacing Law No. 59/2005/QH11 dated 29 November 2005 of the National Assembly on Investment, took effect as from 1 July 2015, as amended by Law No. 03/2016/QH14 dated 22 November 2016 which took effect as from 1 January 2017 ('Law on Investment 2014').
[6] Law No. 66/2014/QH13, entitled the Law on Real Estate Business, dated 25 November 2014 of the National Assembly, replacing Law No. 63/2006/QH11 dated 29 June 2006 of the National Assembly on Real Estate Business, took effect as from 1 July 2015 ('Law on Real Estate Business 2014').
[7] The residential house projects which are not subject to the in-principle approvals under Law on Investment 2014 have to obtain the in-principle approvals regulated in Law on Residential Housing 2014.
[8] The ERC number will be also the tax code.

3. Acquiring shares or capital contribution in a Vietnam domiciled company which has been engaging in real estate business activities and leased/allocated land from the state authorities.

Real estate business is a conditional business in Vietnam. An enterprise undertaking real estate business activities must have chartered capital (akin to equity) of at least VND 20 billion (USD 1 million). In addition, the investors' ownership capital must account for at least:

- Twenty percent of their total invested capital for real estate projects of under 20 ha
- Fifteen percent of their total invested capital for real estate projects of at least 20 ha

The Law on Real Estate Business 2014 requires that those organizations and individuals permitted to provide real estate brokerage business services and real estate trading floors must establish an enterprise and must have at least two persons who possess a real estate broker's practicing certificate, with certain limited exceptions. Besides, any individual permitted to conduct the business of real estate brokerage services independently must have a real estate broker's practicing certificate and must register for the payment of taxes. Individuals who wish to register a real estate brokerage and obtain the relevant practicing certificate must satisfy certain conditions and pass a real estate brokerage test.

Existing investors may now assign or transfer projects to other investors, subject to certain conditions as follows:

- The project has been approved by a state authority and has a detailed master plan on a scale of 1/500 or a master plan of the whole site already approved.
- Compensation or site clearance work of the project or part of the project to be assigned has been completed. In the case of assignment of an entire investment project for construction of infrastructure, the construction of corresponding technical infrastructure facilities must be completed in accordance with the schedule stated in the project already approved.
- The project is not the subject of any dispute of land use rights and/or is not seized to ensure the enforcement of a judgment or to comply with an administrative decision of a state authority.
- There is no decision from a state authority on resumption of the project or resumption of land; in the case of a breach during implementation of the project, the investor must implement the penalty decision.
- The existing investor already has the land use right certificate in respect of the part of or the entire project to be transferred.
- The investor being the transferee of the entire or partial real estate project must be an enterprise licensed for real estate business, have adequate financial capability, and undertake to continue to implement investment, construction and business in accordance with law, ensuring compliance with the schedule and the contents of the project.

In addition, investors, not only in real estate projects but also in other investment projects using land leased from or allocated by the State, or land which is converted into the land use right purpose are now required to make a deposit equal to 1% to 3% of the total investment capital to the account of the licensing authority, except in the following cases:

- An investor winning an auction of a land use right for implementation of an investment project for which the land use right fee/rental will be paid as a lump sum payment.
- An investor winning a tender for the implementation of an investment project using land in accordance with the law on tendering.
- An investor obtaining land allocated or leased by the State as a result of the transfer of an investment project, and (i) the deposit applicable to such project has been fully paid; or (ii) the capital contribution and/or calling of capital has been completed in accordance with the schedule set out in the IRC or in-principle approval in relation to such project.
- An investor obtaining land allocated or leased by the State as a result of a transfer of the land use right and assets attached to the land from another land user.
- An investor being a specific State agency or developer of a high-tech zone established under a specific decision of the relevant State authority in certain projects.

The ratio of the investment deposit on each portion of investment capital shall apply on a progressive basis as follows:

Portion of investment capital	Deposit ratio
Up to VND300 billion (approximately equivalent to US$13.2 million)	3%
Over VND300 billion up to VND1 trillion (approximately equivalent to over US$13.2 million up to US$44 million)	2%
Over VND1 trillion (approximately equivalent to US$44 million)	1%

It is noted that the investment capital of a project for the purpose of calculating the investment deposit does not include land use fees or land rental payable to the State and costs of construction of public works belonging to the investment project. If the land allocation/lease

of investment project comprises numerous phases, the deposit ratio will be calculated on the basis of the investment capital for each phase. In the circumstance where an investor has made an advance payment for site clearance and resettlement, the investor shall be entitled to postpone a portion of the investment deposit equivalent to the amount of such advance payment.

In addition, investors of real estate projects for commercial residential houses or urban development in certain urban areas are required to reserve 20% of the total land of projects for social housing purposes. However, with respect to the commercial residential projects using under 10 ha of land, the investors are entitled to choose to pay to the State an amount of money or a number of completed houses equivalent to such 20% of the total land instead of reserving such amount of land.[9]

Foreign Investment Incentives

With respect to tax rate incentives:

- A tax rate of 10% for 15 years is applied to:
  - New investment projects in areas with extremely difficult socio-economic conditions, economic zones and hi-tech zones.
  - New investment projects, provided that such projects satisfy specific conditions.
  - Hi-tech enterprises and hi-tech agricultural enterprises.
  - New investment projects in production sectors provided that such projects satisfy specific conditions.
  - New investment projects producing products in the list of prioritised supporting industry which satisfy specific conditions.
  - Investment projects in the production sectors with a minimum investment capital of VND12 trillion (USD 527.4 million), using technology which must be evaluated and drawing down total registered investment capital no later than five years after the date of investment licensing, except for the sectors subject to special sales tax and mineral exploitation.
- A tax rate of 10% is applied to:
  - Education, vocational training, health, cultural, sports and environmental activities implemented under the socialisation policy.
  - Projects on investment in social housing for sale, lease or lease-purchase for the entities specified under the Law on Housing.
  - Printed newspapers, provided that such projects satisfy specific conditions.
  - Forest planting, tending and protection; agriculture and aquaculture in areas with difficult socio-economic conditions; forestry in areas with difficult socio¬economic conditions; production, breeding and crossbreeding of plants and animals; production and refining of salt; investment in the preservation of post-harvest agricultural products, aquatic products and food.
  - Cooperatives involved in agricultural, forestry, fishery and salt making activities outside areas with difficult socio-economic conditions or areas with extremely difficult socio-economic conditions.
- A tax rate of 17% (as from 1 January 2016) for 10 years is applied to:
  - New investment projects in areas with difficult socio¬economic conditions.
  - New investment projects, including the manufacturing of high-grade steel; energy-saving products; machines and equipment for agricultural, forestry and fishery production and salt production; irrigation equipment; production and manufacturing of livestock, poultry and aquatic feeds; and development of traditional trades and occupations.
  - A tax rate of 15% is applied to cultivation, husbandry and processing in the agricultural and fishery sectors outside areas with difficult socio-economic conditions or areas with extremely difficult socio-economic conditions.
  - A tax rate of 17% (as from 1 January 2016) is applied to people's credit funds and micro-financial institutions.

With respect to tax exemption and tax deduction:

- Tax exemption for not more than four years and a 50% reduction of payable tax for not more than nine subsequent years is applied to:
  - New investment projects in areas with extremely difficult socioeconomic conditions, economic zones and hi-tech zones.
  - New projects in education, vocational training, health, cultural, sports and environmental activities implemented under the socialisation policy.
  - New investment projects, provided that such projects satisfy specific conditions.
  - New investment projects of hi-tech enterprises and hi tech agricultural enterprises.
  - New investment projects in production sectors, provided that such projects satisfy specific conditions.

[9] Artilce 5 of Decree 100/2015/ND-CP.

- New investment projects producing products in the list of prioritised supporting industries, which satisfy specific conditions.
- Investment projects in the production sectors with a minimum investment capital of VND12 trillion (USD 527.4 million), using technology that must be evaluated and drawing down total registered investment capital no later than five years after the date of investment licensing, except for the sectors subject to special sales tax and mineral exploitation.

- Tax exemption for not more than two years and a 50% reduction of payable tax amounts for not more than four subsequent years is applied to:
  - New investment projects in areas with difficult socio¬economic conditions.
  - New investment projects, including the manufacturing of high-grade steel; energy-saving products; machines and equipment for agricultural, forestry and fishery production and salt production; irrigation equipment; production and manufacturing of livestock, poultry and aquatic feeds; and development of traditional trades and occupations.
  - New investment projects in the industrial zones, except for the industrial zones with favourable socio¬economic conditions.

An import duty exemption exists in certain circumstances for, amongst others, equipment, machinery and specialized vehicles (including spare parts, accessories, etc.) imported for creating the assets of and implementing the projects in the sectors eligible for import duty incentives or in areas eligible for import duty incentives, and projects funded with official development assistance (ODA).

Restrictions on Foreign Property Ownership

The state grants various types of ownership and quasi-ownership interests in respect of land in Vietnam to various persons and entities, including:

- Vietnamese organisations
- Vietnamese households and individuals
- Vietnamese communities
- Vietnamese religious establishments
- Foreign organisations with diplomatic functions
- Overseas Vietnamese
- Foreign-invested enterprises

It should be noted that foreign individuals are no longer recognized as land users under the Law on Land 2013.

In Vietnam, there are two broad categories of ownership, or quasi-ownership, interests that can be held in respect of real property, namely:

- "Land use rights" (LURs), which relate to land and entitle the holder exclusively to use and deal with the land in a specified manner.
- "Ownership of houses and assets attached to land" ("building ownership"), which relates not to the land itself, but to the buildings and other structures attached to land.

There are two main categories of LURs that may be held in Vietnam, being:

- Land allocated by the state ("allocated land")
- Land leased by the state ("state leased land") A subset of allocated land is land recognized by the state as having been stably used by persons or entities over a lengthy period ("stable use land").

Until recently, different types of ownership or quasi-ownership interests in land as well as buildings and structures attached to land were evidenced by different kinds of certificates. A unified certificate ("unified certificate") may evidence that its holder enjoys:

- LURs in respect of the land specified in the unified certificate
- Ownership of the house/s or apartment/s specified in the unified certificate
- Ownership of the construction works specified in the unified certificate
- Ownership of the "artificial forest" ("plantation") specified in the unified certificate (for production purposes)

The holding of LURs in the form of allocated land is to be regarded as being the closest approximation to freehold interests available in Vietnam. LURs in the form of allocated land can be allotted for a fixed term or an indefinite term. It must, however, be remembered that holding LURs in the form of allocated land is technically not tantamount to freehold ownership, as the Constitution of Vietnam 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.

The holding of LURs in the form of state leased land is to be regarded as a type of quasi-ownership interest, notwithstanding that such rights are technically leasehold rights. State leased land is generally leased to the Vietnamese LUR holder for a term of between 50 and 70 years, with such lease terms renewable only at the discretion of the Department of Natural Resources and Environment or other relevant government authority. As a general rule, fully or partially foreign-owned companies are not granted LURs in the form of allocated land, but

are granted LURs in the form of state leased land or land subleased from the licensed infrastructure developers, except in the case of implementation of investment projects for the construction of houses for sale or for a combination of sale and lease.

An FIE is issued with the unified certificate for a term of the land lease not exceeding the investment term provided in the FIE's IRC, which is usually not longer than 50 years, with an extension of no longer than 70 years. In the case of implementation of investment projects for the construction of houses for sale or for a combination of sale and lease, the term of land allocation is subject to the investment term. The FIE can either directly lease the land from the provincial or municipal people's committees, or sublease the land with the constructed infrastructures from the licensed infrastructure developers in the industrial, export processing zones.

While the land price framework shall be determined by the government every five years, the provincial people's committees shall have the authority to annually set out the land price list applicable to their province or city every five years and determine the specific land price.

It should also be noted that the LUR of a FIE varies depending on the form of land use and the payment arrangements of the land rental. The Law on Land contemplates two payment arrangements of land rentals:

- Annual rentals payments ("annual payment")
- One-off payment of rental for the entire lease term ("one-off payment")
- Under a land lease for annual payment, an FIE has the following rights:
- The general rights and obligations of land users as provided in the Law on Land 2013.
- To mortgage their assets attached to the leased land at credit institutions which are licensed to operate in Vietnam, and to contribute as capital their assets attached to the leased land. The recipient of the capital contribution may lease land from the State for a determined purpose for the remainder of the lease term.
- To sell their assets attached to the leased land upon fulfillment of specific requirements.
- To lease houses if they are permitted to invest in the construction of and trading in houses.

While an FIE only has limited rights over the assets on the land under the annual payment regime, an FIE adopting the one-off payment regime and an FIE being allocated with LURs (in the case of implementation of investment projects for the construction of houses for sale or for a combination of sale and lease) can enjoy a broader scope of rights in relation to LUR and assets on the land, as follows:

- The general rights and obligations of land users as provided in the Law on Land 2013
- To transfer land use rights and land-attached assets under their ownership during the land use term
- To lease and sublease land use rights and land-attached assets under their ownership during the land use term
- To mortgage land use rights and land-attached assets under their ownership at credit institutions which are licensed to operate in Vietnam during the land use term
- To contribute land use rights and land-attached assets under their ownership as capital for cooperation in production and business during the land use term.

An FIE that has been granted an investment certificate in relation to a specific residential urban development project is allowed to assign the LUR, with respect to independent houses and/or villas, to eligible house owners, provided that such FIE has completed the construction of the infrastructure and satisfied all of the criteria to assign the LUR in accordance with the approved real estate development project. In such case, the LUR assignees will be granted the certificate over the LUR and the assets on land (if any), i.e., the unified certificate. In addition, a master real estate developer in a residential urban development project with completed infrastructure may transfer the LURs in relation to subconstruction works in the approved project to another corporate entity for the later entity to continue the subproject developments.

An FIE can sublease land from the licensed infrastructure developers in the industrial parks, industrial clusters, export processing zones, high-tech zones and economic zones under either the annual payment or the one-off payment method for the entire term of the land lease, subject to the approval of the relevant state management authorities. An FIE can sublease land to eligible entities. The rights and obligations of an FIE in relation to subleased land under the annual payment method are as same as those associated with annual rental payments for land. Meanwhile, an FIE in relation to subleased land adopting the one-off payment method has the same rights and obligations associated with one-off rental payment for land.

As from 3 March 2017, an FIE which (1) leases land from the Government under the annual payment method; leases or subleases land in an industrial zone/export processing zone under the annual payment method and (2) have been granted with the LUR Certificate will be entitled to lease its assets attached to such land upon the satisfaction of the requirements under the laws on real estate business. The

lessee must use such assets for the purposes which have been specified in the relevant land lease decision of the Government or signed lease/sublease contract entered into by the lessor.

In a build-transfer (BT) project in the infrastructure sector, the state allocates to the investor an area of land to implement such project. In this case, the investor is not required to pay land use fees or land rent during the construction of the work in accordance with the approved project and is responsible to preserve the area of land allocated for management and to use it in strict accordance with the purpose stated in the project. The transfer of the work and land fund of the project must be carried out in strict accordance with the schedule stated in the investment project approved by the state authority or the term which has been permitted by the state authority for extension. In the case where the investor has not transferred after the time-limit for transfer, the investor must lease land from the state, with the time of land lease calculated from the time of completion of the work construction duration in accordance with the approved project.

In a build-operate-transfer (BOT) project, the state allocates or leases land to the investor to implement such project. In this case, the investor is entitled to exemption or reduction of land use fees or land rent.

It is important to note that there are seven entities which are not eligible to receive a certificate of land use rights and certificate of ownership of houses and other assets attached to land:

- Organisations and communities that are allocated land by the state for management;
- Persons who are managing and using agricultural land belonging to public-utility land funds of communes, wards or townships;
- Persons who lease or sub-lease land from land users, except cases of leasing or subleasing land from investors building and dealing in infrastructure facilities in industrial parks, industrial clusters, export processing zones, hi-tech parks or economic zones;
- Persons who receive land for use on a contractual basis in agricultural or forestry farms, agricultural or forestry enterprises, protection forest management boards or special-use forest management boards;
- Current land users that fail to fully meet the conditions for the granting of certificates of land use rights and ownership of houses and other land-attached assets;
- Land users that fully meet the conditions for the granting of certificates of land use rights and ownership of houses and other land-attached assets but have received land recovery notices or decisions from state authorities;
- Organisations and commune-level people's committees that are allocated land by the state without land use levy for the purpose of construction of public facilities, including roads; water, petrol, oil and gas pipelines; power transmission and information communication lines; outdoor entertainment and recreation centers; cemeteries and graveyards for non-commercial purposes.

The Law on Housing 2014 permits foreign organisations and individuals within certain categories to purchase and own residential houses in Vietnam as follows:

- In the case of a commercial apartment, the number of apartments to be purchased and owned by one foreign organisation and one individual shall not exceed 30% of the total number of apartments in one building
- In the case of a separate residential house, the number of houses to be purchased and owned by one foreign organisation and one individual shall not exceed 250 houses in an area equivalent to a ward level (Ward Area). In particular:
  - If there is only one project with not more than 2,500 separate houses in a Ward Area, then the foreign buyers are only permitted to own up to 10% of the total number of separate houses of such project.
  - If there is only one project with the number of separate houses equivalent to 2,500 houses in a Ward Area, then the foreign buyers are only permitted to own up to 250 houses.
  - If there are two or more projects with a total of 2,500 or fewer separate houses in a Ward Area, then the foreign buyers are only permitted to own up to 10% of the number of houses in each project.

However, a foreign individual will only be permitted to own such residential housing units for a period of up to 50 years; the actual duration is set out in the sale and purchase contract and may be extended in accordance with government regulations. If the foreign individual marries a Vietnamese national or a Vietnamese residing overseas, he/she will be entitled to own housing on a stable and long-term basis. A foreign organization may own housing for a period not exceeding the term provided in its IRC.

Trading of Real Estate to Be Formed in the Future

Under the Law on Real Estate Business 2014, the investors of real estate to be formed in the future (Future Real Estate) must satisfy the following conditions for Future Real Estate, among others:

- have a qualified LUR Certificate, project files, and design plans approved by the relevant State authorities;
- have a qualified construction permit (if any);
- have documents on acceptance of the completion of the construction of the technical infrastructure in accordance with the approved project schedules; minutes on acceptance of the completion of the construction of the foundations of the building with respect to Future Real Estate being an apartment building or mixed-use building with a residential function.

In addition, prior to selling Future Real Estate being residential housing:

- the investors must send a notice to the municipal residential housing State management authorities on the satisfaction of conditions for selling/hire purchasing such residential housing;
- the sale and hire purchase must be guaranteed by a qualified commercial bank as provided by the State Bank of Vietnam (Guarantee Bank), noting that the term of a guarantee contract must extend up to the time when the residential housing is handed over to the purchaser. Accordingly, where the developer fails to hand over the Future Real Estate to the purchaser in accordance with its committed schedule, the Guarantee Bank shall, as requested by such purchaser, refund the advance payment made by the purchaser to the developer in accordance with the sale contract and guarantee contract.

Furthermore, in terms of execution of contracts on raising capital for the development of commercial houses, the capital contributors, cooperators, partners mentioned are only entitled to dividends (in monetary payments or shares) according to their contribution ratio in the contract, and not (i) the houses of the projects, or priority for purchasing, paying deposits or the rights to purchase such houses, or (ii) the allocation of land use right for the projects, except for the contribution of capital for establishment of a new legal entity to be appointed by the State as investors in the residential house projects.

Foreign Exchange Controls

Vietnam has historically imposed exchange control mechanisms designed to limit foreign currency outflows, generally requiring the use of the Vietnamese dong (VND) for domestic transactions and for channeling the flow of foreign currencies into the banking system. The use of gold is also regulated. Vietnam's foreign exchange control policy is administered primarily by the State Bank of Vietnam.

The buying and selling of foreign currency must be conducted through a licensed commercial bank permitted to undertake foreign exchange business activities. The State Bank of Vietnam does not guarantee the exchange of VND to foreign currency. Most projects have to self-balance their foreign exchange requirements.

FIEs are generally allowed to repatriate profits from business operations and are allowed to make outward remittances of foreign currency for the purchase of raw materials and supplies, as well as the provision of services, licensed technology transfers, payments of principal and interest on offshore loans registered with the State Bank of Vietnam, salaries and payments of other legally owed sums of money and assets. Upon termination or dissolution of a business enterprise, foreign investors may repatriate their capital. Remittances must be made through certain registered accounts opened at authorized banks licensed to operate in Vietnam.

Vietnam maintains a managed floating exchange rate regime, under which the rate of exchange of US dollars to Vietnamese dong is adjusted according to market forces, subject to parameters set by the State Bank of Vietnam.

Under the current managed floating exchange rate regime, the State Bank of Vietnam sets the central exchange rate between Vietnam dong and US dollars, meaning the average trading exchange rate between Vietnam dong and US dollars on the inter-bank foreign currency market, daily on the basis of reference to changes in the average weighted exchange rate on the inter-bank foreign currency market; to changes in exchange rates on the international market of a number of foreign currencies of countries with a large significant commercial, lending and borrowing, and an investment relationship with Vietnam; and on the basis of macro-economic and monetary balancing and Vietnam's monetary policy targets.

Taxes on Possession and Operation of Real Estate

Land users, including FIEs, have to pay annual non-agriculture land use tax at an aggregate tariff of 0.03%–0.2% of the land price decided by the state every five years. In Vietnam, there is no tax levied on the ownership of a house although such tax has been recently under discussion by the Government and may be introduced in the near future.

Taxes on acquisition and transfer of real estate

Income from real property transfers shall comprise income from the transfer of a right to use or lease land; income from subleasing land by enterprises that conduct real property business, as stipulated in the Land

Law, regardless of whether the land has infrastructure, buildings or engineering works located on it; income from the transfer of housing and buildings located on land, including the assets attached to the housing and buildings; income from the transfer of assets attached to land and income from the transfer of the rights to own or use housing.

The amount of corporate income tax (CIT) payable in any tax assessment period for activities relating to the assignment of real property shall be equal to assessable income from such activities multiplied by the tax rate of 20% (as from 1 January 2016).

Income from an assignment of real property must be calculated separately to declare and pay tax, and the incentive tax rates and incentives on the exemption and reduction of tax shall not apply. Losses from activities of real property assignments can be deductible against other income relating to production and business activities, and these losses may be carried forward to taxable income in subsequent years. Losses may be carried forward for a maximum period of five consecutive years as from the year following the year in which the loss arose.

Stamp Duty

Most 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, but the maximum fee is VND 70 million (approximately USD 3,000) per transaction.

In addition, stamp duties are imposed on the transfer of land and/or property. Conveyance stamp duty is levied on the value of actual sales that are not lower than the standard price provided by the local authorities. The stamp duty on the transfer of a land use right and property is 0.5% of the value of the sales.

Capital Gains Tax

Capital gains are treated as "other income" and are subject to personal income tax or corporate income tax. The income of an enterprise from a capital assignment refers to the income receivable from the assignment of a part of or the whole of an enterprise's capital already invested in it to one or more other organizations or individuals (including the sale of the entire enterprise). With respect to resident entities, the personal income tax rate applicable to income from a capital assignment is 20% of the profit (with respect to a limited liability company) and 0.1% of the revenue (with respect to joint stock company), and the corporate income tax rate applicable to income from a capital assignment is 20% of the profit (as from 1 January 2016). With respect to non-resident entities, personal income tax rate applicable to income from a capital assignment is 0.1% of the revenue, and the corporate income tax rate applicable to income from a capital assignment is 20% of the profit (with respect to a limited liability company and non-public joint stock company) and 0.1% of the revenue (with respect to public joint stock company).

Value Added Tax/Goods and Services Tax

A broad based consumption tax called the value added tax is levied at 10% on a wide range of goods and services.

Tax Depreciation

The government of Vietnam considers depreciation to be a cost and expense that is deductible for the purpose of determining taxable income.

Enterprises must register with the tax office directly confirming the method of depreciation for fixed assets that they are choosing to apply before applying that method. Each year, enterprises shall make their own decision on the level of such depreciation in accordance with the current regulations of the Ministry of Finance on the depreciation of fixed assets, including where they adopt the accelerated method to depreciate the fixed assets. In the course of their operations, enterprises may change the level of depreciation so long as it remains within the stipulated levels, but enterprises may not make any such change after lodging their declaration on finalization of CIT for that year.

Corporate Taxation

A resident corporation is subject to corporate income tax on taxable income at a tax rate of 20% except enterprise income tax on the exploration and extraction of oil and other rare resources in Vietnam.

Personal Taxation

Under the tax system, personal income tax is levied as follows:

- With respect to resident individuals:
  - On regular income on an annual basis
  - On irregular income on each occasion when such income arises
  - On income from the transfer of securities on each occasion or on an annual basis
- With respect to income-paying entities: such entities shall deduct and pay tax into the state budget each time it arises on taxable items paid to taxpayers

- With respect to non-resident individuals: such individuals shall declare and pay tax each time it arises on taxable income.

Tax Treaties: Avoidance of Double Taxation

As at 11 May 2018, the following 79 jurisdictions have entered into double taxation treaties with Vietnam:[10]

No.	Country	Effective Date
01	Australia	30/12/1992
02	France	01/7/1994
03	Thailand	29/12/1992
04	Russian Federation	21/3/1996
05	Sweden	08/8/1994
06	Republic of Korea	11/9/1994
07	United Kingdom	15/12/1994
08	Republic of Singapore	09/9/1994 Amendment: 11/01/2013
09	India	02/02/1995 Amendment: 21/02/2017
10	Hungary	30/6/1995
11	Poland	28/01/1995
12	Netherlands	22/10/1995
13	The People's Republic of China	18/10/1996
14	Denmark	24/4/1996
15	Norway	14/4/1996
16	Japan	31/12/1995
17	Germany	27/12/1996
18	Romania	24/4/1996
19	Malaysia	13/8/1996
20	Lao People's Democratic	30/9/1996
21	Belgium	25/6/1999 Amendment: not taking effect yet
22	Luxemburg	19/5/1998
23	Uzbekistan	16/8/1996
24	Ukraine	22/11/1996
25	Switzerland	12/10/1997
26	Mongolia	11/10/1996
27	Bulgaria	04/10/1996
28	Italy	20/02/1999
29	Belarus	26/12/1997
30	Czech Republic	03/02/1998
31	Canada	16/12/1998
32	Indonesia	10/02/1999
33	Taiwan	06/5/1998
34	Algeria	Not taking effect yet
35	Myanmar	12/8/2003
36	Poland	26/12/2002
37	Philippines	29/9/2003
38	Iceland	27/12/2002
39	North Korea	12/8/2007
40	Cuba	26/6/2003
41	Pakistan	04/02/2005
42	Bangladesh	19/8/2005
43	Spain	22/12/2005
44	Republic of Seychelles	07/7/2006
45	Sri Lanka	28/9/2006
46	Egypt	Not taking effect yet
47	Brunei	01/01/2009
48	Ireland	01/01/2009
49	Sultanate of Oman	01/01/2009
50	Austria	01/01/2010
51	Slovakia	29/7/2009
52	Venezuela	26/5/2009
53	Morocco	12/9/2012
54	Hong Kong	12/8/2009 Amendment: 08/01/2015
55	United Arab Emirates	12/4/2010

[10] Source: the website of the General Department of Taxation of Vietnam, latest access on May 2018, at http://gdt.gov.vn/wps/portal/!ut/p/z1/tVJNU6MwGP4reuCY5oWkkHjDzo6FaevXYCUXh4RA2W2hpZHq_voNoxettu64m0Mmb-b5mDxPsMD3WNRZV5WZqZo6W9o5Ff4DUB5N2N3tJRlOKUTuCOJpxFzgBM_fAmJwAaJkdnU15b4L1wEWX-GPLsIxDSYAjF5YPj2_nI1H1y5E5C1_X_7V_5MVwjH-HRZYqNqszQKnZW5OVFMbXRsHttmDnR0wG7st-pOfM6KZzJAiXCOqGEE8oxoxTqTHvVwGhdfLrVWV45QXJNeeKhBX0kPUd3PEJHAUSC51MNQ099T7-PbzEYdfN--_9jgR4TEMczIgGOMaiXDby5TuEtSSsxKLVhW51O3hs7fXCmPX2zAEHdrvdoGyacqkHqlkNutqBj1iLZmvw_R64h1Y_NxsR2lL6Ip4s6l-0ktqcg09zHg7xvKv0Did1067sO2__ssYxHHMIvulwWH5C_6-8_0359SpJkhUjz-jXDXsmy25STH8Qmsbd7_MZSuMyPD39A9RsqdY!/dz/d5/L2dBISEvZ0FBIS9nQSEh/

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No.	Country	Effective Date
56	State of Qatar	16/3/2011
57	State of Kuwait	11/02/2011
58	Israel	24/12/2009
59	Kingdom of Saudi Arabia	01/02/2011
60	Tunisia	06/3/2013
61	Mozambique	07/3/2011
62	Kazakhstan	18/6/2015
63	Republic of San Marino	13/01/2016
64	Republic of Serbia	18/10/2013
65	New Zealand	05/5/2014
66	State of Palestine	02/4/2014
67	Eastern Republic of Uruguay	26/7/2016
68	Azerbaijan	11/11/2014
69	Turkey	not taking effect yet
70	Iran	26/6/2015
71	Macedonia	not taking effect yet
72	Portugal	09/11/2016
73	The United States of America	not taking effect yet
74	Estonia	not taking effect yet
75	Malta	25/11/2016
76	Panama	14/02/2017
77	Latvia	not taking effect yet
78	Cambodia	not taking effect yet
79	Macau	not taking effect yet

Real Estate Investment Funds

Real estate investment funds (REIFs) have been officially permitted in Vietnam since September 15, 2012, when Decree No. 58/2012/ND-CP of the Government providing for the implementation of the Amended Law on Securities came into force. A REIF must maintain at least 65% of its net assets for investments in real estate in Vietnam for profitable purposes provided that such real estate investment shall satisfy certain statutory conditions, and in shares of issuers being real estate business organisations which have turnover or income from ownership, leasing out and commercial operation of real estate as a minimum of 65% of its total turnover or income. The remaining portion of the asset value can be invested into valuable papers, securities and government bonds with applicable limitations on capital.[11] In addition, REIFs are not allowed to directly develop any real estate development projects, provide any financing or guarantee for any loan. A REIF must hold its real estate for a minimum of two (2) years from the date of purchase, except for certain cases prescribed by law.

[11] No more than (i) 5% of the total net asset value of the fund is permitted to be invested in securities issued by the same organisation, except for Government bonds; (ii) 10% of the total net asset value of the fund is permitted to be invested in securities issued by one group of companies with the relationship of parent - subsidiary and associated companies; and (iii) 10% of the total number of currently circulating securities is permitted to be invested in one issuing organisation.

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Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of measurement	Square Meters
Rental payments	
Rents	USD/sqm/month on gross or net area
Typical lease term	2-3 years
Frequency of rent payable (in advance)	Quarterly
Typical rent deposit (expressed as x months' rent)	3 months ross rent
Security of Tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No
Basis of rent increases or rent review	Open market rental value OR fixed increment agreed at the outset of the lease
Frequency of rent increase or rent review	At lease renewal or every 2-3 years
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges
Car parking	Allocation is based on one parking lot per 300sqm, It is held under a separate monthly lease for an additional rent
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord responsible but costs charged back to tenant via service charge
Responsibility for external/structural repairs	Landlord responsible but costs charged back to tenant via service charge
Responsibility for building insurance	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Generally prohibited unless to a subsidiary company of the tenant (subject to landlord approval)
Tenant early termination rights	Only by break clause usually subject to penalty
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

Source: JLL

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