Asia Pacific Property Investment Guide

2013

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Joint Foreword to the Asia Pacific Property Investment Guide 2013

In this third joint Jones Lang LaSalle and Ashurst Asia Pacific Property Investment Guide, we set out important issues that investors need to consider when investing in real estate around the region. Asia Pacific has a wide range of real estate markets, each with its own distinctive rules and requirements for investors. The guide includes the most up to date information available for investing in the region.

In this edition, we have expanded our coverage to include Brunei, Laos, Maldives, Mongolia, Myanmar and Sri Lanka. We are looking to further expand our coverage in the 2014 edition.

We trust you find this guide a useful and informative business tool.

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AUSTRALIA

Property Tenure/Ownership

Three types of tenure exist:

- Freehold
  - Freehold land (also known as an 'estate in fee simple') is land that has been granted by the government to a person. Most of the developed, privately held land in Australia (other than the Australian Capital Territory) is freehold.
- Crown land
  - Crown land is vested in the government, although the government may give another person the ability to manage or control that land.
- Leasehold
  - Leasehold land is leased to a person either by the government or by the freehold owner. Land in the Australian Capital Territory is leasehold from the government.

All mineral rights are reserved to the Crown, where applicable.

Two primary systems of land title exist:

- 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.
- 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). 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 title' is a type of Torrens title that allows for the subdivision of land or property through the creation of a strata plan. The main difference is that an owner owns a particular parcel of land or part of a building in the strata scheme together with a share in common property that is shared with other owners in the strata scheme.
  - Most commonly used in the case of multi-unit housing, but retail and commercial developments may also be sold on a strata title basis.

Major Property Legislation

Property law in Australia is state and territory based. There is no uniform property legislation in Australia. Each state and territory has individual pieces of legislation covering key areas such as:

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

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

Operational Requirements for Foreign Corporations

All foreign companies that wish to carry on a business in Australia must either register with the Australian Securities and Investments Commission (ASIC) or form a subsidiary company that will be incorporated in Australia through which the business can be conducted.

Foreign Company

A foreign company is taken to be carrying on business in Australia for this purpose generally if it establishes a presence in the country, either by having employees or a business office.

A registered foreign company requires a person to be appointed as a 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 the ASIC each calendar year.

A registered foreign company is required to set out a number of details on all its public documents and negotiable instruments that are published or signed in Australia. This includes its name, the expression 'Australian Registered Body Number' (ARBN) followed by the ARBN issued to it upon registration, its place of origin and the notice of the limited liability of its members (if the liability of its members is limited, but is not apparent from its name).

A registered foreign company must lodge notice of certain changes with the ASIC.

Company Incorporated in Australia

A subsidiary company established in Australia is required to have at least one director resident 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 subsidiary company must lodge a notice of certain changes with the ASIC, and is also required to annually confirm its details and pay a fee. It must maintain financial accounts and, depending upon the nature of the company that has been established, it may also be required to file accounts periodically with the ASIC.

Foreign Investment Regulation

Foreign investment in Australia is regulated primarily through a regime established under the Foreign Acquisitions and Takeovers Act 1975 (FATA). Under FATA, the Australian Treasurer has wide powers to prohibit foreign investment proposals where those proposals are required to be notified to the Foreign Investment Review Board (FIRB). Foreign persons are subject to the provisions of FATA. Such foreign persons include:

- a natural person not ordinarily resident in Australia; and
- any corporation, business or trust in which there is a substantial foreign interest, i.e., any single foreigner who has ownership of 15% or more, or any group of foreigners with an aggregated interest of 40% or more.

On 1 January 2005, the Free Trade Agreement between Australia and the United States of America came into force, and had the effect of increasing the notification and approval thresholds for eligible US investors. The current approval thresholds are detailed below.

According to the FIRB (2012), the types of proposals by foreign persons to invest in Australia that require prior approval and, therefore, are notifiable to the government are:

- acquisition of interests of 15% or more in existing Australian companies and businesses valued over AUD 244 million (indexed annually). For US investors, a notification threshold of AUD 1,062 million applies, except for investments in prescribed sensitive sectors. The value of a company or business is the higher of the value of the total issued shares of the company, or its total gross assets. Prescribed sensitive sectors include, among other things, the media, telecommunications and transport;
- investments in the media of 5% or more, regardless of the value of the investment;
- takeover of offshore companies whose Australian subsidiaries or assets are valued at over AUD 244 million, or the applicable US investor threshold of either AUD 1,062 million or AUD 244 million (where the investment is in a prescribed sensitive sector);
- direct investment by foreign governments, their related entities and agencies;
- acquisition of interests in urban land that involves the:
  - acquisition of developed commercial real estate, where the property is subject to heritage listing, valued at over AUD 5 million or more, and the acquirer is not a US investor, or where the property is not subject to heritage listing, valued at over AUD 53 million, or AUD 1,062 million for US investors;
  - acquisition of vacant non-residential real estate irrespective of value;
  - acquisition of residential real estate, regardless of value (subject to some limited exemptions); or
  - acquisition of an interest in an urban land corporation or trust (as defined under FATA);
- proposals where any doubt exists as to whether they are notifiable.

On 16 February 2011, Australia signed an Investment Protocol with New Zealand. Once the Investment Protocol is implemented (the implementation date is yet to be advised as at the date of printing of this publication), New Zealand investors will be subject to the same thresholds that apply to US investors.

Foreign Investment Incentives

Assistance for foreign investors is available through Austrade, a Commonwealth government 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 information on the business environment, market intelligence reports, site visits to identify locations and potential partners, advice on Australian government industry development programs and applicable government approvals. Austrade has investment advisory specialists in locations around the world.

Restrictions on Foreign Property Ownership

Foreign companies and individuals may require consent from FIRB to purchase land or property in Australia.

This requirement does not apply in respect of acquisitions by the following, who are considered to be domestic purchasers:

- 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; and
- foreign nationals holding permanent resident visas purchasing residential real estate either in their own name or through an Australian corporation or trust.

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According to the Treasurer's latest Foreign Investment Policy (January 2012), foreign persons should notify the government and obtain prior approval to acquire an interest in certain types of real estate in Australia, including residential real estate and vacant land, or to buy shares in Australian urban land corporations or trust estates. With respect to developed commercial real estate, the notification requirements apply where the real estate is valued at over AUD 53 million (AUD 1,062 million for US investors and AUD 5 million if the real estate is heritage listed). An 'interest' includes buying real estate, obtaining or agreeing to enter into a lease, or entering into financing or other profit-sharing arrangements.

Applications should be lodged in advance of a transaction, and transactions should be made conditional upon receiving FIRB approval. Approval will be granted where the investment is not contrary to the national interest. The Treasurer has a wide discretion in this regard, although intervention on national interest grounds has historically been infrequent.

Decisions are generally made within 30 days after an application has been lodged, although the Treasurer may extend this period by up to a further 90 days.

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 (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; and
- circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue.

Travelers 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, the entity must submit an international funds transfer instruction (IFTI) report to the Australian Transaction Reports and Analysis Centre AUSTRAC.

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
- the reporting entity has a suspicion on reasonable grounds that the client is not who he or she claims 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 Possession of Real Estate

In all states and in the Australian Capital Territory (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 Australian Capital Territory, tax-free thresholds apply. These thresholds and the land tax rates vary.

In New South Wales (NSW), land tax is applied to most forms of vacant and developed land on a progressive scale of AUD 100, plus 1.6% of the land value between the minimum threshold and the premium threshold, and 2% thereafter. For the 2012 land tax year, the minimum threshold is AUD 396,000 and the premium threshold is AUD 2,421,000.

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).

City, municipal and shire councils (and the Australian Capital Territory Government, in the case of the Australian Capital Territory) 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.

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty on land transfers

Australian states and territories impose stamp duty at varying rates on land and certain other property transferred with land. This may include goods and certain business assets sold with land.

The rate of stamp duty is charged on a sliding scale. As an example, the rates in NSW start at 1.25% and gradually increase to a top rate of 5.5% for land, with a dutiable value in excess of AUD 1 million. The rate may also vary depending on the characterization of the land. For example, the purchase of a principal residence may be subject to concessional rates.

Stamp duty is usually payable by the buyer, although in some states, both parties to the transaction are 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 (or in the case of Victoria and Tasmania, after the transfer) is signed, depending on the state or territory. Penalties can apply for late payment. In Victoria and NSW, there are extensions of time for payment of duty on certain off-the-plan purchases. The land transfer cannot be registered until duty has been paid.

Landholder Duty

Most states and territories do not impose stamp duty on transfers of shares or units, and some states (NSW and South Australia) impose duty at rates below the rates applicable to transfers of land.

To prevent stamp duty on the transfer of land being avoided by interposing an entity, all jurisdictions apply landholder duty to the acquisition of a 50% or greater interest in a private company, or a 50% interest (or an interest of 20% or less in some cases) in a private trust that directly or indirectly owns land or interests in land in the relevant state with a value above a threshold (ranging between AUD 500,000 and AUD 2 million, with no threshold applying in the Australian Capital Territory). In Tasmania, for the provisions to apply, land held must also represent 60% or more of the entity's total property. Except for Victoria, the Australian Capital Territory and Tasmania, the landholder provisions also extend to the acquisition of a 90% or greater interest in a listed company or trust.

The duty is calculated by reference to the proportionate interest acquired by reference to the market value of the underlying land at the transfer duty rates. In NSW, Western Australia and South Australia, duty also applies to any dutiable goods of the landholder. For example, the acquisition of a 50% interest in a landholder with land and goods in NSW valued at AUD 3 million would attract duty of about AUD 68,000 (i.e., transfer duty on 50% x AUD 3 million).

Lease Duty

Lease duty on rents has been abolished in all Australian states and territories. However, the grant or transfer of a lease at a premium generally attracts stamp duty in all states (although not in the Australian Capital Territory). The rate of duty is the same as for a transfer of land. 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 a long-term lease in the Australian Capital Territory.

Capital Gains Tax

Some capital gains can be treated as ordinary income and, hence, are subject to tax at personal or company tax rates (this will generally be the case where the gain is realized from undertaking a 'profit-making undertaking or scheme'). Other capital gains are captured under the capital gains tax. In both cases, these taxes are levied at the federal rather than at the state level and are, therefore, uniform across Australia.

There are two main concessions that can reduce the amount of capital gains tax payable on gains. For assets acquired by taxpayers on or before 21 September 1999, the amount of the gain may be reduced by an inflation factor applied for the period during which the taxpayer held the asset up until September 1999 (that is, no indexation is allowed in relation to inflation for the period after that time).

Alternatively, the amount of the taxable gain may be reduced in some situations by the 'capital gains tax discount' (see below). Trading losses may be offset against taxable capital gains, but capital losses can only be offset against taxable capital gains and not against trading income.

If a capital gains tax event happens in relation to a capital gains tax asset after 21 September 1999, and the asset was acquired at least a year before to that event, 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 and for a complying superannuation entity, 33.3%. Companies are not eligible for the discount. Note, however, that the government has announced that it will remove eligibility for the CGT discount for non-residents for capital gains made after 8 May 2012. Non-residents will still be entitled to the CGT discount accrued before that time (after offsetting capital losses), provided they choose to value the asset at that time.

Non-residents are taxed on capital gains arising from the disposal of 'taxable Australian property', such as Australian real property. From 12 December 2006, non-residents who do not have a permanent establishment in Australia are generally no longer required to pay capital gains tax on shares or units in Australian companies or unit trusts, the assets of which consist principally of Australian real property—provided they did not hold a 10% or greater interest in the company or trust at the time of disposal of the shares or units, nor for a period of 12 months during the 24 months before the disposal of the shares or units.

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Value Added Tax/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 goods and services. GST is imposed on a federal level across Australia.

Tax Depreciation

Depreciation allowances are generally available on buildings and structural improvements, as well as plants and equipment. Depreciation on building and structural improvements is available at a rate of either 2.5% or 4% of the original construction cost. For hotel, commercial, industrial and income-producing residential buildings that commenced construction after 15 September 1987, a 2.5% per annum deduction is permitted. A higher rate of 4% is available for certain construction on or before 15 September 1987, as well as for certain eligible short-term traveler accommodation or industrial property constructed after 26 February 1992. Plant and equipment used to produce assessable income are also depreciable at rates reflecting their effective life. Such effective lives may be self-assessed or be based on effective lives determined by the Commissioner of Taxation.

Corporate Taxation

Resident and non-resident corporations are both subject to corporate tax on net profits at a flat rate of 30%.

Non-resident corporations are 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.

Personal Taxation

A resident is taxed on his or her worldwide income (subject to certain exemptions and credits) on a graduated scale. For the 2012–2013 tax year, this scale ranges from 19% to 45%. The first AUD 18,200 is tax-exempt, with the top marginal rate applying to income of over AUD 180,000. In addition, a levy of 1.5% of personal income is imposed on all resident taxpayers to cover the cost of Medicare.

Non-residents are taxed on Australian-sourced income at 32.5% up to AUD 80,000 and, thereafter, at resident tax rates. No Medicare levy is imposed on non-residents.

Tax Treaties: Avoidance of Double Taxation

Treaties in existence (Note: Agreements with Turkey and Chile exist, but are not yet in force):

Argentina
Austria
Belgium
Canada
China
Czech Republic
Denmark
East Timor
Fiji
Finland
France
Germany
Hungary
India
Indonesia
Ireland
Italy
Japan
Kiribati
Malaysia
Malta
Mexico
Netherlands
New Zealand
Norway
Papua New Guinea
Philippines
Poland
Republic of Korea
Romania
Russia
Singapore
Slovakia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Taiwan
Thailand
United Kingdom
United States of America
Vietnam

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.

The legal framework for REITs is responsive to cross-border investment. The REITs listed on the Australian Stock Exchange include a number of funds with substantial or exclusive offshore assets (e.g., mandates focused solely on US, European or Japanese assets).

There are two broad types of property trusts in Australia:

- Australian real estate investment trusts (A-REITs);
- a whole 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 lifespan. A-REITs

have become a well-established part of the property investment scene in Australia, with a risk/return profile between that of direct real estate and equity investment.

In addition to A-REITs, there is a range of unlisted investment vehicles available in the Australian market. The structure of these vehicles varies greatly, as does the type of property in which they invest. While units in these vehicles are not traded on an open exchange, there is an increasingly deep secondary market that makes many of these vehicles much more liquid than the first generation of unlisted property trusts from the late 1980s and early 1990s.

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 quarterly or semi-annually. The majority of A-REITs have 'dividend reinvestment plans', which 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 holder 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 offered to retail clients implemented through the Corporations Act 2001. REITs are regulated under this legislation as managed investment schemes. They are required to be registered and, among other things, to have a responsible entity to manage the fund, to issue a 'product disclosure statement' when interests in the fund are offered for investment, and to comply with the ongoing management and disclosure requirements that apply to managed investment schemes. Unlisted property trusts offered to retail clients 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. On average, listed 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 listed A-REITs market price compared with their net tangible assets (NTAs), the balance sheet value of the underlying properties less debt in an A-REIT. As listed A-REITs have, in recent years, traded at steep discounts to NTA, this has resulted in a reasonably high level of restructures and acquisitions in this sector.

Taxation

A-REITs are generally non-tax paying entities, provided they effectively pay out all net taxable income in each income year. If they fail to do so, any retained income will be taxed in the hands of the trustee of the A-REIT at the highest marginal tax rate, including the Medicare levy. Non-resident unit holders in the A-REIT may be subject to tax on the income or capital gains paid out by the trustee to the extent that the income is Australian sourced or the capital gains are taxable capital gains (i.e., they generally relate to taxable Australian property).

A-REITS that qualify as 'managed investment trusts' (MITs) are eligible for special tax concessions. These include a concessional rate of withholding tax of 15% on distributions to investors resident in 'exchange of information' (EOI) countries (30% withholding otherwise). The government has announced that a concessional 10% withholding tax will apply to distributions from MITs to EOI country residents that only hold newly constructed (after 1 July 2012) energy efficient commercial buildings.

A-REITs generate significant tax advantages for unit holders through building and equipment depreciation allowances that reduce or defer the tax paid by unit holders, that is, accounting profit realized by the A-REIT that is sheltered from tax by depreciation can potentially be distributed to unit holders in a non-taxable form. Such distributions normally reduce the tax basis that the unit holder has in their units and, once that tax basis is reduced to nil, subsequent distributions of tax-sheltered accounting income may be taxable to the unit holder.

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Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Meters
Rental Payments	
Rents	Quoted in AUD/sqm/year (net area). Can be charged net or gross of maintenance cost
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
Security of Tenure	For the duration of the tenancy, with some landlords seeking open-ended guarantees beyond the original lease term
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 increases or rent review	Annual fixed increases with three yearly upward-only reviews to market
Service Charges, Operating Costs, Repairs & Insurance	
Responsibility for service charge/ management fee	To be paid monthly in advance Net basis - tenant will be responsible for their proportion of the total operating costs Gross basis - tenant will only be liable for any increase in outgoings above the base year
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	Offices: separately monthly lease for an additional rent Industrial: included in the lease
Responsibility for internal repairs	Tenant (a 'redecoration clause' is usually included)
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 (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
Tenant's building reinstatement responsibilities at lease-end	Reinstated to original condition

Source: Jones Lang LaSalle

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 the 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 and 99 years. Title may be transferred with the approval of His Majesty the Sultan in Council. Title may be extended on expiry of the lease term with the approval of His Majesty the Sultan in Council and the 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 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 the approval of His Majesty the Sultan in Council.
- The government may grant temporary occupation permits over state land to applicants, for licenses to occupy land for agricultural, commercial, housing or industrial purposes. These licenses 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)

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.

After reservation and approval of a proposed company name, 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 two sets of the memorandum and the 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. The registration fee is calculated on a scale based on the amount of the authorized capital of the company.

Companies may generally undertake any type of business, except those that are prohibited or restricted by licensing requirements. There may be separate licensing or approval requirements, depending on the type of business undertaken. The types of businesses that generally require a license or approval include:

- banking and finance;
- insurance and insurance agents;
- restaurants;
- retail stores;
- workshops;
- factories and manufacturing;
- security companies;
- employment agencies;
- property agents;
- motor vehicle dealers; and
- travel agents.

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

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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 that gives their names, nationality, residential address, passport numbers and occupations. Where the list includes directors who are residents of Brunei, a memorandum executed by or on behalf of the company incorporated outside Brunei that states the powers of the local directors;
- a memorandum of appointment or a power of attorney under the seal of the company incorporated outside Brunei, or on its behalf, that states the names and addresses of two or more individuals who are residents of Brunei, authorized to accept service of process and any notices on the company; and
- a notice of situation of the registered office in Brunei Darussalam.

Registration fees are calculated on the registered authorized 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 authorized to accept service;
- registered offices in and/or outside Brunei;
- its name; and
- 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.

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 2 years or more.

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; and
- 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 that has been granted a pioneer certificate will be given the pioneer incentives, provided that 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; and
- there are favorable prospects 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 manufacture 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 than 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; and
- 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 5 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 the 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.

Individuals who are residents (citizens, permanent residents or foreigners with work permits) of Brunei may be registered as owners of strata units.

Locally incorporated or registered companies and residents of Brunei Darussalam may be registered as long-term lessee of up to 60 years over an 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 residents.

Restrictions on Foreign Property Ownership

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 / acre
Agriculture	BND 5.00 / acre
Rubber	BND 5.00 / acre
Residential	BND 10.00 per 1/4 acre (outside Development Control Competent Authority ['DCCA' area), BND 50.00 per 1/4 acre (within DCCA)
Residential and minor commercial	BND 12.50 per 1/4 acre (outside DCCA), BND 62.50 per 1/4 acre (within DCCA)
Residential and commercial	BND 125.00 per 1/4 acre
Flats	BND 100.00 per 1/4 acre
Flat and commercial	BND 125.00 per 1/4 acre
Commercial	BND 150.00 per 1/4 acre
Commercial and industrial	BND 150.00 per 1/4 acre
Industrial	BND 150.00 per 1/4 acre
Institutional building	BND 62.50 per 1/4 acre
Institutional building, commercial and industrial	BND 150.00 per 1/4 acre
Hotel	BND 150.00 per 1/4 acre
Filling/petrol station	BND 125.00 per 1/4 acre
Diplomatic	BND 62.50 per 1/4 acre

Taxes on Acquisition and Transfer of Real Estate

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

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

Agreements	BND 1.00
Powers of Attorney	BND 10.00
Trust deeds	BND 10.00

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Leases	At an ad valorem rate. If the lease is for less than one year, the stamp duty is calculated at BND 3.50 for the first BND 500 of annual rent and BND 1.00 for every BND 250.00 of annual rent thereafter. If the lease is for more than one year, but less than five years, the stamp duty is calculated at BND 7.50 for the first BND 500 of annual rent and BND 2.00 for every BND 250.00 of annual rent thereafter. If the lease is for more than five years, the stamp duty is calculated at BND 14.00 for the first BND 500 of annual rent and BND 4.00 for every BND 250.00 of annual rent thereafter.
Memorandum of charge	At an ad valorem rate. For the first BND 500.00 of security created, the stamp duty is BND 1.85 and BND 1.00 for every BND 500.00 of security created hereafter.

On approval for the transfer of landed property, the stamp duty for the transfer is charged at an ad valorem rate, based on a valuation of the property by the Land Office. Stamp duty is charged at BND 5.00 for the first BND 500.00 of value and BND 1.50 for every BND 250.00 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 the country 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; and
- rents, royalties, premiums, and any other profits arising from properties.

Corporate income tax is paid at a rate of 22%. From year-end 2011, the following tax thresholds apply:

- for the first BND 100,000.00 of chargeable income, 25% shall be charged at 22%;
- for the next BND 150,000.00 of chargeable income, 50% of this shall be charged at 22%; and
- all chargeable income over BND 250,000.00 shall be charged at 22%.

For newly incorporated companies, a tax exemption will be granted for the first BND 100,000 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 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%; and
- 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;
- Malaysia;
- Oman;
- Pakistan;
- Singapore;
- Vietnam; and
- Laos.

Real Estate Investment Trusts

REITS are not commonly utilized in Brunei Darussalam.

Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Feet
Rental Payments	
Rents	BND/month, exclusive of service charge
Typical lease term	Two years or longer
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as X month's 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 increases or rent review	Every two years
Service Charges, Operating Costs, Repairs & 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	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 landlord's approval)
Tenant early termination rights	Only if a predetermination clause is provided for in the tenancy agreement
Tenant's building reinstatement responsibilities	Reinstated to original condition on expiry/termination

Source: Jones Lang LaSalle

CAMBODIA

Property Tenure/Ownership

Cambodia adopted a freehold system of land tenure under the 2001 Land Law. Private ownership of land is permissible in some types of land. Under the former laws, 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, three main types of land tenure that exist:

- Freehold: fee simple, unrestricted.
- Leasehold: long-term leaseholds (15 years or greater) create 'in rem' rights. Long-term leases exist up to 50 years, renewable once for another 50 years.
- Concessions: conditional leases granted by the government over state private land. Concessions are used 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 21 September 1993, as amended.
- The Land Law, promulgated on 30 August 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 15 February 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 27 September 2005
- Law on Expropriation, promulgated on 26 February 2010.
- Sub-decree No. 126 on the Management and Use of Co-owned Buildings, dated 12 August 2009.
- Sub-decree No. 146 on Economic Land Concession, dated 27 December 2005, as amended on 15 September 2008.
- Prakas No. 493 of the Ministry of Economy and Finance on Collection of Property Tax, dated 19 July 2010.
- Prakas No. 371 on Taxable Rate on Immovable Properties, dated 5 May 2011.
- Prakas No. 1222 on Real Estate Development Business Management, dated 15 December 2009
- Law on Providing Foreigners with Ownership Rights in Private Units of Co-owned Buildings, dated 27 May 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 29 July 2010.
- Civil Code, effective on 08 December 2007, enforceable on 21 December 2011.
- Law on the Implementation of the Civil Code, effective on 31 May 2011, enforceable on 21 December 2011.
- Sub-decree No. 86 on Construction Permit, dated 19 December 1997.
- Royal Decree on Transitional Principles and Provisions for the Transfer of Public Properties of the State and of Public Entities, dated 3 August 2006.
- Sub-decree on Rules and Procedure for Transfer of Public Properties of the State and of Public Entities, dated 27 November 2006.

Operation Requirements for Foreign Corporations

Incorporated companies established at the Ministry of Commerce (MOC) and the Council for the Development of Cambodia (CDC) for Investment Companies entitled to investment benefits:

- Subsidiary office (MOC)
- Branch office (MOC)
- Representative office (MOC)
- Qualified investment project (CDC)

Registration/Licensing Requirements

Registration is a straightforward process at the MOC (and CDC, in the case of investment companies). Most enterprises can operate with a standard MOC-issued company license. Certain sectors require specialist licenses issued by the relevant ministries (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. Workers register at the Ministry of Labor for employment permits, renewable annually. There are no limitations on the number of renewals. Companies are entitled to hire foreigners to cover up to 10% of its 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 9 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.

Projects included in the 'negative list' (as set out in the Sub-decree No. 111 on the Implementation of the Amendment to the Law on Investment 2003) are not eligible for QIP status.

On an annual basis, the CDC requires all QIPs to apply for a Certificate of Compliance 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 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 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; and
- 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 only to the 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 approximately 0.1% is levied on properties valued at over KHR 100,000,000 (equivalent to approximately USD 25,000). The tax is levied annually.
- 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.

Taxes on Acquisition and Transfer of Real Estate

A transfer tax of 4% is levied on all 'hard 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). Transfers of such properties (at the local level) do not attract a transfer tax. Only properties for which national level title deeds (commonly referred to as 'hard title') have been issued to attract a 4% transfer tax. 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 not rely on the price stated in the sale contract).

A regulation imposing a capital gains tax of 20% has been drafted, but is yet to be implemented. For the time being, all profits realized by a company (including capital gains on the sale of real estate) are taxed at the prevailing profit tax rates.

A VAT of 10% is applied on sales of buildings.

Resident enterprises are taxed on all profits derived from both inside and outside of Cambodia. Non-resident enterprises are taxed on Cambodian source income. A resident enterprise is one that has a place of management and carries on business in Cambodia.

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 nine 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.

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Other forms of withholding tax are as follows:

Payments made to resident entity are:

- 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%

Personal Taxation

Individual residents are liable to income tax/tax on salary on Cambodian and foreign source income. Non-residents are subject to income tax on Cambodian source income only.

Residents are taxed on salary after certain deductions are made for child relief. Salary taxes are levied on a graduated scale, ranging from 5% to 20%, with 20% being levied at the KHR 12,500,000 (approximately USD 3,100) upwards.

Annual Income	Rate
Up to 500,000	0%
From 500,001–1,250,000	5%
From 1,250,001–8,500,000	10%
From 8,500,001–12,500,000	15%
Over 12,500,000	20%

Tax Treaties: Avoidance of Double Taxation

Cambodia has not, as yet, entered into any tax treaties with other countries. However, foreign tax credits are available (subject to certain conditions) to resident tax payers with regard to any foreign taxes paid.

CHINA

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. 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 (revised and effective on 30 August 2007)
- PRC Land Administration Law (revised on 28 August 2004)
- Implementation Rules of PRC Land Administration Law (issued on 27 December 1998, effective on 1 January 1999, revised on 8 January 2011)
- Regulations on Administration of Development and Operations of Urban Real Estate (issued and effective on 20 July 1998, revised on 8 January 2011)
- Opinions for Regulating the Access by and Administration on Foreign Investment in the Real Estate Market (issued and effective on 11 July 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
- Urban Real Estate Management Law of PRC (revised in August 2007)
- Land Management Law of PRC (revised on 28 August 2004) (issued and effective on 19 May 1990)
- Measures on Administration of Foreign Investment on Development of Land (issued on 19 May 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 Catalogue of Prohibited Uses of Land and the Catalogue of Restricted Uses of Land on 12 December 2006. This completely prohibited the use of land for real property development of villas and golf courses. Such catalogues 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 70% of the property value for second-hand transactions, and up to 80% for new developments. 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 1 June 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.

CHINA

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 Catalogue (the Catalogue) has recently been jointly revised and promulgated by the NDRC and MOFCOM on 24 December 2011, with the construction and operation of villas being moved from the category of 'restricted' in the Catalogue (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 17 February 2012 that stipulated more specific rules and stricter standards on floor area ratios to impose stricter control on development of real property.

Operational Requirements for Foreign Corporations

Office

Modes of Entry

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

Registration/Licensing Requirements

- Foreign Investment Enterprises
  - Initial approval of proposal, contract and articles of association – MOFCOM.
  - Name registration - Municipal Administrative Bureau for Industry and Commerce (AIC).
  - Business registration – AIC.

The following documents should be presented:

- application form;
- certificate of name registration;
- approval certificate;
- contract, articles of association and feasibility report and their approvals by MOFCOM;
- capital credit document;
- 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; and
- power of attorney issued by the investor to the relevant attorney for the registration process.
- 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;
- a written application signed by the chairman of directors or the general manager of the enterprise, containing the following details: name of the office, resident members (chief representative, representatives), scope of business, term of residence and office address;
- approval certificate;
- copies of a legitimate certificate for operation 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; and
- office premises lease contract and copy of deeds to property.
- 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; and
- capital credit certificate issued by the bank with which the foreign partner does business.

Retail Trade

After entry into the World Trade Organization (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. To set up a retail entity, the minimum paid-in capital requirement is RMB 300,000. The required amount for a wholesale business is RMB 500,000.

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 are 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 categorization of foreign investment projects is regularly reviewed. The recently updated Catalogue, made effective from 30 January 2012, had made significant changes to the existing former version. Although the new Catalogue has not been put into force yet, it demonstrates the likely trend for restrictions being lifted in certain industries and being imposed in a small number of cases.

Foreign investment incentives are more readily available and more wide ranging in 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.

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 mid-term, 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 1 December 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 non-business purposes.

Real estate tax is levied as follows:

- for owner-occupied properties in Shanghai, real estate tax is levied at 1.2% of 80% of the original value of the property. In Beijing and Guangzhou, it is 1.2% of 70% of the original value;

- for leased properties in Shanghai, Beijing and Guangzhou, real estate tax is levied at 12% of rent for both foreign and local companies; and
- for leased properties without rental income, real estate tax is levied at 1.2% of the annual value.

However, 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.

In Shanghai, the applicable tax rates are from 0.4% to 0.6% of the assessed market value of the real property. The rates in Chongqing are from 0.5% to 1.2%. However, the property taxes imposed on foreign-invested enterprises and foreign individuals is a different rate applying to all owned property—from 1 January 2009, this is at the rate of 1.2%.

Land Use Tax

Land use tax is levied on Land Use Right holders and is charged at rates ranging from RMB 1.50 per square meter (psm) per annum to RMB 30 psm 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, business 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: 5% comprehensive.
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5-30.0 psm) + business tax (5% of rental income) + city maintenance and construction tax (7% of business tax) + education fee supplement (3% of business 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 1.5-30.0 psm) + business tax (5% of rental income) + city maintenance and construction tax (7% of business tax) + education fee supplement (5% of business tax)+ stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).
- Guangzhou

		Monthly rental < RMB 1,000	Monthly rental between RMB 1,000 (inclusive) and RMB 2,000	Monthly rental ≥ RMB 2,000 (inclusive)
PRC national		4%	8%	10%
Foreign individual	Non-tax-free property	4%	7.7%	9.7%
	Tax-free property	0%	3.7%	5.7%

Non-residential property

- Beijing
  - Leased by an individual landlord:

    Monthly rental < RMB 5,000: 12% comprehensive

    Monthly rental ≥ RMB 5,000: 7% comprehensive.
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5-30.0 psm) + business tax (5% of rental income) + city maintenance and construction tax (7% of business tax) + education fee supplement (3% of business tax) + 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 + business tax (5% of rental income) + city maintenance and construction tax (1% to 7% of business tax) + education fee supplement (5% of business tax) + stamp tax (0.1% of rental income) + individual income tax (20% of the income from property leasing, deducted of certain amount).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.5-30.0 psm)+ business tax (5% of rental income) + city maintenance and construction tax (1% to 7% of business tax) + education fee supplement (5% of business tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).
- Guangzhou

		Monthly rental < RMB 1,000	Monthly rental higher than RMB 1,000 (inclusive)
PRC national		10.7%	14%
Foreign individual	Non-tax-free property	10.7%	14%
	Tax-free property	2.7%	6%

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.

Registration fees for mortgage contracts are charged at RMB 80 per set for a residential property and RMB 550 per set for a non-residential property.

Deed Tax

Deed tax is levied on purchasers of real properties at the rate of 3% to 5%, determined by the local government at the provincial level. However, from 1 October 2010, for those who purchase a sole property for family occupation, the deed tax will be reduced to half of the original rate. If the area of the property is under 90 sqm, the deed tax will be levied at the rate of 1%.

Business Tax

Business tax is levied at 5% on gross rental income for property leases and 5% on profit for property sales.

From 28 January 2011, if an individual sells a residential property that has been owned for less than five years, the individual shall pay the business tax in full amount. If an individual sells a non-ordinary residential property that has been owned for more than five years (inclusive), the individual shall pay a business tax based on the balance of its sale proceeds, after deduction of the price of the property. If an individual sells an ordinary residential property that has been procured for more than five years (inclusive), then the business 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 business tax, depending on the location of the taxpayer. The highest rate is applicable to downtown locations. From 1 December 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% and 60% 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, the land development cost, the construction cost, the interest, the business tax, the stamp duty and the assessed value of old houses or buildings. A property developer may deduct 120% 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% 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 new 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.

CHINA

Personal Taxation

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

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

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

Monthly Taxable Income*	IIT Rate	Deduction
Up to RMB 1,500	3%	–
RMB 1,501–RMB 4,500	10%	RMB 105
RMB 4,501–RMB 9,000	20%	RMB 555
RMB 9,001–RMB 35,000	25%	RMB 1,005
RMB 35,001–RMB 55,000	30%	RMB 2,755
RMB 55,001–RMB 80,000	35%	RMB 5,505
Over RMB 80,000	45%	RMB 13,505

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

Tax Treaties: Avoidance of Double Taxation

Treaties in existence:

Albania
Algeria
Armenia
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Brazil
Brunei
Bulgaria
Canada
Croatia
Cuba
Cyprus
Czech
Denmark
Egypt
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Jamaica
Japan
Kazakhstan
Korea
Kuwait
Kyrgyzstan
Laos
Latvia
Lithuania
Luxembourg
Macedonia
Malaysia
Malta
Mauritius
Mexico
Moldova
Mongolia
Montenegro
Morocco
The Netherlands
New Zealand
Nigeria
Norway
Oman
Pakistan
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Romania
Russia
Saudi Arabia
Serbia
Seychelles
Singapore
Slovenia
Slovakia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Tajikistan
Thailand
Trinidad and Tobago
Tunis
Turkey
Turkmenistan
UK
USA
Ukraine
United Arab Emirates
Uzbekistan
Venezuela
Vietnam

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.

Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Meters
Rental Payments	
Rents	Beijing: RMB per sqm of gross space per month Shanghai: RMB per sqm of gross space per day Tier Two Cities: RMB per sqm of gross space per month or day depending on the property
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
Frequency of rent increases 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 & 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
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Usually 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 with or without reasonable penalty amount
Tenant's building reinstatement responsibilities at lease end	Original condition, allowing for wear and tear

Source: Jones Lang LaSalle

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Property Tenure/Ownership

Hong Kong is a Special Administrative Region of the People's Republic of China (HKSAR). All land belongs to the government, and land tenure is on a renewable leasehold basis. St. John's Cathedral is the only freehold property in Hong Kong.

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. In the past, they have been granted for periods of 75, 99 or 999 years, with or without the right of renewal. Government leases are now granted for periods of 50 years.

A common practice is to sell a strata-title interest in a multi storey 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 are generally for two to three years, although market practice has become more flexible recently.

Major Property Legislation

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

Operational Requirements for Foreign Corporations

Modes of Entry

There are five main modes of entry:

- Sole proprietorship or partnership
- Private or public limited company
- Shell company
- Public company
- Branch office

Registration/Licensing Requirements

All companies 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.

Manufacturers are required to obtain Certificates of Origin (CO) from the Trade and Industry Department or one of the following government-approved certification organizations:

- The Hong Kong General Chamber of Commerce
- The Indian Chamber of Commerce, Hong Kong
- The Federation of Hong Kong Industries
- The Chinese Manufacturer's Association of Hong Kong
- The Chinese General Chamber of Commerce

Foreign Employment Limitations

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

Foreign Investment Incentives

There are no specific foreign investment incentives.

Effective October 2003, the government allows foreign investors who have a minimum investment of HKD 10 million (originally HKD 6.5 million, which has been raised to HKD 10 million since 14 October 2010) in permissible investment assets in HKSAR to settle in HKSAR, with their dependents as capital investment entrants. Prospective applicants may choose from a number of investments. Real estate is suspended as a class of permissible investment assets, with effect from 14 October 2010. The new policy will apply to foreign nationals, Macau SAR residents and residents of Taiwan. Owing to foreign-exchange controls, the new policy will not apply to residents of Mainland China without permanent residence overseas.

Restrictions on Foreign Property Ownership

None.

Foreign Exchange Controls

None.

Taxes on Possession and Operation of Real Estate

Government Rent

Government rent is charged annually at 3% of the rateable value of the property. In general, the following types of properties are liable for government rent:

- properties in the New Territories and New Kowloon north of Boundary Street;
- properties with land leases granted on or after 27 May 1985; and
- properties with their non renewable land leases extended on or after 27 May 1985 at a government rent payable at 3% of the rateable value of the lot from time to time.

Rates

Rates are payable at a percentage of the rateable value of the property. The percentage is 5% for financial year 2012–2013. Rateable value 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. The rateable value of all properties is reviewed annually.

Property Tax

Property tax is levied on owners of property situated in HKSAR 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. For property tax purposes, a flat rate of 20% 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 purchaser. Stamp duty for year 2012/2013 is assessed as follows:

CONSIDERATION (HKD)		
Exceeds	**Does Not Exceed**	**Rate***
–	$2,000,000	$100
$2,000,000	$2,351,760	$100 + 10% of excess over $2,000,000
$2,351,760	$3,000,000	1.5%
$3,000,000	$3,290,320	$45,000 + 10% of excess over $3,000,000
$3,290,320	$4,000,000	2.25%
$4,000,000	$4,428,570	$90,000 + 10% of excess over of $4,000,000
$4,428,570	$6,000,000	3%
$6,000,000	$6,720,000	$180,000 + 10% of excess over of $6,000,000
$6,720,000	$20,000,000	3.75%
$20,000,000	$21,739,120	$750,000 +10% of excess over of 20,000,000
$21,739,120	-	4.25%

**Subject to marginal relief*

Stamp duty is also payable on leasing transactions, with the rate dependent on the rent payable and lease term. Stamp duty on a lease transaction is normally borne equally by the landlord and the tenant.

It is usual practice for each party to bear its own legal costs in a property transaction. Fees are based on a standard fee scale.

Special Stamp Duty

Special Stamp Duty (SSD) is imposed on transactions of residential properties of all values if the property is acquired by the vendor on or after 20 November 2010 and resold within 24 or 36 months after acquisition.

The 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:

If the property was acquired between 20 November 2010 and 26 October 2012:

- 15% if the vendor has held the property for six months or less;
- 10% if the vendor has held the property for more than six months but for 12 months or less; and
- 5% if the vendor has held the property for more than 12 months but for 24 months or less.

If the property was acquired on or after 27 October 2012:

- 20% if the vendor has held the property for six months or less;
- 15% if the vendor has held the property for more than six months but for 12 months or less; and

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- 10% if the vendor has held the property for more than 12 months but for 36 months or less.

Buyer's Stamp Duty

Effective on 27 October 2012, unless one of the proposed exemptions is applicable to the transaction, a Buyer's Stamp Duty (BSD) at 15% of the market value or full stated consideration of the property (whichever is higher) is payable on top of the current ad valorem stamp duty and SSD (where applicable) if a residential property is acquired by any person (including limited company), except if he or she is a Hong Kong permanent resident.

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 Buildings Allowances on Industrial Buildings and Structures
  - Initial allowance - 20% on the cost of construction of the premises
  - Annual allowance - 4% on the cost of construction of the premises
  - Balancing allowance or charge will be due upon disposal of the premises
- Commercial Building Allowances on Commercial Buildings and Structures
  - Annual allowance - 4% on the cost of construction of the premises
  - Balancing allowance or charge will be due upon disposal of the premises
- Plant and Machinery
  - Initial allowance - 60% on the cost
  - Annual allowance - at rates of 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 is available only on cessation of a business to which there is no successor

Corporate Taxation

Incorporated entities are subject to annual profits tax at a flat rate of 16.5% for year 2008/2009 onwards. Un-incorporated entities are taxed at 15% for year 2008/2009 onwards.

Net losses may be carried forward indefinitely. Capital expenditure on refurbishment and renovation of business premises may be amortized over a period of five years, based on a 20% straight-line annual write-off. There is a 100% write-off for new expenditure on plant and machinery specifically related to manufacturing, and on computer hardware and software that are owned by end-users. With effect from year 2008/2009:

- specified capital expenditure on environmental protection machinery is allowed a full deduction of that expenditure during the year in which the expenditure is incurred; and
- while specified capital expenditure on environmental protection installation is allowed to deduct 20% of that expenditure in each of the five consecutive years commencing from the year in which the expenditure is incurred.

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 less than 60 days within a year of assessment are not subject to salary tax. Owner-occupiers are allowed to deduct interest payments from taxable income up to a maximum of HKD 100,000 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:

Austria
Belgium
Brunei
China (arrangement for avoidance of double taxation)
Czech Republic
France
Hungary
Indonesia
Ireland
Japan
Jersey
Kuwait
Liechtenstein
Luxembourg
Malaysia
Malta
Mexico
The Netherlands
New Zealand
Portugal
Spain
Switzerland
Thailand
United Kingdom
Vietnam

- 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% for year 2008/2009 onwards)

Tax Treaties

Avoidance of Double Taxation (including countries granting relief on income not restricted to airline/shipping income, as well as countries that have signed the treaties with SAR, but not yet come into force)

Real Estate Investment Trusts

Introduction

The Securities and Futures Commission (SFC) published the revised Code on Real Estate Investment Trusts (REITs) in June 2010. 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.

Restrictions

1. Geographical Limitations
   - With effect from June 2005, SFC-authorized REITs are allowed to invest in overseas properties in accordance with the provisions of the Code and Practice Note issued by the SFC.
2. Business Scope
   - A REIT may acquire uncompleted units in a building, but the aggregate contract value of such real estate shall not exceed 10% of the REIT's total net asset value at the time of acquisition.
   - No investment in vacant land or property development activities 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% of the REIT's non-cash assets shall be invested in such type of real estate.
3. Gearing
   - A REIT may borrow for the purpose of financing investments or operations, but aggregate gearing shall not exceed 45% of its total gross asset value.
4. Dividends
   - A REIT shall distribute to unit holders as dividends each year an amount not less than 90% of its audited annual net income after tax.

Taxation

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

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Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	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)	2-3 months (gross rent)
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 increases or rent review	At lease renewal or every three years in longer leases
Service Charges, Operating Costs, Repairs & Insurance	
Responsibility for service charge/ management fee	Monthly in advance
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 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)	Usually landlord responsible, 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	Landlord, but costs charged back to tenant via service charge
Disposal of Leases	
Tenant subleasing & assignment rights	Subletting up to 30% of acquired space is generally possible, particularly for larger occupiers
Tenant early termination rights	Only by break clause
Tenant's building reinstatement responsibilities at lease end	Original condition

Source: Jones Lang LaSalle

Property Tenure/Ownership

There are mainly two types of real estate:

- Freehold title
- Leasehold title

Major Property Central Legislation

- Urban Land (Ceiling and Regulation) Act 1976 - This Act, which was a key impediment to the consolidation of land for private development in urban areas, has been repealed by almost all states, enabling the development of land parcels, above 500 sqm, in cities like Delhi, Mumbai, Bangalore and Chennai.
- Transfer of Property Act 1882
- Registration Act 1908
- Forest (Conservation) Act 1980
- Land Acquisition Act 1894
- Slum Areas (Improvement and Clearance) Act 1956
- Benami Transactions (Prohibition) Act 1988
- Indian Stamp Act 1989
- Special Economic Zones Act 2005
- Various other legislation applicable to real estate, particularly construction activities such as environmental laws and state legislation where the land is situated (such as master plan, zonal plan, fire safety laws and electricity laws) and labor laws.

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 Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations 2000 and the (Indian) Companies Act 1956, 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 office of foreign entities in India are:
  - No person, being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, can establish in India a branch/ liaison /project office without the prior permission of the Reserve Bank of India (RBI).
  - Partnership/proprietary concerns set up abroad are not allowed to establish a branch/liaison/project office in India.
  - Branch/project offices of a foreign entity, but not liaison offices, are permitted to acquire property for their own use and to carry out permitted activities. Branch/project offices cannot acquire real estate solely for leasing or renting the real estate.

Foreign companies have to be registered with the Registrar of Companies (ROC) within 30 days of setting up a place of business in India as an Indian company under the (Indian) Companies Act 1956 through:

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

Foreign equity investment in Indian companies can be up to 100%, depending on the Foreign Direct Investment (FDI) Policy. The 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.

Registration/Filing Requirements

While no approvals/registrations are required in case of investments made under the 'automatic route', prior approval of the Foreign Investment Promotion Board (FIPB) is required where the investment falls under the government approval route.

Irrespective of the route under which the investment has been made, post-investment filings have to be made with the RBI.

Apart from the above-mentioned approvals and filings, additional 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 are required from state governmental bodies and 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 Foreign Resident Registration Office in the Ministry of Home Affairs within two weeks of their arrival in India if:

- they intend to stay in India for a period of 180 days or more; or
- the duration of the visa issued to them is six months or more.

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

Foreign nationals that 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 may come through 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 fulfillment of prescribed parameters. Under the 'automatic route', the Indian company, having received FDI, needs to inform the RBI within 30 days of receipt of inward remittances and file the required documents within 30 days from the date of issue of shares.
- 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 FIPB/SIA is required.

The government allows FDI of between 26% and 100% in the following sectors, but FIPB:

- Agriculture and animal husbandry
  - floriculture, horticulture, development of seeds, animal husbandry, pisiculture, aquaculture and cultivation of vegetables and mushrooms
  - tea sector, including tea plantations
- Mining
  - mining and exploration of metal and non-metal ores
  - coal and lignite
  - petroleum and natural gas sector,
- Manufacturing
  - alcohol (distillation and brewing), coffee and rubber processing and warehousing, hazardous chemicals and industrial explosives
  - defense
- Information services
  - broadcasting
  - print media
- Power
  - generation, transmission, distribution and trading
- Civil Aviation
  - airport
  - air transport services and other services (such as ground handling services, maintenance and repair organizations, and flying training institutes)
- Courier services
- Construction development: Townships, housing, built-up infrastructure
  - townships, housing, built-up infrastructure and construction development projects (including housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, and city-level and regional-level infrastructure),
  - industrial parks
- Satellites
  - establishment and operation
- Private security agencies
- Telecommunication
  - telecom services
  - ISP with gateways
- Trading
  - cash and carry wholesale trading
  - e-commerce activities
  - retail (single and multi brand)
  - test marketing
  - storage and warehouse services
- Asset reconstruction companies
- Banking (private sector)
- Commodity exchanges
- Credit information companies
- Infrastructure companies in securities markets
- Insurance
- Non banking finance companies
  - venture capital
- Pharmaceuticals

[1]Pakistan nationals are required to register within 24 hours.

Certain other special 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 businesses, including government/private lottery, online lotteries, etc;
- Gambling/betting, including casinos, etc;
- Business of chit fund;
- Nidhi company;
- Trading in transferable development rights;
- Real estate business or construction of farm houses;
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, tobacco or tobacco substitutes; and
- Activities/sectors not opened to private sector investment, e.g., atomic energy and railway transport.

'Real estate business' means dealing in land and immovable property with a view to earning profit or earning income 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 and townships.

Continued Liberalization - Real Estate

The government has allowed FDI of up to 100% in townships, housing, built-up infrastructure and construction-development projects (which would be inclusive of, but not restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, and city-level and regional-level infrastructure). Some of the key conditions to be satisfied are as follows:

- Minimum area to be developed under each project:
  - For construction-development projects (which could be of any nature and not limited to office buildings, residential projects, IT/business parks, shopping centers, industrial/logistics and warehousing facilities, hotels or serviced apartments), the minimum built-up area is 50,000 sqm.
  - For development of serviced housing plots (i.e., where only individual plots of land with supporting infrastructure such as roads and utility connections are sold to individual occupiers within a large development), the minimum land area is 10 ha.
  - In the case of a project combining elements of both of these categories, the investor would be required to meet any one of the two criteria above.
- The investment would further be subject to the following conditions:
  - Minimum capitalization is USD 10 million for wholly owned subsidiaries and USD 5 million for joint ventures with Indian partners. The funds have to be brought in within six months of commencement of business of the company.
  - The original investment cannot be repatriated before three years after meeting the minimum capitalization rule. However, the investor may be permitted to exit earlier with prior approval of the government through the FIPB.
- At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances.
- The foreign investor would not be permitted to sell or trade in undeveloped plots or raw land. 'Undeveloped plots' refer to those where roads, water supply, street lighting, drainage, sewerage and other such conveniences have not been made available. It will be necessary for the investor to provide this infrastructure and obtain the completion certificate from the relevant local body/ service agency before the disposal of plots. This measure is intended to discourage speculative investment and trading of land without any development or any value addition.
- 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 state government or the municipal/local body concerned in individual cities. This essentially means that it is the state governments and municipal bodies that would be approving such projects, while the central government's role would be limited to policy-level issues.

Special tax incentive packages have also been developed for developers in special economic zones (SEZs) and for companies operating from the SEZs.

Restrictions on Property Ownership

The general provisions with respect to the purchase/sale of immovable property by foreign corporate bodies or individuals are set out in the Foreign Exchange Management Act 1999 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000. Unless covered under the 'automatic route' under these regulations, the permission of the RBI is required before the purchase/sale of immovable property by foreign corporate bodies or individuals.

A resident outside India who is established in India, in accordance with the Foreign Exchange Management (Establishment in India of

Branch or Office or other Place of Business) Regulations 2000, as a branch office or other place of business for carrying on in India any activity (excluding a liaison office) 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. 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 or resident outside India cannot purchase any immovable property in India unless such property is acquired by way of an inheritance from a person who was a resident in India. A foreign national resident in India can purchase immovable property in India.

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 Foreign Exchange Management Act 1999 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 ratable value (RV) of the property. Calculation of RV 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 finalized according to the zones. The Municipal Corporation of Greater Mumbai has proposed the capital value-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:

Legal costs are borne by each party involved. Legal fees in India range between INR 3,000 and INR 10,000 per hour.

City	Stamp Duty	Registration Charge
Delhi	6% (with municipal levies) (men) 4% (with municipal levies) (women)	1%
Mumbai	5% (urban)	1% (subject to maximum of INR 30,000)
Bangalore	6%	1%
Chennai	8% (including local surcharge	1%

Capital Gains Tax

Gains on the sale of capital assets held for three years or more (or 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 three years (or one year for equity and preference shares or other listed securities).

Indirect Taxes

Excise duty is imposed on good manufactured in India.

The standard rate of excise duty in India is 12%. To avoid the cascading effect of excise duty, CENVAT credit is available on earlier amounts of excise duty paid on input raw materials and plant or machinery used in making a product.

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

With effect from 1 April 2005, the state sales tax (levies on the sale of a commodity that is produced or imported and sold for the first time) has been replaced by the value-added tax (VAT) in all states. VAT is for different commodities and varies from state to state.

Expenditure tax is levied at a rate of 10% on any expense incurred at luxury hotels. In addition, a luxury tax of up to 15% is levied on the cost of a room in a luxury hotel. This tax varies from state to state and is according to the room rent charges.

Service tax at a rate of 12.36% on usage charges is levied on certain services, including:

- telephone;
- insurance (other than life insurance);
- real estate and stock broking;
- pipeline transport of goods;

- site formation, demolition, and similar services;
- membership of clubs and associations;
- packaging and specialized mailing services;
- survey and map-making services;
- dredging services in rivers and harbors;
- cleaning services for commercial buildings and similar premises;
- construction of planned residential complexes with more than 12 dwelling units, developed by builders;
- legal consultancy services (not including court appearances), applicable where parties are not individuals;
- health service undertaken by hospitals or medical establishments;
- electricity exchange services; and
- services provided by builder in relation to preferential location, internal/external developments, etc.

Corporate Taxation

The rates of corporate taxation for the financial year 2012–2013 are as follows:

Category	Rate (excluding cess)
Domestic company	30% plus 5% surcharge if net income exceeds INR 1 crore
Foreign company	
- Royalty and fees for technical services	10% of gross income
- Other income	40% plus 2% surcharge, if net income exceeds INR 1 crore

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.
- Deduction of profit of new industrial undertakings in Jammu and Kashmir (sector-specific strategy) of 100% for the first five years and 30% for the subsequent five years.
- 100% deduction of profits for companies carrying out scientific research and development, as approved by the Department of Scientific and Industrial Research.

Tax Depreciation

Depreciation allowances vary according to the types of asset:

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

Personal Taxation

Income tax rates for Indian nationals and expatriate residents are:

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

Net Income Range	Income tax rates (excluding cess)
Up to INR 250,000	NIL
INR 250,000 to INR 500,000	10% of total income exceeding INR 250,000
INR 500,001 to INR 1,000,000	INR 25,000 + 20% on total income exceeding INR 500,000
Above INR 1,000,000	INR 125,000 + 30% of total income exceeding INR 1,000,000

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

Net Income Range	Income tax rates (excluding cess)
Up to INR 500,000	NIL
INR 500,001 to INR 1,000,000	20% of total income exceeding INR 500,000
Above INR 1,000,000	INR 100,000 + 30% of total income exceeding INR 1,000,000

- For any other individual, every HUF/AOP/BOI/artificial juridical person:

Net Income Range	Income tax rates (excluding cess)
Up to INR 200,000	NIL
INR 200,001 to INR 500,000	10% of total income minus INR 200,000
INR 500,001 to INR 1,000,000	INR 30,000 + 20% of total income minus INR 500,000
Above INR 1,000,000	INR 130,000 + 30% of total income minus INR 1,000,000

A deduction in total income with regard to investment made by individuals/HUF is limited to INR 100,000. 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; and
- deduction of person with disability.

Tax Treaties: Avoidance of Double Taxation

Comprehensive tax treaties are in existence in the following countries:

Armenia	Montenegro
Australia	Morocco
Austria	Mozambique
Bangladesh	Myanmar
Belarus	Namibia
Belgium	Nepal
Botswana	Netherlands
Brazil	New Zealand
Bulgaria	Norway
Canada	Oman
China	Philippines
Cyprus	Poland
Czech Republic	Portugal
Denmark	Qatar
Egypt	Romania
Estonia	Russia
Finland	Saudi Arabia
France	Serbia
Georgia	Singapore
Germany	Slovenia
Greece	South Africa
Hashemite Kingdom of Jordan	Spain
Hungary	Sri Lanka
Iceland	Sudan
Indonesia	Sweden
Ireland	Switzerland
Israel	Syria
Italy	Tajikistan
Japan	Tanzania
Kazakstan	Thailand
Kenya	Trinidad and Tobago
Korea	Turkey
Kuwait	Turkmenistan
Kyrgyz Republic	United Arab Emirates
Libya	United Arab Republic
Lithuania	Uganda
Luxemburg	United Kingdom
Malaysia	Ukraine
Malta	United States of America
Mauritius	Uzbekistan
Mexico	Vietnam
Mongolia	Zambia

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 shall be closed-end funds, and its units shall be listed on a recognized stock exchange. The net asset value shall be declared at the close of each business day.
- Title deeds pertaining to the real estate assets shall 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.

Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Feet
Rental Payments	
Rents	Rupees per sq ft per month Tier I cities: Rent quoted is exclusive of 12.36% service tax. Tier II cities: Rent quoted is inclusive of taxes in the 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 renewal?	Tier I cities: Right to renewal 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 three years
Frequency of rent increases or rent review	Every three years
Service Charges, Operating Costs, Repairs & 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 is 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 micromarkets, e.g., one bay per 2,000 sq ft in the CBD, one bay per 1,000 sq ft or one bay per 1,250 sq ft in peripherals. 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 (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

Source: Jones Lang LaSalle

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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 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 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.
   - 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 for 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 for renewal.
   - Can be held directly by Indonesian entities or 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 the 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 owner 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 foreign-owned companies and 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 buildings or trade centers. The validity period depends on the expiry date of the land right of the plot on which the building is constructed.

Major Property Legislation

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

Regional Autonomy

Law No. 22 of 1999 on regional autonomy (subsequently substituted by Law No. 32 of 2004 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 1 January 2001.

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)
- Branch office
- Representative office
- Regional representative office

Registration/Licensing Requirements

- Foreign joint venture company
  - registration with the Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal, or BKPM);
  - location permit (Ijin Lokasi) from the relevant regional authority;
  - articles of association ratification from the Ministry of Law and Human Rights; and
  - construction and construction consulting companies should be registered under, and obtain a license from, the Ministry of Public Works.
- Representative Office
  - trading representative offices should obtain licenses from the Ministry of Trade;
  - oil and gas representative offices should obtain a license from the Ministry of Energy and Mineral Resources; and
  - there is also a general representative office established under the BKPM for general activities.

Foreign Employment Limitations

Expatriates are allowed to hold positions where qualified Indonesian nationals are not available, and subject to the condition that such a position is open for expatriates, provided there is gradual Indonesianization of these positions.

Approval of the manpower utilization plan by the Investment Coordinating Board and/or appropriate ministry is required. Foreign employees must obtain an entry/exit permit for entering/leaving the country and a police certificate card.

All expatriate residents in Indonesia are required to register with the Indonesian Tax Office and file personal income tax returns on a worldwide basis.

Retail Trade

Government Regulations No.15/1998 and 16/1998 (amending various preceding regulations) were issued in January 1998 to allow foreign investors in the manufacturing sector to set up retail 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 the Capital Investment Coordinating Board 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, and 10% dividend withholding tax for non-resident shareholders, if required; and

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- a 'tax holiday' of up to ten years has recently been introduced for investments over IDR 1 trillion (USD 120 million) for five designated business sectors. Further developments and details are awaited.

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. 41/1996 issued in June 1996, 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 subsidized houses on land with Right of Use title;
- strata-titled apartment units on land with Right of Use title; and
- vacant land with Right of Use title or other land use agreements with the land title holder, and build a house on the land.

The Indonesian government is currently reviewing the 1996 Government Regulation, with a view to possibly opening up the ability for foreign individuals to hold a Right of Use (Hak Pakai) title for a longer period of time (i.e., for 95 years and extendable), although it may be restricted to properties valued over a certain threshold. Whether these changes are implemented remains to be seen.

Foreign Exchange Controls

Generally, there are no foreign exchange controls, but foreign loans should be reported to the Central Bank of Indonesia.

Taxes on Possession and Operation of Real Estate

Property Tax

The property tax (PBB) rate on land and buildings is 0.5%, with the actual tax calculated against the taxable sale value (NJKP) of the property. The NJKP is a fixed proportion of the sale value of the property (NJOP), which is determined by the Directorate General of Tax (DGT) on behalf of the Ministry of Finance on average every one to three years. NJKP is currently 20% for NJOP of up to IDR 1 billion or 40% for NJOP above IDR 1 billion. As a result, the effective PBB rates are 0.1% of the assessed value for land and building worth up to IDR 1 billion, and 0.2% of the assessed value for land and buildings worth more than IDR 1 billion. The non-taxable thresholds of property are stipulated by each regional government. For example, in Jakarta, it is IDR 60 million.

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.

PBB is payable annually following assessment by the DGT.

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:

Value	Duty Payable
Up to IDR 250,000	Nil
IDR 250,001–1,000,000	IDR 3,000
Over IDR 1,000,000	IDR 6,000

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 maximum threshold currently is IDR 60 million. For acquisitions by inheritance, the non-taxable property value is stipulated by the regional authorities, but may not exceed IDR 300 million.

The non-taxable threshold amount for BPHTB varies by region and the maximum threshold currently is IDR 60 million. For acquisitions by inheritance, the non-taxable property value is stipulated by the regional authorities but may not exceed IDR 300 million.

Capital Gains Tax

1. Land and Building Transfers

- A 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 taxpayers engaged in property development business, the tax rate is 1%.
- The 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 five years of revaluation. 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. 'Luxury houses' include condominiums with a unit size of more than 150 sqm and landed houses with a building size of above 400 sqm or electricity of above 6,600 watt.

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 amortized 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 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. 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.

Losses may be carried forward for five years. For certain categories 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.

Personal Taxation

Residents (i.e., 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	5%
IDR 50,000,001–250,000,000	15%
IDR 250,000,001–500,000,000	25%
Over IDR 500,000,000	30%

Non residents are taxed at 20% of gross income derived in Indonesia.

INDONESIA

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

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).

A REIF 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 REIF can invest its fund in a special purpose company, established specifically to achieve the REIFs' investment purpose. REIFs are regulated by the Capital Market Supervisory Board (Badan Pengawas Pasar Modal – Lembaga Keuangan – BAPEPAM-LK). According to BAPEPAM-LK, there are currently no REIFs established in Indonesia.

Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Meters
Rental Payments	
Rents	RP/sqm/month, except for grade A buildings, where rents are quoted in USD. 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
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 increases or rent review	At lease renewal or 3 yearly in longer leases
Service Charges, Operating Costs, Repairs & 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 annually in advance
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: Jones Lang LaSalle

JAPAN

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
A 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 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 the 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 juekikien) 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 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, but 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 its 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 or more; and
- 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. One or more of the directors with representative capacity shall be a resident in Japan.

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 its 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 of Japan.

Establishment of a branch office in Japan is also subject to the notification or report 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 payment in or out of Japan requires 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 non resident, who is registered as owner of the fixed asset in the tax register book as of 1 January 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 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 to JPY 600,000.

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 non residential buildings).

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
5 years or less	Income tax: 30% Residential tax: 9%
Over 5 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 which is 10% for properties held for five years or less and 5% for properties held for over five years. A special law provides that until 31 December 2013, the capital gains tax does not apply to corporations.

JAPAN

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 non-taxable, subject to consumption tax. Sale or lease of land and lease of residential buildings are deemed non taxable. The consumption tax rate is currently 5% (a national consumption tax rate of 4% and a local consumption tax rate of 1%).

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.

As from 1 April 2012, the corporate tax rate is 25.5%, compared to the previous year of 30%. There is also a 10% surtax to the corporate tax rate that applies until 31 March 2015, resulting in a corporate tax rate of 28.05%.

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

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:

- Non-permanent Resident
  - A non permanent resident is a resident who does not have Japanese nationality and has had his/her domicile or residence consistently in Japan for less than five years in the last ten years.
  - A non permanent 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 non-permanent 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.

Non-resident

- A non-resident is an individual other than residents, including a temporary visitor, who stays in Japan for less than a year.
- A non-resident 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 1 January each year is not subject to individual inhabitant tax for such year.

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 as of end-April 2012:

Armenia
Australia
Austria
Azerbaijan
Bahamas
Bermuda Islands
Bangladesh
Belarus
Belgium
Guernsey (not yet in effect)
Brazil
Brunei Darussalam
Bulgaria
Cayman Islands
Canada
China
Czech Republic
Denmark
Egypt
Fiji Islands
Finland
France
Georgia
Germany
Hong Kong
Portugal (not yet in effect)
Hungary
India
Indonesia
Ireland
Israel
Italy
Kazakhstan
Jersey (not yet in effect)
Kuwait (not yet in effect)
Kyrgyzstan
Luxembourg
Malaysia

Mexico
Moldova
The Netherlands
New Zealand
Norway
Pakistan
Philippines
Poland
Romania
Russia
Saudi Arabia
Singapore
Slovakia
South Africa
South Korea
Spain
Sri Lanka
Sweden
Switzerland
Tajikistan
Thailand
Turkey
Turkmenistan
The Isle of Man
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 (the '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 Operator under the Financial Instruments and Exchange Act ('FIEA').

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, while the minimum amount of net assets regularly held by an investment corporation shall be JPY 50 million.
- 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 or more;
  - the total assets shall be JPY 5 billion or more; and
  - the net assets per investment security shall be at least JPY 50,000.
- 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; and
- 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; and

- 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; and
- 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;
- 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 unit holders as dividends for each fiscal period; and
- 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, to 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; and
- applicable real property acquisition tax levied on the acquisition.

Common Terms of Lease/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 possibility of renewals. Fixed term leases: 3-5 years, but can be longer.
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x month's 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 increases 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 & 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: Jones Lang LaSalle

LAOS

Property Tenure/Ownership

Property legislation and the Constitution of the Lao People's Democratic Republic (Lao PDR) provides that land is owned by the 'national community'—it is impossible for any individual or entity, Lao or foreign, to 'own' land. Rather, individuals and entities can be granted 'land use rights' that are akin to freehold ownership or 'usufructs', a civil law concept granting long-term rights to use land for productive activities. Within this framework, individuals and organizations can acquire land use rights and usufructs in one of three ways:

- allocation by the State;
- transfer; and
- inheritance.

Major Property Legislation

- Law No. 01/97/NA on Land, dated 12 April 1997
- The Land Law No. 04/NA dated 21 October 2003 (Land Law)
- Law No. 01/90/PSA Property (Ownership), dated 27 June 1990
- Law No. 09/NA on State Property (State Assets), dated 12 October 2002
- Law on Investment Promotion No. 02/NA, dated 8 July 2009 (Investment Law)

Note that the above are supplemented by various regulations, notifications and decrees in the fields of state land ownership, zoning, etc.

Operational Requirements for Foreign Corporations

The main legislation governing foreign investment in the Lao PDR is the Investment Law, which recently superseded the Foreign Investment and Domestic Investment Laws.

The Investment Law outlines:

- the sectors that are open to investment;
- the forms of investment available;
- the incentives available to investors;
- the rights and duties of investors; and
- the investment licensing process.

The stated objective of this legal framework is to create an enabling environment for investment in the Lao PDR to improve economic cooperation with foreign countries and to contribute to national socio-economic growth.

Under the Investment Law, foreign investors may invest in the following forms of investment:

- business cooperation by contract;
- joint venture between a foreign and domestic investor; or
- 100% foreign-owned enterprise.

The requirements for establishing a joint venture between a foreign and domestic investor and a 100% foreign-owned enterprise are similar—they also share similar rules with respect to taxation, foreign exchange and labor issues.

The most common form of enterprise is a limited liability company. Other available forms of investment are branches and a representative office.

For a branch office, the Enterprise Law No. 11/NA, dated 9 November 2005 (Enterprise Law), and the recently issued Branch Office Notification specify that a branch of a company is an integrated part of that company (whether foreign or domestic), meaning that it does not have separate legal status. The Branch Office Notification further specifies that the parent company shall be liable for all acts and deeds of the branch office.

The Branch Office Notification restricts establishment of a branch by banks and other financial institutions, insurance companies, international consulting companies and foreign airline companies.

A representative office is usually used by investors who only require a minimal presence for their activities in the Lao PDR to 'test the waters' through feasibility studies and preliminary negotiations before making any substantial investment. A representative office is not permitted to conduct revenue-generating activities in the Lao PDR, and the term of registration is generally limited to three years (subject to limited review). Representative offices are appropriate for investors wishing to:

- supervise distributors and agents;
- collect local information for the offshore parent; and
- promote and market goods and services of the parent.

Foreign Investment Incentives

To encourage investment in the country, the Investment Law provides investors with certain rights, protections and incentives.

The Investment Law provides investors with investment protection, including:

- a legal regime that protects the assets and investments of foreign investors from seizure, confiscation or nationalization;
- allowing investors to lease land, transfer leasehold interests and build on or make improvements to a leased land; and
- allowing investors to remit foreign currencies abroad (in accordance with other laws and regulations).

In addition, investors have obligations to:

- protect the environment;
- protect the health of their employees; and
- ensure that their activities do not negatively affect public or national security.

Certain tax incentives are provided to promoted sectors. Under the Investment Law, the promoted sectors are:

- agriculture;
- industrial;
- handicrafts; and
- services.

A detailed list of these activities, as well as their level of promotion (i.e., level 1 for high promotion, level 2 for moderate promotion, and level 3 for low promotion) are separately issued by the government.

The level of tax incentives provided to promoted sectors also depends on the location of the relevant investment.

To facilitate investment, the greatest tax incentives are provided to promote sector investments in remote areas with no economic infrastructure classified as Zone 1. Zones with a moderate level of economic infrastructure suitable to accommodate investment are classified as Zone 2. Zones with established infrastructure to support investments are classified as Zone 3.

In Zone 1,

- Level 1 investments are entitled to a profit tax exemption for ten years.
- Level 2 investments are entitled to a profit tax exemption for six years.
- Level 3 investments are entitled to a profit tax exemption for four years.

In Zone 2,

- Level 1 investments are entitled to a profit tax exemption for eight years.
- Level 2 investments are entitled to a profit tax exemption for four years.
- Level 3 investments are entitled to a profit tax exemption for two years.

In Zone 3,

- Level 1 investments are entitled to a profit tax exemption for six years.
- Level 2 investments are entitled to a profit tax exemption for two years.
- Level 3 investments are entitled to a profit tax exemption for one year.

The profit tax exemption commences on the date on which the foreign investment enterprise commences operations. For new production of goods and for research and creation of new technology activities, the profit tax exemption commences from the date on which the enterprise starts making a profit. Once the profit tax exemption period is over, the foreign investment enterprise must pay profit tax in accordance with the Tax Law. Tax exemptions provided to mining, hydropower and plantation agriculture investments must be provided for in the relevant concession agreement and must comply with the relevant laws that apply to those sectors.

Additionally, enterprises may be entitled to:

- an exemption from profit tax in the following accounting year when net profit is spent to expand business operations;
- exemptions from import duties and taxes on equipment, spare parts, vehicles and raw materials not available in the Lao PDR, used directly for protection;
- exemptions from export duties on export products; and
- deduction of annual losses from profit in the following year within a period of three years.

Foreign investment is permitted in sectors falling outside the promoted activities; however, such investments are not eligible for the tax incentives that are available to promoted activities. In addition, various restrictions may apply to investments in non-promoted sectors, based on government policy and the laws and regulations governing the sector concerned.

There are certain sectors in which foreign investment is strictly prohibited, including weapons and drug manufacturing, investigation and security activities, central banking activities, and activities relating to foreign affairs, national defense and political organizations.

The Investment Law also provides for favorable investment incentives through the creation of special economic zones, as highlighted under specific regulations established for each zone.

Concession Rights

A concession involves authorization from the government, allowing a legal entity to use the government's property according to the terms and conditions of a concession agreement. Concession-related activities generally involve investments in the areas of telecommunications, communications, transportation, mining, electricity and plantation agriculture. To engage in a concession-related activity, an investor must enter into a special agreement or multiple agreements with the government, depending on the sector concerned, which will govern the activities to be conducted. In the mining and electricity sectors, the investor will generally be required

to offer the government a negotiated equity stake in the project company.

Restrictions on Foreign Property Ownership

One of the most important principles underlying the legal framework governing land in the Lao PDR is that of land ownership. The Land Law provides that land is owned by the 'national community', echoing similar provisions in the Constitution. This principle makes it impossible for any individual or entity, Lao or foreign, to 'own' land. Rather, individuals and entities can be granted 'land use rights' that are akin to freehold ownership or 'usufructs', a civil law concept granting long-term rights to use land for productive activities. Within this framework, individuals and organizations can acquire land use rights and usufructs in one of three ways: allocation by the State; transfer; or inheritance.

Foreign individuals and foreign-invested companies, including minority foreign-owned companies, are restricted to

- leasing land; and
- receiving land concessions from the State (generally granted to large investments).

The lease or concession of land by the State to foreign-invested enterprises registered in the Lao PDR is limited to 50 years. The lease of land by a Lao citizen to a foreign-invested company registered in the Lao PDR is limited to 30 years. In both cases, leases are usually renewable. Special economic zones' leases/ concessions are limited to 75 years.

Under the Investment Law, foreigners and foreign-invested entities that invest at least USD 500,000 in equity in the Lao PDR are permitted to hold land use rights for residential, office or unspecified business purposes. However, implementation of this aspect of the Investment Law is still unclear.

Foreigners who lease land or receive land concessions from the State must fulfill certain obligations, including:

- using the land in accordance with relevant zoning objectives;
- taking steps to protect the environment;
- respecting the land use rights of neighboring persons;
- paying land lease or concession fees on time; and
- complying with the Lao PDR law generally.

Under the Investment Law, the property of investors is protected from nationalization or expropriation, except for public purposes and upon payment of compensation.

Foreign investors are entitled to own structures and developments that they build or purchase on leased land. This right is protected under the Land Law and the Investment Law. However, upon expiration of the lease or concession term, all fixtures will revert to the lessor or the State without compensation.

Subject to obtaining prior approval from the State, foreign investors are permitted to:

- use fixed assets on land leased as security;
- sublease their land use rights; and
- use a lease agreement or concession agreement as capital contribution in a Lao PDR entity.

The land title system in the Lao PDR has a direct impact on the operations of foreign investors in the country. While foreign investors cannot own land use rights, their security in any leased land will depend on the validity of the lessor's land rights. To be able to lease land to a foreign investor, a Lao citizen must have obtained formal title, as this is the main document evidencing permanent land use rights and the right to lease land.

Foreign Exchange Controls

The Lao PDR has enacted a strict regime of foreign exchange and capital controls. The list of permissible transactions in foreign currency is relatively limited.

The Presidential Decree regarding Management of Foreign Exchange and Precious Metals (No. 01/P, 17 March 2008) (Foreign Exchange Decree) prohibits individuals and legal entities operating in the Lao PDR from paying or receiving foreign exchange for the goods and services rendered to them or by them, or from settling debts in foreign exchange within the Lao PDR, without approval from the Bank of Lao PDR (BoL). The decree further provides that foreign exchange can be used to achieve certain objectives, including paying for imported goods, paying for import-export related services, repaying foreign debts in accordance with a loan agreement that has been approved by the BoL, and repatriating or transferring profits, dividends, capital, interest or salaries by foreign investors to a third country, provided that such use is compliant with regulations issued by the BoL.

Derivative transactions such as foreign exchange, interest rate and commodities hedging transactions fall into a general catch-all requirement of BoL approval. Foreign investors are required to use the Lao PDR banking system and domestic bank accounts for all transactions, unless BoL approval has been obtained for the use of offshore bank accounts.

Taxation

Company's sale/transfer of properties

Profit tax

The company must report its own profit tax on the sale of properties or leasehold rights. In general, the company's income from the

sale of properties or leasehold rights will be subject to profit tax at the rate of 28% (pursuant to the Presidential Decree on the Amendment of the Rates of Business Turnover Tax, Profit Tax and Salary Income Tax No. 001/P, dated 01 March 2011 and effective on 1 January 2012). The profit tax rate will be reduced to 24% with the implementation of the Amended Tax Law, which is expected to take effect on 1 October 2012.

Value Added Tax (VAT)

The standard rate of VAT is 10% in the Lao PDR. The Lao PDR VAT system follows the conventional VAT system, where VAT charged (output VAT) can be deducted with the VAT paid (input VAT). Under the Lao VAT Law, the supply of immovable property or parts thereof is subject to VAT if:

- the immovable property is located in the Lao PDR;
- the supply is made for a consideration by a registered VAT taxpayer whose business consists of, at least in part, the purchase and supply of immovable property, acting as such; and
- the immovable property is used or destined to be used by a registered VAT taxpayer, at least in part, as a business asset.

Registered VAT taxpayers carrying out a business of land development, construction or purchase for re-selling or leasing are required to pay VAT according to the selling or leasing value, excluding VAT of the sold or leased property to another registered VAT taxpayer.

Transfer fees

In addition to Profit Tax and VAT, the sale of land usage rights will be subject to a transfer fee of 1%. The transfer fee is calculated on the basis of the value of the property that can vary depending on the zone and type of land. Additional fees include service fees and stamp tax.

Stamp tax

Stamp tax applies to international organizations, individuals, legal entities, Lao population, aliens and foreigners operating the activities or earning their livelihood in the Lao PDR, with complete documents to submit or certify to all levels of the government.

The stamp tax of LAK 10,000 must be paid when the land sale and purchase agreement is submitted for registration with the government authorities.

Notarization fees

There are notarization fees for the sale and purchase agreement. Notarization fees include charges of LAK 20,000 per page and service fees of LAK 35,000 per page.

Individuals' sale/transfer of property

Income tax

The sale or transfer of property by individuals will be subject to a transfer fee of 1%, plus notarization fees, service fees and stamp tax.

Upon the implementation of the Amended Tax Law (1 October 2012), income from the following will be subject to an income tax of 5%:

- sale and purchase of land;
- transfer of land use rights; and
- sale and purchase/transfer of structures or land with the existence of structures (excluding a sale and purchase/transfer between direct relatives, such as father, mother, husband, wife and children).

Companies renting out the property to individuals and other companies

Profit tax

The company's income that is derived from rent will be treated as taxable income and subject to 28% profit tax (24% with the implementation of the Amended Tax Law). The basis of the taxable income is the gross rental income, less deductible expenses for rental income, including the maintenance cost, interest on loan, property tax, insurance premium and depreciation on the buildings.

Value Added Tax (VAT)

Rental payments are subject to a VAT of 10%. The company can deduct input VAT with respect to renovation, construction and maintenance of the property.

Individuals' renting out property

Income tax

Under the current Tax Law, income from the lease of houses, land or other assets is subject to income tax at 15%. Under the Amended Tax Law, which will be effective on 1 October 2012, the income tax rate on lease income will be reduced to 10%.

The lessor is required to file a tax declaration with the Tax Department within ten days of receipt of the rental income. The Tax Department will assess the declaration and issue a payment order. In cases where the lessor receives an advance payment, the tax will be calculated on the full amount of the advance payment.

The Tax Department has the authority to reassess the value of the rent in the event that the rental is deemed to be below market value, or the lessee makes capital improvements to the property.

LAOS

Tax Treaties: Avoidance of Double Taxation

Lao PDR has double tax agreements in force with the following countries:

- P.R. China
- Thailand
- R.O. Korea
- Vietnam
- Malaysia
- Myanmar

The information in this guide is current as at 14 August 2012.

MACAU

Land Tenure/Property Ownership

Macau government grants the use of reclaimed or vacant land by means of a land concession agreement subject to publication in the official gazette of the Macau government and registration at the land registry ('Land Concession Agreement'), which constitutes the land title. There are only a small number of freehold property interests in Macau, typically found in the older part of the region.

The land concession is granted for an initial term not exceeding 25 years, subject to renewal upon request of the concessionaire or any interested party, for successive terms of ten years until 2049.

Once the land is granted to a foreign or local individual or company ('concessionaire'), the concessionaire undertakes the obligation of developing the land for a particular commercial purpose (e.g., gaming, hospitality, retail, office, residential, industrial, etc), within a certain period of time. The land concession is deemed provisional until completion of the development, upon which it is converted into definitive.

Under the Land Concession Agreement, the concessionaire shall pay a premium (payable upfront or in installments) and an annual rent.

Once the superstructure is completed, it may be registered as individualized units under strata title system, after which, it can be sold to third parties, who may then hold full private ownership rights over such properties.

The Macau land title system is similar to the 'Torrens title system', where the registration of land or property ownership recorded in the land registry guarantees indefeasible title to the relevant land/ property owners.

Major Property Legislation

Macau Civil Code	Articles 1264 to 1312 Articles 1313 to 1372 Articles 865 to 932	Ownership Right Horizontal Property (strata title) Regime Sale and Purchase Contract
Land Law	Law 6/80/M, July 5	

Operational Requirements for Foreign Corporations

Modes of Entry

Apart from specially regulated activities (e.g., gaming, banking, insurance, offshore, travel agencies etc), there are no foreign investment restrictions, which mean that individuals or companies from any country may incorporate Macau companies and own their whole share capital. Moreover, there is no local director requirement or director nationality restrictions, which means that individuals from any country may act as directors in Macau companies.

There are also no substance requirements, i.e., a company can be maintained without business or operations for an unlimited term.

Macau companies must file for annual tax returns. Audited accounts are only required to be submitted in joint-stock companies or in companies with a continuous high-level of annual profits.

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 notarization. The whole incorporation process, until full registration at the Macau Commercial Registry, takes around 15 days.

Registration/Licensing Requirements/Types of Commercial Entities

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., gaming, banking, insurance, offshore, travel agencies etc).

To do business in Macau, any individuals or entities may incorporate a Macau company, register a branch, or, on a non-permanent basis, simply register with the Macau Finance Bureau, if providing services to a Macau entity under a contractual arrangement.

The forms of corporate entities are:

- Sole Shareholder Company
- Limited Liability Company
- Joint Stock Company

Sole Shareholder Company	One shareholder	Minimum share capital of MOP 25,000.00
Limited Liability Company	From 2–30 shareholders	Minimum share capital of MOP 25,000.00
Joint Stock Company	At least 3 shareholders	Minimum share capital of MOP 1,000,000.00

MACAU

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.

Foreign Employment Limitations

Non-Macau residents must apply for a work permit to be able to work in Macau or be employed by a Macau entity.

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

The temporary residency applications for fixed assets purchases (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.

Major tax incentives available to investors include:

- Total exemption of property tax granted to real estate purchases for industrial purposes.
- Total exemption of up to five years in Macau, and ten years on Taipa and Coloane, for new real estate rented for industrial purposes.
- 50% reduction in complementary tax.

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

Imported new vehicles to be used by hotels and travel agencies are exempted from vehicle tax.

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. Accordingly, money denominated in all currencies may move into and out of Macau freely. The Macau Pataca (MOP) is currently pegged to the Hong Kong dollar via the United States dollar.

Summary of Tax Regime

DESIGNATION	INCIDENCE
Property Tax	For a leased property, tax is levied at 16% on the net rental income. For a non-leased property, tax is levied at 10% for a property with an annual rental amount that is below the 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 is exempted. From MOP 32,001 up to MOP 65,000 – 3%. From MOP 65,001 up to MOP 100,000 – 5%. From MOP 100,001 up to MOP 200,000 – 7%. From MOP 200,001 up to MOP 300,000 – 9%. Above MOP 300,000 – 12%.
Professional Tax	Levied on individuals with an annual income in excess of MOP 120,000, 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).
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 is subject to 1% stamp duty, 2% stamp duty on a property worth between MOP 2 million and MOP 4 million, and 3% stamp duty on a property worth over MOP 4 million. Free transfer of property or registered assets and rights worth over 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 purposes that are aimed at cooling down the property market and speculation: 20% if the transfer of ownership occurs within one year from the date the property was purchased and 10% within the second year. 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%.
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 made by the employer is MOP 30.00 (USD 3.75) per resident employee and MOP 45.00 (USD 5.63) per non-resident employee.

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Property Tenure/Ownership

Ownership of property is via registered title. Subsequent transactions are registered against that title.

There are two types of tenure:

- Freehold
- Leasehold (a term not exceeding 99 years)

Major Property Legislation

Control of Rent Act 1966	Control of Rent (Repeal) Act 1997
Environmental Quality Act 1974	Housing Development (Control and Licensing) Act 1966
Housing Development (Control and Licensing) Regulations 1989	Housing Development (Housing Development Account) Regulations 1991
Housing Development (The Tribunal for Homebuyer Claims) Regulations 2002	Housing Development (Compounding of Offences) Regulations 2002
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 Titles Act 1985	Street, Drainage and Building Act 1974
Town and Country Planning Act 1976	Uniform Building By-laws 1984

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

Operational Requirements for Foreign Corporations

Modes of Entry

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

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 the rights and the obligations made of each partner, but doing so is not obligatory.

Sole proprietorship or partnership in Malaysia will be personally liable for the debts of business. All sole proprietorships and partnerships in the country 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 a partnership.

Incorporation of Local Company

The Companies Act 1965 ('Companies Act') governs all companies in Malaysia. The Companies Act stipulates that a person must register a company with the CCM to engage in any business activity. It provides for three types of companies:

- a company limited by shares;
- an unlimited company; and
- a company limited by guarantee.

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).

Private Company (Sendirian Berhad/Sdn. Bhd.)

A private company limited by shares will have provisions in its memorandum and articles of associations that:

- 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; and
- prohibit any invitation to the public to deposit money with the company.

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 of 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 minimum of two subscribers to the shares of the company (section 14, Companies Act);
- A minimum of two directors (section 122, Companies Act); and
- A company secretary who can be either:
  - an individual who is a member of a professional body prescribed by the Minister of Domestic Trade and Consumer Affairs; or
  - an individual licensed by the CCM.

Both the director and the company secretary shall have their principal or only place of residence within Malaysia. Directors of public companies or subsidiaries of public companies normally must not exceed 70 years of age. 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. The name of the company shall appear in legible Romanized letters, together with the company number on its seal and documents.

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. A private company may, however, provide for varying voting rights for its shareholders.

Foreign Company
A foreign company cannot carry on business in Malaysia, unless it incorporates a local company or registers the company in Malaysia. 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 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; or
- enter into a joint venture with a Malaysian company or individual, typically through holding shares in a newly incorporated joint venture company.

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. This is for the CCM to exert some degree of control over the affairs of the foreign company in Malaysia. The foreign company that is registered has power to hold an 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 organizations 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 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 center 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 representative or regional offices are:

- planning or coordinating business activities;
- gathering and analyzing 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; and
- acting as a coordination center for the corporation's affiliates, subsidiaries and agents in the region.

Activities not allowed to be conducted by 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/transshipment 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; and
- 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. Expatriates will only be considered for managerial and technical posts. 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.

Approved Operational Headquarters (OHQ)
An approved OHQ generally refers to a company that provides qualifying services to its offices or related companies regionally and globally.

A company that establishes an OHQ in Malaysia can be considered for tax incentives and facilities under the OHQ incentive program, which includes tax exemption for a period of ten years on income from:

- qualifying services rendered to its offices or related companies outside Malaysia;
- interest on foreign currency loans extended to its offices or related companies outside Malaysia; and
- royalties received from R&D work carried out on behalf of its offices or related companies outside Malaysia.

The income generated by an OHQ company in providing qualifying services to its offices and related companies in Malaysia will not be taxed during its tax-exempt period, provided such income does not exceed 20% of its overall income derived by providing qualifying services.

The qualifying services are as follows:

- general management and administration;
- business planning and coordination;
- coordination of procurement of raw materials, components and finished products;
- technical support and maintenance;
- marketing control and sales promotion planning;
- data/information management and processing;
- R&D work carried out in Malaysia on behalf of its offices or related companies within or outside Malaysia;
- training and personnel management for its offices or related companies within or outside Malaysia;
- treasury and fund management services to its offices or related companies outside Malaysia; and
- corporate financial advisory services to its offices and related companies outside Malaysia.

International Procurement Center / Regional Distribution Center
An international procurement center (IPC) is a locally incorporated company that carries on a business in Malaysia to undertake procurement and sale of raw materials, components and finished products for its group of related companies and unrelated companies in the country and abroad.

A regional distribution center (RDC) is a collection and consolidation center for finished goods, components and spare parts produced by its own group of companies for its own brand to be distributed to dealers, importers or its subsidiaries or other unrelated companies within or outside the country. Among the value-added activities involved are bulk breaking, repackaging and labeling.

An approved IPC/RDC status company is eligible for full tax exemption of its statutory income for ten years, and dividends paid from the exempt income will be relieved from tax in the hands of its shareholders, provided the company fulfills the following additional criteria:

- an annual sales turnover of at least MYR 100 million, of which the annual value of export sales achieves MYR 80 million, and the value of direct export sales achieves MYR 50 million concerning the qualifying activities in the basis period for a year of assessment;
- at least 80% of the IPC/RDC products must be exported, including 30% via drop shipment; and

- sales to the domestic market, including sales to free zones and licensed manufacturing warehouses, are limited to 20% of its sales turnover.

Applications for an IPC/RDC status, incentives and expatriate posts should be submitted to the MIDA.

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 or have now engaged 75 or more full-time employees and are, thus, required to be licensed; and
- existing licensed companies previously exempted from complying with equity conditions, but are now required to comply because of their shareholders' funds having reached MYR 2.5 million.

Equity Policy Applicable to Existing Companies
Equity and export conditions imposed on companies before 17 June 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 http://www.mida.gov.my/.

Foreign Employment in Malaysia

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 authorized bodies/agencies that can approve such applications/submissions based on the core business of the applying company. The agencies and their corresponding sectors are as follows:

- Malaysian Industrial Development Authority (MIDA)
  - manufacturing company that is involved in expansion plans
  - manufacturing-related services Regional office, OHQs, 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 that 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 the 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 the private and public sectors that are not under the jurisdiction of MIDA, MDeC, PSD, BNM and SC

Application to MIDA
Companies in the manufacturing sector or companies applying to operate as an OHQ or IPC or RDC in Malaysia may apply to employ expatriates. The application to employ expatriates depends on the company's requirements, subject to the condition that the company has a minimum paid-up capital of MYR 500,000. A representative office/regional office of a foreign company based in Malaysia is also allowed to employ expatriates at the professional, managerial and technical level.

The guidelines on the employment of expatriate personnel for manufacturing companies are as follows:

- manufacturing companies with a foreign paid-up capital of USD 2 million or above:
  - automatic approval is given for up to ten expatriate posts, including five key posts; and
  - expatriates can be employed for up to a maximum of ten years for executive posts, and five years for non-executive posts.
- manufacturing companies with a foreign paid-up capital of at least USD 200,000, but less than USD 2 million:
  - automatic approval is given for up to five expatriate posts, including one key post; and
  - expatriates can be employed for up to a maximum of ten years for executive posts, and five years for non-executive posts.
- For manufacturing companies with a foreign paid-up capital of less than USD 200,000, applications for an expatriate post will be considered based on the following guidelines:
  - key posts can be considered where the foreign paid-up capital is at least MYR 500,000, and the number of key posts allowed depends on the merits of each case.

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- for the duration of employment, up to ten years can be considered for executive posts that require professional qualifications and practical experience, and five years for non-executive posts that require technical skills and experience. However, Malaysians must be trained to eventually take over these posts.

- For Malaysian-owned manufacturing companies, approval for the employment of expatriates for technical posts, including R&D posts, will be given as requested.

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 locals/foreigners. For 100% locally owned companies, the paid-up capital is MYR 250,000; for local and foreign owned companies, the paid-up capital is MYR 350,000; and for 100% foreign owned companies, the paid-up capital is MYR 500,000.
- Recommendations from the 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 their corresponding fields/sectors 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; and
  - Biotechnology Corporation of Malaysia – biotechnology-related activities.
- 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 their corresponding fields/sectors 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 involved 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 work experience.

Application to MDeC

This type of work permit enables a foreign knowledge worker to take up employment under a contract of service with an organization in Malaysia. 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 the employment pass upon approval of employment positions by MDeC in MSC Malaysia.

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

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, the technology used and the industrial linkages. Eligible activities and products are termed as 'promoted activities' or 'promoted products'.

- 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.

- 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 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 unutilized 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.
  - The RA will be given for 15 consecutive years commencing from the year the first reinvestment is made.

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 commercialization of public sector R&D
  - The subsidiary company that undertakes commercialization is eligible for a 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 commercialization of the R&D findings is eligible for a 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 that 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 commercialize research findings – A 50% tax exemption 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.

Operational Headquarters (OHQs)

- Allowed 100% foreign equity ownership
- Eligible for 100% income tax exemption for ten years, provided conditions are met

Multimedia Super Corridor (MSC)

An MSC Malaysia status is recognition by the government of Malaysia, through the Multimedia Development Corporation

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(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.

- The 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, go to http://www.mida.gov.my/.

More details on the MSC can be obtained at http://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 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 500,000 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 paid-up capital; and
- Local company owned by foreign interest, to have at least MYR 250,000 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 500,000 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; and
- 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:

- Acquisition of residential units by local and foreign interests. However, a foreign interest is only allowed to acquire a residential unit valued at more than MYR 500,000 per unit.

- Any acquisition of a residential unit under the 'Malaysia My Second Home' program
- 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 a 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 the government
- Acquisition of properties by a company that has obtained an endorsement from the Secretariat of the Malaysian International Islamic Financial Centre (MIFC)
- Acquisition of residential units to be occupied as a hostel for a company's employees. However, local companies owned by a 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 a manufacturing company
- Acquisition of properties by ministries and government departments (federal and state), Ministry of Finance Incorporated, Menteri Besar Incorporated, Chief Minister Incorporated, State Secretary Incorporated and listed government-linked companies
- Acquisition of properties under a privatization project, whether at the federal or state level, provided that it involves companies that are the original signatories in the contracts for the privatized projects
- Acquisition of properties in companies that have been granted the status of IPC, OHQ, representative offices, regional offices, Labuan offshore companies and BioNexus or other special status by the Ministry of Finance, Ministry of International Trade and Industry and other ministries
- Acquisition of agriculture land valued at MYR 500,000 and above, or at least 5 acres in area, by a foreign interest to undertake agriculture activities on a commercial scale using modern or high technology, or to undertake agro-tourism projects or agriculture/ agro-based industrial activities for the production of goods for export
- Acquisition of industrial land valued at MYR 500,000 by foreign interest
- Transfer of property to a foreigner based on family ties is only allowed among immediate family members

State Authority's Consent 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 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 500,000, while some other states have maintained the threshold limit at the lower level of MYR 250,000. 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.

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. 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 via this program. Purchase of residential units is exempted from EPU's approval under the MM2H program. 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 without the need to pay import duty, excise duty and sales tax.

More details are available from http://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. The definition for non-resident includes:

- non-Malaysian citizens;
- overseas branches or representatives offices of resident companies;
- embassies, consulates, high commission and international organizations; and
- Malaysians who are permanent residents of another country and are residing outside the country.

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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.
- **Portfolio Capital**
  - Capital and profits of portfolio investment are allowed to be repatriated any time, without being subject to any levy.
  - No levy is imposed on the repatriation of proceeds from the sale of immovable property.
- **Extension of Credit Facilities to Nonresidents**

  Ringgit borrowing:
  - Resident non-bank companies, licensed onshore banks or individuals may extend any amount of ringgit credit facilities to a non-resident (other than stockbroking companies and banks), provided the utilization 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 the country, excluding the purchase of land only, subject to their own internal credit assessment guidelines.

  Foreign Currency Borrowing:
  - Non-residents are free to borrow any amount from licensed onshore banks and licensed international Islamic banks.
  - Non-residents are free to obtain borrowing from resident non-bank companies and individuals, subject to the limits (through conversion of ringgit up to) of MYR 1 million in aggregate per calendar year from a resident individual with domestic ringgit borrowing, and MYR 50 million in aggregate per calendar year on a corporate group basis from a resident company with domestic ringgit borrowing. The resident lender is required to obtain prior permission of the Controller of Foreign Exchange for extending credit facilities exceeding the limits mentioned.

Import and Export of Ringgit and Foreign Currency by Nonresident Travelers

- Non-residents are only allowed to import and export ringgit notes up to USD 10,000 equivalent. However, there are no limitations on the import or export of foreign currency notes and traveler's checks. A written application to the Foreign Exchange Administration Department must be made for any import and export of ringgit exceeding permitted limits.

Issuance of Bonds/Sukuk in Malaysia

- Multi-development banks, multilateral financial institutions, foreign governments, agencies or national corporation of foreign governments, foreign multinational companies and resident corporations may issue ringgit or foreign currency denominated bonds/sukuk in Malaysia, and the proceeds from such issuance are allowed to be used onshore or offshore. Ringgit-denominated bonds/sukuk proceeds to be used offshore must be converted into foreign currency with the licensed onshore banks. Prior consent or approval from the Ministry of Finance (for MDBs and MFIs only), the Securities Commission of Malaysia and the Bank Negara Malaysia may be required for such issuance.

Opening of Foreign Currency Accounts (FCA) and Ringgit Accounts (External Accounts)

- Non-residents are free to open currency account with licensed onshore banks and licensed international Islamic banks and to utilize or repatriate the funds for any purpose.
- There are also no limitations in opening external accounts (EA) 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 from the EA may be used for any purpose, except for lending in ringgit to residents other than as permitted by the Controller of Foreign Exchange and as payment on behalf of a third party of international trade and services. Such limitations does not apply to supranational or international organizations, foreign central banks, consulates, embassies, high commissions, individuals under the MM2H, or individuals working or studying in Malaysia, including their family. The funds may also be used to pay another non-resident's EA for settlement of international trade and services.

OHQs

- OHQs are free to invest any amount in foreign currency assets, to be funded with own foreign currency funds or foreign currency borrowing.
- OHQs are allowed to borrow any amount of foreign currency from onshore banks, licensed international Islamic banks, other resident companies within the same corporate group in Malaysia and any non-residents, provided the OHQ does not on-lend the funds to other residents or raise the funds on behalf of any resident.
- OHQs are allowed to obtain any amount of foreign currency trade financing from non-resident to finance import payments.

- No restriction for payment in ringgit between resident companies.
- OHQs may invest abroad any amount, including extending credit facilities to their related overseas companies, to be funded with foreign currency funds or borrowing. They may also convert any amount to finance investment abroad if they have no domestic credit facilities, or up to MYR 50 million per calendar year if they have domestic credit facilities, into foreign currency for investment abroad.

IPCs and RDCs

- IPCs and RDCs are free to hedge with onshore banks and licensed international Islamic banks for payments for the import and export of goods and services based on a firm underlying commitment or on an anticipatory basis.
- Hedging involving ringgit shall only be undertaken with licensed onshore banks.
- No restriction for payment in ringgit between resident companies.
- IPCs and RDCs are free to pay other resident companies in foreign currency for the settlement of goods and services sourced from its foreign currency account if the IPC/RDC have exports earnings (either from export of goods and services).

MCS Status Companies

- Companies incorporated and operating in Malaysia's MSC as separate legal entities will be exempted from most of the foreign exchange administration rules once awarded the MSC status by the MDeC. All companies will need to periodically supply Malaysia's central bank, Bank Negara Malaysia, with certain statistics on their active foreign fund flows.

Iskandar Development Region (IDR)

- Companies approved by the Ministry of Finance and are awarded an 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 are granted exemption from most of the provisions of the foreign exchange administration rules and are afforded certain flexibilities.

More details on foreign exchange controls can be obtained at http://www.bnm.gov.my, http://www.sc.com.my, http://www.mifc.com and http://www.mida.gov.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

First MYR 100,000: 1%
Next MYR 400,000: 2%
Remainder (over MYR 500,000): 3%

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 of the current market value at the following rates:

First MYR 150,000: 1%
Next MYR 850,000: 0.7%
Next MYR 2,000,000: 0.6%
Next MYR 2,000,000: 0.5%
Next MYR 2,500,000: 0.4%
Remainder: Negotiable, but shall not exceed 0.4% of such excess

Legal fees for sales and purchases, as well as charges for completing any transaction (subject to a minimum of MYR 300 or MYR 250, if the consideration is below MYR 45,000) are fixed at rates based on the consideration or adjudicated value:

Capital Gains Tax

The real property gains tax (RPGT) is levied on gains arising from the disposal of real property situated in Malaysia, or on any interest, option or other right in or over such land, as well as 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%
Disposal in the three year after the date of acquisition	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%

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Previously, by virtue of a ministerial exemption order that takes effect from 1 January 2010, the Minister has exempted the application of the rates described in the tables above. An RPGT of 5% will be applicable on gains of disposal of real properties or real properties companies by any person, including foreign companies and non-resident individuals. The rates were increased in 2012 to 10% for real properties held within two years, and remained at 5% for real properties held exceeding two years until five years.

It should be noted that pursuant to the budget issued by the government for 2013, it has been proposed that gains from the disposal of residential and commercial properties are taxed between 0% and 15%, depending on the holding period of the real properties as follows:

	RPGT Rates		
Holding Period	Companies	Individual (Citizen & PR)	Non-resident Individuals
Up to two years	15%	15%	15%
Exceeding two years until five years	10%	10%	10%
Exceeding five years	0%	0%	0%

The new rates will apply from 1 January 2013, if such proposal is effected.

Service Tax

A service tax of 6% applies on the cost of certain prescribed goods and services provided in Malaysia including:

- food, drinks and tobacco;
- provision of rooms for lodging and premises for meetings, conventions, and cultural and fashion shows; and
- health services and provision of accommodation and food by private hospitals.

The tax also applies to professional and consultancy services provided by accountants, advocates and solicitors, engineers, architect, surveyors (including valuers, assessors and real estate agents), advertising agencies, consultancy firms, management service providers, insurance companies, motor vehicle service and repair centers, telecommunication services companies, security and guard services agencies, recreational clubs, estate agents, parking space services operators and courier service firms.

However, professional services provided by a company to companies within the same group will be exempted from the current service tax of 6%. Courier services provided from a point within Malaysia to a destination outside the country will also be exempted from the service tax of 6%.

Generally, the imposition of service tax is subject to a specific threshold based on an annual turnover ranging from MYR 150,000 to MYR 500,000, such as:

- car rental agencies licensed under the Commercial Vehicles Licensing Board Act 1987 having an annual sales turnover of MYR 150,000 and above;
- employment agencies having an annual sales turnover of MYR 150,000 and above;
- companies providing management services, including project management and coordination services, having an annual sales turnover of MYR 150,000 and above; and
- hotels having more than 25 rooms and restaurants within such hotels.

Income Tax

Income of any person, including a company, accruing in or derived from Malaysia or received in the country from overseas is subject to an income tax.

However, income received in Malaysia by any person other than a resident company carrying on business of banking, insurance, or sea or air transport for a year of assessment derived from sources outside Malaysia is exempted from 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 periodic payments; and
- 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 30 September 2005.

Corporate Taxation

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. 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 25% on taxable income. Resident small and medium sized companies (i.e., companies capitalized at MYR 2.5 million or less) are taxed at 20% on the first MYR 500,000, with the balance at the current corporate tax rate of 25%.

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 the country. 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 or her chargeable income after deducting personal reliefs at a graduated scale ranging from 0% to 26%. Non-resident individuals are liable to tax at a rate of 26% without any personal relief, although they can claim rebates in respect of fees paid to the government for the issuance of an employment work permit.

Tax Treaties: Avoidance of Double Taxation

As at 31 January 2012, the effective double taxation agreements are as follows:

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

* Limited Agreement

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

Real Estate Investment Trusts ('REIT')

Introduction

The Securities Commission issued a new set of guidelines on REITs on 21 August 2008 (new REITs Guidelines), superseding the earlier REIT Guidelines issued on 3 January 2005. The new REITs Guidelines was updated on 13 July 2011.

Equity Structure of REIT Manager

Following the measures announced in Budget 2008 to encourage foreign REIT managers to set up operations in Malaysia and list their REITs on Bursa Malaysia, the new REITs Guidelines now allow up to 70% foreign shareholding in the REIT manager. The REIT Guidelines updated on 13 July 2011 have an eligibility requirement for a management company of a REIT to have a minimum of 30% local equity.

Permitted Investments

Instead of having different thresholds for listed and unlisted REITs, the New REITs Guidelines has prescribed one threshold for both listed and unlisted REITs, that is, 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 under construction, or real estate where it does not have a majority ownership and control, is permitted provided that the respective requirements are met. To safeguard investors' interest, a REIT is not allowed to conduct:

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- activities of extension of loans and any other credit facility;
- acquisition of vacant land; and
- 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

Subject to certain rules of the New REITs Guidelines, REIT managers are now able to raise funds speedily for acquisitions or capital expenditure purposes. The New 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. The limit of total borrowings of a fund has been increased from 35% to 50% of the total asset value of a REIT at the time the borrowings are incurred. Total borrowings exceeding this limit require the sanction of unit holders by way of an ordinary resolution. To secure borrowings, the REIT manager may pledge the fund's property with the consent of the REIT trustee. In relation to the issue of units for cash (other than rights issues) concerning a listed REIT, REIT managers are only required to seek a general mandate via a resolution in a general meeting from unit holders for issuance of units up to 20% of its fund size (subject to certain requirements).

Contrary to the previous guidelines, the new REITs Guidelines have specifically prohibited new 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.

Related Party Transactions

The New REITs Guidelines have introduced specific rules to regulate related party transactions ('RPTs'). The term 'related party' includes:

- the REIT manager;
- REIT trustee;
- major unit holder of the REIT;
- director or major shareholder of the REIT manager; or
- any person connected with all the preceding parties.

All RPTs carried out by or on behalf of the fund should be carried out at arm's length in the best interests of unit holders of the fund, and they should be adequately disclosed to unit holders.

Real estate transactions with a related party must also be consistent with the investment objective and strategy of the REIT. Further, such RPTs should, having been consented by the REIT trustee, be transacted at a price that is equivalent to the value assessed in the valuation report. However, the New REITs Guidelines have also accorded flexibility, so that an RPT may be transacted at a price other than that in the valuation report. This is provided that, in respect of an acquisition, the acquisition price shall not exceed 110% of the value assessed in the valuation report; or, in respect of a disposal, the disposal price is not set below 90% of the reported value, and the REIT trustee provides a written confirmation that the transaction is based on normal commercial terms at arm's length and not prejudicial to unit holders' interest.

In the event that the transaction value of an RPT is equal to or greater than 5% of the total asset value of the REIT (after acquisition), prior approval of unit holders is required. If the transaction value does not exceed 5% of the total asset value of the fund (after acquisition), the REIT trustee must provide a written confirmation, and unit holders must be informed either through an announcement to Bursa Securities for listed funds or through a notification letter for unlisted funds of the trustee's written confirmation, whichever applicable.

Special Tax Exemptions for 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 25%. Nevertheless, a REIT is exempted from such taxes in an assessment year if it distributes at least 90% of its total taxable income to its unit holders in the same assessment year.

Tax exemption is available on certain REIT income derived from, among others: investment in securities issued or guaranteed by the Malaysian government; interest income from Islamic securities originated in Malaysia; interest paid or credited by any licensed Malaysian banks; and offshore sourced income received from an overseas investment. Unit holders will also be exempted from tax upon distribution if a REIT's income is exempted pertaining to the above investments.

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 25% 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 31 December 2011 only. The government has now extended the incentives for a period of five years, commencing 1 January 2012 up to 31 December 2016.

The withholding tax will be withheld by 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 properties companies, then such gains will be subject to RPGT. With effect from 1 January 2010, an RPGT of 5% will be applicable on gains of disposal of real properties or real property companies. RPGT is exempted for disposal of real property or real property companies held for more than five years.

Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Feet
Rental Payments	
Rents	MYR/month on a gross basis per sq ft, inclusive of service charge
Typical lease term	3 years or longer
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x month's 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, 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. Fixed increases are less common
Frequency of rent increases or rent review	Every 3 years
Service Charges, Operating Costs, Repairs & Insurance	
Responsibility for utilities	Electricity, telecommunication and water consumption are separately metered and payable by each tenant
Car parking	Allocation is usually on a per sq ft ratio based on one 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'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: Jones Lang LaSalle

MALDIVES

Property Tenure/Ownership

The concept of real estate ownership in the Maldives is slightly different compared to other jurisdictions. Local law recognizes two different 'types' of ownership of real estate by individuals or entities:

- private ownership or '*amilla bin*'; and
- state ownership '*bandaara bin*'

Private ownership is where individuals or entities have purchased land from the state.

State ownership is where the state has granted usage rights to individuals or entities for the occupation of the land. Where a *bandaara bin* is granted to a party, the usage rights over the *bandaara bin* is unlimited and can even be passed through inheritance, as if it was owned outright by the deceased.

Although there is no formal recognition for leasehold titles in the Maldives as yet, long leases over land is very common. This is especially true in the field of tourism, where islands earmarked for tourism are 'owned' by the state and the developer is simply granted a lease over the island, with rights to develop and manage as per terms of the lease. At present, leases over tourism islands are subject to a maximum of 50 years as per the provisions of the Tourism Act.

Land designated for residential purposes can be leased out for a maximum of 35 years. There is no restriction on the period of lease for land designated for business or industrial purposes.

However, there is a blanket constitutional provision, which restricts any type of lease of land to a foreigner (or foreign entity) to a maximum period of 99 years.

Major Property Legislation

- Law on Uninhabited Islands (20/98);
- Tourism Act (2/99); and
- Land Act (1/2002).

Foreign Investment

Modes of Entry

Foreign investments in the Maldives are regulated by:

- Law on Foreigners Doing Business in the Maldives (4/79);
- Foreign Investment Act (25/79); and
- Companies Act (10/96).

The Foreign Investment Act specifies that any foreign party, be it individual or corporate, intending to do business in the Maldives must only do so after acquiring permission and registering as an entity in the country.

The government is protectionist, restricting foreign investments from engaging in any business activity unless the specific business activity is first approved by the government. The Ministry of Economic Development, the responsible government agency under the Foreign Investment Act, publishes a positive list of activities that the Ministry has, in the past, given approval for foreign investments to be engaged in, and this list is used as a 'general guide' in making an assessment as to whether permission may be granted. It should, however, be noted that the Ministry is, under the law, not bound to give permission to a foreign investor to engage in a certain business activity merely because the activity already exists in the positive list.

Positive List

The positive list of investments approved by the government is as follows:

- financial consultancy;
- auditing services;
- insurance services;
- water sports activities;
- commercial diving (salvage);
- domestic air transport services;
- catering services for airlines;
- big game fishing;
- technical support services, i.e., photocopies, elevators, automated teller machines (ATMs), etc;
- manufacturing of garments;
- water production, bottling and distribution;
- consultancy in public relations, editorial, advertising and translation services;
- packing and distribution of cement;
- general sales agency, passenger sales agency and cargo sales agency for airlines and shipping lines;
- spa operations and management;
- water treatment plant;
- boat building;

- software development and related support services;
- domestic maritime ferry services;
- financial leasing services;
- fish processing activities (currently under review);
- traditional medical services;
- production of underwater photography, videography and post cards;
- block ice making;
- specialty restaurants;
- professional business valuation services;
- flying schools;
- IT system integration and implementation services;
- freight forwarding;
- credit rating/grading, information research and related training;
- mechanical electrical services for new construction and provision of after installation service;
- baggage wrapping service;
- large format digital printing, digital imaging, photography, supplying indoor and outdoor advertising products, hoarding fabrication and aluminum fabrication;
- providing engineering solutions in areas of design, fabrication and installation of parts and complete machinery;
- establishment of sustainable modern research and development (R&D) base for marine and coral research;
- aquaculture;
- mariculture; and
- operation of duty free shops.

Procedure for Registration and Licensing by Foreign Investors

Foreigners or foreign entities wishing to engage in business in the Maldives require permission to do the same. The Foreign Investment Act has a two-track mechanism for foreign investments, one for those wishing to engage in tourism-related business activities and another for all other business activities.

Those who wish to engage in tourism-related business activities must apply to the Ministry of Tourism for a relatively straightforward permit, which is generally granted. There is, however, a certain level of protectionism practice regarding safari/live aboard vessels, thus, a foreign investment will only be allowed to engage in the business of operating or managing such a vessel if the vessel has more than 20 rooms (40 beds).

Once the permit from the Ministry of Tourism is granted, the investor can proceed directly to the incorporation of the entity in the Maldives.

For activities other than tourism-related business activities, the investor must submit a proposal prepared according to the given guidelines to the Ministry of Economic Development together with the requisite information. The Ministry of Economic Development will review the proposal before granting the permit.

A foreign investment agreement is entered into with all investors going through the Ministry of Economic Development route, which, before the Business Profit Tax Act, levied a royalty on profits. The royalty regime has been abolished since the establishment of a tax regime under the Business Profit Tax Act.

Once approval for the activity is granted, a foreign investor can choose either to establish a new entity in the Maldives or to re-register a foreign entity as an entity permitted to do business in the Maldives.

Foreign Employment Limitations

Employment of foreign nationals is regulated by the Regulation of Employment of Foreign Nationals (2011/R-22), which requires employers to apply for a foreign worker quota. The law specifies certain positions for which a quota for foreign workers will not be granted, which are as follows:

- taxi/pickup or lorry drivers;
- aircraft co-pilots and first officers;
- captains of sea-going vessels;
- engineers of sea-going vessels; and
- boat crew for vessels registered for fisheries activities.

Apart from those positions listed above, the government practices a liberal approach, so obtaining a foreign worker quota is a simple procedure.

Foreign Ownership of Real Estate

The laws of the Maldives do not allow foreigners (or foreign entities) to own real estate in the Maldives. Foreigners can, however, have a long lease subject to a maximum term of 99 years. In the case of a tourism lease, the maximum lease period is 50 years, regardless of whether the lessee is local or foreign.

Foreign Exchange Controls

There are no foreign exchange controls in the Maldives.

Property Tax

There is no property tax per se in the Maldives other than a tax on the transfer of land. For any transfer of land, a tax of 15% of the transaction value is charged. As foreigners cannot own land, they would not be party to such a transfer and, therefore, this would not be applicable to any foreigners or foreign entities.

MALDIVES

Business Profit Tax

A business profit tax was introduced in the Maldives in 2010. A 15% tax is levied on profits enjoyed by persons or entities doing business in the Maldives.

Goods and Services Tax

Goods and Services Tax is charged under the Goods and Services Tax Act (10/2011), which categorizes all goods and services into two main categories:

- tourism goods and services; and
- general goods and services.

Until 31 December 2012, a tax rate of 6% is applicable for goods and service in the tourism sector. From 1 January 2013 onwards, the rate is 8%. For goods and services in the general category, a rate of 6% is applicable.

Personal Income Tax

There is no personal income tax in the Maldives. However, persons engaging in a business (either as a sole proprietor or otherwise) are subject to the provisions of the Business Profit Tax Act.

Tax Treaties

The Maldives is party to a limited multilateral agreement between the members of the South Asian Association for Regional Cooperation ('SAARC') for the avoidance of double taxation and mutual assistance on tax matters. However, no double tax avoidance treaties have been signed by the Maldives with any specific country.

Investment Treaties

The Maldives has not signed any investment treaties with any other country.

MONGOLIA

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 usually is 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, property that cannot be moved, 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 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 Foreign 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

A foreign legal person or individual is a foreign citizen or stateless person not residing permanently in Mongolia. A foreign legal person is able to incorporate a company or a representative office to invest in Mongolia. 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. In addition, a foreign investor may enter into a stability agreement with the Government of Mongolia under which the government guarantees that any change of rules that the foreign investor has expressly considered determinant in his/her business decision will not apply to his/her investment during the term of the stability agreement.

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 to abroad;
- to pay stockholders' income and dividends;
- to receive income after sale of assets and securities;
- to transfer their property rights to others;
- to terminate an investment agreement and liquidation of 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; and
- 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 agreement and statutes of the business entity with foreign investment;
- implement measures to ensure the protection and restoration of the natural environment; and
- respect the customs and traditions of the people of Mongolia.

Foreign investment in Mongolia is regulated primarily through the Law on Foreign Investment. Under this law, the state administrative body in charge of foreign investment has wide powers. This administrative body can decide whether to issue permission on establishing business entities with foreign investment and representative of a foreign legal person based on the application

materials and other relevant information or to prohibit foreign investment proposals.

The Law of Investment in Strategic Sectors was recently passed. Under the new law, foreign investments in the minerals, banking and media sector—depending on the size of the investment—may require approval from the government.

The basic requirement to establish a foreign investment entity is to have at least USD 100,000 in equity, where not less than 25% shall be invested by the foreign investor.

Stages for incorporation of foreign-owned limited liability company:

- securing of proposed name of the company at the State Registration Office (SRO);
- open temporary bank account;
- registration at the Foreign Investment & Foreign Trade Agency (FIFTA);
- submit all application materials to SRO;
- local tax registration;
- obtain a company registration certificate;
- make the company seal;
- seal registration and notarization;
- bank account becoming operational; and
- notifying the local tax office of the jurisdiction that applies to the company.

Restrictions on Foreign Property Ownership

Except land, there are currently no restrictions on foreign residents or nonresidents 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 Law of Mongolia on Land, 7 June 2002, "[t]he state-owned land may be given possession with a license to only Mongolian citizens, companies. Organizations, as well as entities with foreign investment, may use land with fees by way of lease for duration of 15 to 60 years, with a single extension of up to 40 years on the same conditions as the original lease." The salient terms of such lease are:

- if a business entity with foreign investment is liquidated before the expiration of the lease, then the lease will be terminated at the same time;
- land may be substituted or taken back for a specific state purpose; and
- if land is used contrary to the interest of public health, natural environment or national security, then the lease will be terminated.

Foreign citizens residing in Mongolia for more than 183 days will be considered permanent residents. They can use land for household needs by obtaining a lease of up to five years (which contains a right to extend the lease for a further period of up to five years). Such land shall not exceed 0.05 ha for a residential lot, and 0.1 ha for cultivating vegetables, fruits and berries.

Foreign Exchange Controls

All transactions within Mongolia, between residents in Mongolia, shall be carried out using national currency, tögrög or tugrik (MNT).

However, there are presently no restrictions applicable on foreign exchange transactions. No restrictions are placed on the inflow and outflow of foreign capital to and from the country. Currency risks associated with Mongolia are usually considered relatively low, as both the economy and the political environment are stable.

However, all transactions within Mongolia, between residents in Mongolia shall be carried out using the national currency.

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 non-resident 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 to a 10% income tax on the rental income. However, if the legal resident purchases the property in the name of a foreign company based abroad, the foreign company will be liable to a 30% tax rate (20% income + 10% VAT). 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 his/her ownership with the tax authority. An annual 0.6% tax of the total value of immovable property is payable by the owner. The value is determined with its state registration valuation or insurance on the property. Apartments are exempted 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.

VAT

A 10% VAT payment is not applicable to individuals.

It is only applicable to a Mongolian registered corporate entity and to revenues derived from a property amounting to MNT 10 million or above per year. Such entity will become a registered Mongolian VAT payer. A VAT number can be obtained from the Mongolian Tax Authority.

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.

- Austria
- Belarus
- Belgium
- Britain
- Bulgaria
- Canada
- China
- Czech
- France
- Germany
- Hungary
- India
- Indonesia
- Italy
- Kazakhstan
-
- Kuwait
- Luxembourg
- Malaysia
- Nederland
- North Korea
- Poland
- Russia
- Singapore
- South Korea
- Switzerland
- Turkey
- Ukraine
- United Arab Emirates
- Vietnam

Tax Treaties: Avoidance of Double Taxation

Effective Treaties:

Pending Ratification:

- Egypt
- Latvia
- Romania
- Thailand
- Uzbekistan

Real Estate Investment Trusts

Real estate investment trusts (REITs) concept is not known, and such trusts have not been established in Mongolia.

Conclusion

The legal environment regarding real estate in Mongolia is evolving. Currently a 'package' of land laws is presented to the Parliament. The proposed laws may substantially alter the legal landscape for real estate to encourage more private ownership of land plots, consultation and planning together with the landowners, willingness to take a more market-based approach with regards to valuation of lands, involuntary resettlement, and development, as well as to combat corruption.

The information in this guide is current as at 31 August 2012.

MONGOLIA

Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Meters
Rental Payments	
Rents	Quoted in USD or MNT/sqm/year (net area)
Typical lease term	1–3 years, with 4–10 years for larger tenants
Other major requirement	Generally months deposit is payable by tenant in advance
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months' rent)	Three months gross rent
Security of tenure	Only for the duration of the tenancy, no guarantee beyond the 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 increases 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 negotiations, 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.
Car parking	Where parking is available, it is held under a separate monthly lease for an additional rent.
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 early termination 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. But, major damage cost will be deducted from deposit.

Source: Jones Lang LaSalle

MYANMAR

Property Tenure/Ownership

Main Features of Land Holding

Constitution 2008 guarantees that the Union of Myanmar (Union) shall permit citizens the right of private property and inheritance, in accordance with the law. The Land and Revenue Act 1879 provides the landholder permanent heritable and transferable rights of use and occupancy. These rights are subject to:

- payment of taxes;
- government power to acquire the land for public purposes; and
- government control over mines and minerals.

Under the Constitution, the Union is the ultimate owner of all lands and natural resources and will supervise the use or extraction of them.

Under the Land Acquisition Act 1894 (LAA), the government may acquire or temporarily occupy land for public purposes. The President of the Union may also grant a company the same power for public purposes. In such cases, the LAA governs compensation given to the original landholder. Special considerations may apply to property with mines or minerals situated underneath the land, as per the Land Acquisition (Mines) Act 1885.

State land, belonging to or at the disposal of the government, is defined in the Upper Burma Land and Revenue Regulations 1889. The occupier's right is noninheritable and nontransferable.

Freehold land is transferable, inheritable and exempt from land revenue, and it can only be expropriated if it is in the public interest, subject to the payment of compensation. Freehold land is primarily located in larger cities or towns.

Grant land is granted or leased by the government from 10 to 90 years. The right is transferable, and the grant holder is subject to land revenue. The state does not have access to the land during the grant period, but can reclaim it under the LAA. Grant land is primarily located in cities and towns.

Agricultural land holding requires a license. A foreigner's application must meet the Foreign Investment Commission's approval. The Land Nationalization Act 1953 applies, giving the President power to stipulate use and administration of the land. Special provisions apply for tenants under the Disposal of Tenancies Law 1948 and corresponding rules.

In general, land is classified by its use. Different regulations may apply to different land uses.

'Culturable' land, 'fallow' land and 'waste' land may be granted to local or foreign investors for agricultural purposes involving technology, expertise and capital, under the Procedures Conferring the Right to Cultivate Land/Right to Utilize Land for Agriculture, Livestock Poultry Farming and Aquaculture Purposes 1991. The grant may be up to 5,000 acres for 30 years. The maximum 30-year period can be extended with the approval of the government. Foreigner applications and requests for larger grants of 50,000 acres or more must be approved by the Myanmar Investment Commission (MIC). Exemptions from land revenue, income tax and other duties are available.

The Forest Law 1992 empowers the Minister of Forestry to demarcate land as 'reserved forests' or 'conservation areas' for certain other purposes. The Forest Law governs licensing and practice for economic use of forest land.

Land administration is assigned to various government departments.

Other Land Legislation

The Transfer of Property Act 1882 (TPA) applies to contracts, sales, mortgages, charges, gifts, exchanges, leases and other transfers. To an extent, the TPA is superseded by more recent laws.

Previously, the Towns Act 1907 covered denomination, administration and tax collection from those holding land within 'towns'. The Village Act 1907 served similar purposes for village tracts (lands outside towns).The Ward or Village Tract Administration Law 2012 repealed and replaced these two acts to modernize colonial systems, introduce secret ballot voting of local officials, and create greater safeguards against forced labor.

The Water Power Act 1927 and accompanying rules govern the use of public water for energy or mining purposes.

The Code of Civil Procedure 1908 addresses attachments. Lands, houses or other buildings, and all other saleable property, movable or immovable, belonging to or under the control of a judgment debtor, whether held in name or in trust, are liable to attachment and sale in execution of the decree.

Restrictions on Foreign Property Ownership

Foreigners or foreign-owned companies may not purchase land or condominiums. The Transfer of Immovable Property Restriction Law 1987 (TIPRL) prohibits the transfer of immovable property between citizens and foreigners. Therefore, TIPRL prevents foreigners from accepting mortgages as security. TIPRL does not apply to companies or organizations in contract with the state.

Foreigners can obtain land use rights by leasing from the government or contributing to a joint venture with a government agency. It is common for foreigners investing in a property development to lease the land from the government and enter into a build, operate and transfer (BOT) agreement with the government for the development project. The project can be wholly owned by the investor, or can be a joint venture with a government partner.

MYANMAR

Land Lease

On 3 November 2012, a new Foreign Investment Law 2012 (FIL) came into force, replacing the old Myanmar Foreign Investment Law 10/1988. Investors registered under the new FIL are eligible for a lease term of up to 50 years, with the option of two consecutive ten-year renewals. The MIC may even grant lease terms greater than 50 years where an investor invests in remote or economically underdeveloped areas. In both cases, the MIC has discretion over lease terms; investors should make clear requests for long-term leases and provide business justifications for the request in their MIC proposal.

Leases are not granted for:

- religious land;
- land restricted for state security;
- land under litigation; and
- land restricted by the state.

The state may prohibit leases for land where the investor's business would cause public impact to the environment, noise, pollution or culture within urban residential areas.

Operational Requirements for Foreign Corporations

Registration

The Registration Act 1909 requires the registration of mortgages and all nontestamentary instruments that create or extinguish a present or future interest in immovable property. Leases of immovable property require registration if they last over one year or have yearly rent. An instrument that makes a gift of immovable property must be registered. The Registration Act exempts instruments relating to shares in a joint stock company, even if the assets of the company include immovable property.

Under the Companies Act 1914, a company must register any charge or mortgage with the Registrar's Office, including copies of the implementing instrument. The company must also keep records of each charge or mortgage.

Permit to Trade

All foreign companies (100% owned, joint venture or branch/ representative office, but not in a government joint venture) wishing to do business in Myanmar must obtain a 'permit to trade' from the Ministry of National Planning and Economic Development. The investor must meet the minimum imported capital requirements. The permit to trade is applied for at Companies Registration Office and requires an MIC approval. Permits to trade are not granted to the trading companies, although the policy has not been officially announced.

MIC Permit

Foreign companies wishing to operate and receive incentives under the FIL may apply for an MIC permit. The company must meet imported capital requirements higher than the minimum to qualify for a permit to trade.

The FIL, promulgated on 2 November 2012, designates the following 11 activities as 'restricted or prohibited enterprises':

- business that can affect the traditional culture and customs of the national races within the Union;
- business that can affect public health;
- business that can cause damage to the natural environment and the ecosystem;
- business that can bring hazardous or poisonous wastes into the Union;
- factories that produce or business that use hazardous chemicals under international agreements;
- manufacturing business and services that can be carried out by citizens by issuing rules;
- business that can bring technologies, medicines and instruments tested abroad or have not obtained approval to use;
- business of agriculture as well as short-term and long-term agriculture that can be carried out by citizens by issuing rules;
- business of breeding that can be carried out by citizens by issuing rules;
- business of the Myanmar Marine Fisheries that can be carried out by citizens by issuing rules; and
- business of foreign investment to be carried out within ten miles from the border connecting the Union territory and other countries, except those areas stipulated as economic zone, with the permission of the Union government.

Foreigners wishing to invest in these areas must register under the FIL and enter into a joint venture with local partners on a share capital. What is referred to as an 'equity split' is still unclear, but will be specified in the Foreign Investment Law Rules that the MIC intends to publish within 90 days from 2 November 2012.

If the company is a government-owned enterprise or a joint venture with a State entity, it must be incorporated under the Special Companies Act 1950. The company may apply under the FIL. If approved, the MIC permit will be issued without requiring a permit to trade.

Foreign Exchange Controls

Foreign Currency

Myanmar has been consulting with the International Monetary Fund on currency reforms, and the Central Bank of Myanmar recently introduced a managed floating exchange rate.

Foreign capital is generally kept with the Myanmar Foreign Trade Bank in US, Euro, or Singapore dollars. The government intends to eliminate the use of foreign exchange certificates.

The Foreign Exchange Management Law 2012 governs outward remittances, making a distinction from current transactions that include:

- payments due in connection with foreign trade and other current business, including services as well as normal short-term banking and credit facilities;
- payments due as interest on loans and as net income from other investments;
- payments of moderate amounts for amortization of loans for the depreciation of direct investments; and
- moderate remittances for family living expenses and capital transactions.

No restrictions are imposed on transactions concerning current transactions. However, capital transactions will require approval by the Central Bank of Myanmar. Investing under the FIL and its subsequent notifications guarantees repatriation of funds. Organizations and individuals acting under an MIC permit shall carry out financial transactions through foreign currency and Myanmar kyat (MMK) accounts with a bank prescribed by the MIC. Converting currency by purchasing foreign capital or selling assets requires permission by the MIC.

Taxation

Taxes

Property and income taxes are collected by the Internal Revenue Department of the Ministry of Finance.

Myanmar tax structure comprises 15 different taxes and duties under 4 major heads:

1. Taxes levied on domestic production and public consumption: excise duty, license fees on imported goods, state lottery, as well taxes on transport, commercial tax, and the sale proceeds of stamps;
2. Taxes levied on income and ownership-income tax;
3. Customs duties; and
4. Taxes levied on utility of state-owned properties: taxes on land, water tax, embankment tax, and taxes on the extraction of forest products, minerals, rubber and fisheries.

Income tax is assessed from property, salary, business and other sources. For income tax, foreigners and foreign organizations are separated into resident and non-resident foreigners. A foreign employee working for a company under the FIL may be considered a resident foreigner. A resident foreigner is either an individual present in Myanmar for 183 days during the income year, an association with control in Myanmar, or a company or enterprise formed under the Myanmar law. A branch of a foreign-incorporated company registered under the Companies Act is a nonresident. All types of companies are taxed on their worldwide income.

Withholding taxes are prescribed by Notification No. 41/2010, issued by the Ministry of Finance and Revenue, enforced under section 15, subsection (e) of the Income Tax Law 1974. Withholding taxes apply at different rates to income from interest, royalties and purchases of goods and services in Myanmar, or by an entity created by Myanmar law. The amount must be deducted and remitted in the same currency as the payment.

Land Revenue

The Upper Burma Land and Revenue Regulations as well as the Land and Revenue Act (applying to Lower Burma and the Thayetmyo District of Upper Burma) enforce land revenue for all property, unless otherwise exempted. For example, land revenue and income tax exemptions apply for different periods of time, depending on the use of agricultural land.

Stamp Duty

The Myanmar Stamp Act 1899, as amended, prescribes stamp duties for instruments that transfer or create property interests. Rates for instruments that attract stamp duty and instruments exempted are enumerated in the schedules subsequently enacted.

Double Taxation Treaties

Myanmar has double taxation treaties with UK, Singapore, Malaysia, Vietnam, Indonesia, South Korea and Thailand.

Investment Incentives

Special Economic Zones

A specific regime applies to special economic zones under the Special Economic Zone Law 2011. Currently, the Dawei Special Economic Zone is governed by a similar law, the Dawei Special Economic Zone Law 2011. Investors may secure land leases or permissions for use. The initial period granted is 30 years. An investor may apply at prescribed intervals for extensions totaling 10 to 45 additional years, depending on the size of investment.

Within the permitted period of land use, an investor may rent, mortgage or sell the land and building to another person for investment business.

MYANMAR

An investor receives the right to operate in foreign currency, to open a foreign account with any bank, to receive and pay money in foreign currency and to exchange and transmit their own foreign currency within the zone or abroad. Incentives include tax breaks.

Duties of the investor include bearing the expenses of any required transfer of human settlement and obtaining permission before altering the topography.

The special economic zones laws may be appealed or amended in the near future.

Foreign Investment Law
The FIL provides many incentives in addition to the enhanced lease terms. All investors registering under the FIL are entitled to income tax exemption for a period up to five consecutive years, with additional tax incentives available on a case-by-case basis. Beyond tax incentives, the FIL provides investors with protection against nationalization—a right to remit certain classes of foreign currency—and gives precedence to contractually stipulated dispute resolution mechanisms over parallel local state laws.

Duties of the investor include utilizing land only as permitted by the MIC, obtaining an MIC approval before transferring land or buildings, obtaining permission before altering the topography, taking measures to avoid polluting or degrading the environment, and completing additional requirements relating to workforce composition and share transfers.

Alternative
The FIL provides many incentives in addition to the enhanced lease terms. All investors registering under the FIL are entitled to an income tax exemption for a period up to five consecutive years. Investors may further apply for additional incentives, including:

- exemption from income tax on profits maintained in a reserve fund and reinvested in Myanmar within one year;
- enhanced depreciation of capital assets used in the business, deductible from taxable profits;
- income tax relief to a maximum of 50% on export profits;
- right to deduct research and development expenses from assessable income, where such activities are necessary for the business and are carried out within Myanmar;
- right to carry forward and offset a loss for up to three consecutive years from the year the loss is sustained, where such loss is sustained within two years immediately following the expiration of the initial tax holiday;
- relief from customs duty and internal taxes on the imports of industrial materials required to establish the enterprise, or where such imports support an expansion of the initial investment;
- relief from customs duty and internal taxes on raw materials imported for the first three years of commercial production; and
- relief from trading tax on goods produced for export.

Beyond tax incentives, registering under the FIL:

- guarantees against nationalization during the term of investment;
- permits the investor to remit net profits derived from annual business earnings;
- guarantees that the investor may remit foreign currency upon termination of investment; and
- gives precedence to contractual dispute resolution mechanisms, stipulated in contracts relating to the business activities, over local state laws.

NEW ZEALAND

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 can involve considerable complexity (for example: buying land from government bodies; land that triggers the Overseas Investment regime; and Maori land).

New Zealand operates under the Torrens land registration system. 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 a search of 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 persons taking an 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; and
- 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
- Land Act 1948
- Building Act 2004
- Local Government Acts 1974 and 2002
- Public Works Act 1981
- Resource Management Act 1991
- Unit Titles Act 2010
- Rating Valuations Act 1998
- Te Ture Whenua Maori Act/Maori Land Act 1993
- Marine and Coastal Area (Takutai Moana) Act 2011
- Overseas Investment Act 2005

There are currently a number of legislative reviews and reforms taking place that will change the law and have implications for 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 4 main structures available:

- register a branch;
- form a subsidiary company;
- acquire an existing New Zealand company; and
- form a limited partnership.

Registration/Licensing 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 Overseas Investment Act 2005. If the New Zealand company is listed on the New Zealand Stock Exchange, 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 come to New Zealand. Temporary work visas and permits 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 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; and
- who want to join a partner in New Zealand and work.

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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 regulating specific 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 in relation to certain legislation.

Foreign Investment Incentives

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 non-resident in certain circumstances and on the payment of profits to certain non-resident contractors.

Restrictions on Foreign Property Ownership

Certain of investments 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 not resident in New Zealand, 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 investment in New Zealand by overseas persons is the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.

Approval by the OIO is required for a large business/share acquisition (more than NZD 100 million) or the acquisition of an interest (including a leasehold interest) 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 in the acquisition of shares in a company holding that interest) in:

- nonurban land that exceeds 5 ha in area;
- land located on specified islands; and
- land including or adjoining lakes, the foreshore and seabed, reserves, historic areas and other listed features. Additional rules apply where the sensitive land is also a farmland.

Application is by way of letter to the OIO, providing specified details of the applicant, the vendor, the nature of the investment and the likely benefits to the New Zealand economy. 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'.

Where the 'sensitive land' is a 'farmland', any consent is conditional upon the land first being advertised for sale to the public in the open market.

The OIO and the relevant minister must have regard to specified criteria when considering an application and assessing the benefit. The method of assessing those benefits has recently been the subject of litigation in the New Zealand Court of Appeal. The OIO has issued guidance, setting down a 50 working day period for straightforward applications, but this time frame is often exceeded in the case of farmland. Consent may be granted, subject to conditions, compliance with which will be monitored by the OIO.

For further information on overseas investment in New Zealand, please refer to the Land Information New Zealand – Overseas Investment Office website (http://www.linz.govt.nz/overseas-investment/).

Additional Conditions

A business venture or transaction involving the acquisition or holding by overseas persons 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 nonresident in certain circumstances and on the payment of profits to certain non-resident contractors.

Taxes on Possession and Operation of Real Estate

No land tax is payable, but local government authorities are empowered to levy taxes, termed as 'rates', on all property within their territorial boundaries. Rates are assessed on either assessed annual rental value, land value, or capital value.

Taxes on Acquisition and Transfer of Real Estate

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 in any 12-month period. The standard rate of GST is currently 15%. In certain circumstances, supplies are zero-rated, meaning 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, if 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, the transaction must be zero-rated for GST. 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 that may be zero-rated. A mortgagee sale is subject to GST if the mortgagor would have been 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 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. 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 it is sold within ten years of this. Certain exemptions apply in respect of residential land and business premises.

Tax Depreciation

Depreciation can be claimed on building fit-outs, but not on most buildings or land.

Until 1 April 2011, buildings acquired after 31 March 1993 could be depreciated at 4% diminishing value or 3% straight-line, based on an estimated useful life of 50 years. 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 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 fit-out, and depreciation at 2% straight-line is permitted. Any loss on sale is not deductible.

Corporate Taxation

Corporate taxation for New Zealand resident companies is at the rate of 28% on their worldwide income. An overseas company is taxable 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 non-resident are taxed only on income deemed to be derived from New Zealand. New tax residents enjoy a 4-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	
Up to NZD 14,000	10.5%
NZD 14,001–48,000	17.5%
NZD 48,001–70,000	30%
NZD 70,001 and above	33%

Resident withholding tax (RWT) is imposed on residents' interest and dividend income at rates that reflect personal tax.

Payments to Non-resident

Dividends, interest and royalties paid by a New Zealand resident company to non-resident are subject to non-resident 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 non-resident's country of residence, i.e., the dividend rate has been historically reduced to 15% and interest/royalty rates to 10% (though the new/revised US, Australia, Hong Kong, Singapore, Turkey, Canada, Mexico and Chile DTAs reduce these rates even further in a confirmed new trend, indicating each must be individually reviewed as they frequently differ).

A new zero percent 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; and

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- 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 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 interest paid, which cost may be passed on contractually to the holder; and
- the rate of AIL reduces to 0% on bonds that meet certain requirements, e.g. XXX, are widely held.

Tax Treaties: Avoidance of Double Taxation

New Zealand currently has DTAs with 37 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
Philippines
Poland
Russian Federation
Singapore
South Africa
Spain
Sweden
Switzerland
Taiwan
Thailand
Turkey
United Arab Emirates
United Kingdom
United States of America

Information Exchange Agreements:

Anguilla
Bahamas
Bermuda
British Virgin Islands
Cayman Islands
Cook Islands
Curacao
Dominica
Gibraltar
Guernsey
Isle of Man
Jersey
Marshall Islands
Netherland Antilles
Niue
St Christopher and Nevis
St Vincent and Grenadines
Samoa
Sint Maarten
Turks and Caicos Islands
Vanuatu

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 New Zealand Stock Exchange (NZX) are governed by the NZSX/NZDX Listing Rules, the Securities Markets Act 1988, the Companies Act 1993, and by their trust deed or constitution. REITs in other forms (for example, unlisted property trusts) are governed by the Securities Act 1978 (if offers are made to the public) and legislation specific to their legal form (unit trusts, for example, are governed by the Unit Trusts Act 1960).

Common Terms of Lease/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 month's 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 3.5-4.5% or linked to CPI.
Frequency of rent increases or rent review	3, yearly
Service Charges, Operating Costs, Repairs & 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: Jones Lang LaSalle

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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 provision of the Condominium Act (see restrictions on foreign ownership below).
- 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.
  - Where the buyer, transferee or assignee is a foreigner or a foreign-owned enterprise, the 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

Operational Requirements for Foreign Corporations

Office

Modes of Entry

- Subsidiary domestic corporation
- Branch or representative office
- Regional operating headquarters, or regional or area headquarters

Registration/Licensing 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

Major Property Legislations

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	

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 USD 2.5 million and that the investment for establishing a store is at least 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 USD 250,000.

Industrial Trade

Registration/Licensing 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 (CBMW) – 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) that 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, as well as 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.

Expatriate employees of RHQs and ROHQs also enjoy some tax incentives.

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 the alien interest in the project does not exceed the 40% limit provided under 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.

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Special Education Fund Tax (SEFT)

1% of the assessed value is levied on real property 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); and
- 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 of over PHP 1.5 million. All professional services, including those of brokers in the real estate industry and those rendered by financial and non-financial intermediaries, are also 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, as well as 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 due to the inadequacy of the property in meeting the growing needs of the business. Property kept in repair may, nevertheless, be the subject to 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 from 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.

A non-resident foreign corporation not engaged in trade or business in the Philippines is taxed on its gross income.

Enterprises at 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 non-resident citizens as well as resident and non-resident foreigners are taxed on income derived in the Philippines only.

Individual income is categorized as compensation, business and passive. 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.

Non-resident 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.

Aliens who are employed by regional, or by area headquarters or regional operating headquarters of multinational corporations, representative offices, offshore banking units or petroleum service contractors and subcontractors are subject to a preferential income tax rate of 15% of their gross income from such employers (e.g., salaries, annuities, honoraria and allowances).

Tax Treaties: Avoidance of Double Taxation

Treaties in existence:

Australia	Korea
Austria	Malaysia
Bahrain	The Netherlands
Bangladesh	New Zealand
Belgium	Norway
Brazil	Pakistan
Canada	Poland
Chile	Romania
China	Russia
Czech Republic	Singapore
Denmark	Spain
Finland	Sweden
France	Switzerland
Germany	Thailand
Hungary	Turkey
India	United Arab Emirates
Indonesia	United Kingdom
Israel	United States of America
Italy	Vietnam
Japan	Yugoslavia

Real Estate Investment Trusts (REITs)

Requirements

R.A. 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. It must also be a public company as defined under R.A. 9856, which means that:

- it has to maintain its status as a listed company; and
- 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 sales 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.

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Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Meters
Rental Payments	
Rents	PHP/sqm; exclusive of value-added tax and withholding tax
Typical lease term	3-5 years
Frequency of rent payable (in advance)	Monthly or quarterly
Typical rent deposit (expressed as x month's 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 a fixed increment
Frequency of rent increases or rent review	At lease renewal
Service Charges, Operating Costs, Repairs & Insurance	
Responsibility for utilities	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)
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)
Tenant's building reinstatement responsibilities at lease end	Reinstated to original condition

Source: Jones Lang LaSalle

SINGAPORE

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
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 Singapore ('IE')
- 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. 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 3,000 and have acceptable qualifications.

Mid-level skilled foreigners may apply for an 'S' pass if they have a fixed monthly salary of at least SGD 2,000. Applicants will be assessed on a points system, taking 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 4,000 to sponsor the stay of their spouses and children here.

Those who do not satisfy either the basic monthly income or the education criteria are required to apply for work permits.

Tax Incentives

Major incentive schemes available to investors include:

- Productivity and Innovation Credit Scheme
- Land Intensification Allowance Scheme
- Research and Development Incentive Scheme
- Pioneer Incentive
- Investment Allowance
- Approved Royalties Incentive
- Development and Expansion Incentive
- Finance and Treasury Centre Tax Incentive
- Writing-down allowances for intellectual property acquisition
- Writing-down allowances for research and development cost-sharing
- Global Trader Program
- Double tax deduction for market development scheme
- Fund Management Incentive Scheme
- Approved Foreign Loan Scheme
- Angel Investors Tax Deduction Scheme
- Mergers and Acquisitions Scheme

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Restrictions on Ownership of Property by Foreigners

Residential property in Singapore is 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 property ('restricted properties') including:

- vacant land;
- land zoned for residential purposes;
- any house, building or other premises or any part thereof permitted to be used pursuant to the Planning Act or any other written law as a dwelling-house or which is lawfully so used; and
- 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 comprised in any building in a development permitted to be used under the Planning Act for residential purposes, and that is not a landed dwelling-house;
- any unit comprised in a development that is shown in an approved plan bearing the title 'condominium' and issued by the competent authority under the Planning Act; or
- 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 transaction):

- 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; or
- 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; or
- a Singapore society.

A foreign person must obtain approval from the Land Dealings (Approval) Unit to buy restricted properties.

A special arrangement is applicable to Sentosa Cove and 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 Monetary Authority of Singapore (MAS) lifted the requirement on non-resident, non-financial issuers of Singapore dollars bonds, and equities to convert their Singapore dollars proceeds into foreign currencies before remitting it abroad. With this latest relaxation of Singapore dollar restrictions, only 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-occupier's tax rates.

Generally, the annual value (determined by the Chief Assessor) is the estimated 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; and
- for hotels, the annual value of the hotel rooms will be determined at 25% of the gross hotel room receipts in the preceding year. For

all other areas in the hotels that are not hotel rooms (such as food and beverage outlets, retail shops and car parks), their annual values are based on their estimated prevailing market rentals.

The property tax rate for all properties, except owner-occupied residential properties, is 10% of the annual value. With effect from 1 January 2011, a new progressive property tax regime will replace the previous flat 4% tax rate for owner-occupied residential properties. The three-tier graduated rate scheme is as follows:

Annual Value	Tax Rate
First SGD 6,000	0%
Next SGD 59,000	4%
Above SGD 65,000	6%

If a property has been vacant for a continuous period of at least 30 days or a calendar month, an owner can claim a refund of the tax paid for the vacant period if the property is:

- intended for letting, but no tenant could be found despite reasonable efforts to obtain a tenant; or
- undergoing repairs to make it fit for occupation (repairs do not include renovations, alterations, improvements and additions).

However, if an owner intentionally leaves his or her property vacant, or it is vacant pending its sale, the owner would not be eligible for the refund.

Taxes on Acquisition and Transfer of Real Estate

Stamp Duty & 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 and is regardless of whether the property is complete or incomplete.

Buyer's Stamp Duty

Stamp duty, or buyer's stamp duty, 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 are as follows:

Amount or Value of Consideration	Duty Payable
Every SGD 100 or part thereof of the first SGD 180,000	SGD 1
Every SGD 100 or part thereof of the next SGD 180,000	SGD 2
Thereafter, every SGD 100 or part thereof	SGD 3

A shortcut method of computation of the ad valorem stamp duty is as follows:

Stamp duty = (3% X consideration) - SGD 5,400

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 8 December 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 are accorded the same treatment as a Singapore citizen) and non-individuals;
- Singapore permanent residents who already own one or more residential properties, whether owned wholly, partially or jointly with others; or
- Singapore citizens who already own two or more residential properties, whether owned wholly, partially or jointly with others.

The ABSD is payable by affected buyers at fixed rates on the actual price paid or market value of the property, whichever is higher.

The ABSD rate will be 10% for foreigners, and 3% for Singapore citizens and Singapore permanent residents.

Seller's Stamp Duty ('SSD')

Stamp duty is also payable by a seller of a residential property who acquired it (unless the parties agree otherwise):

- in the period between 20 February 2010 and 29 August 2010 (all inclusive) and sell or disposes of the property within one year from the date of acquisition;
- in the period between 30 August 2010 and 13 January 2011 (all inclusive) and sells or disposes of the property within three years from the date of acquisition; or
- on or after 14 January 2011 and sells or disposes of the property within four years from the date of acquisition.

Properties acquired before 20 February 2010 will not be subject to SSD.

The material date of acquisition or disposal is the date on which the contract is made, rather than the date of transfer or the 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.

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Where 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 were not paid.

Mortgages

Stamp duty payable on the mortgage instrument (other than for an equitable mortgage) is SGD 4 for every SGD 1,000 of the loan or part thereof, subject to a maximum of SGD 500.

Stamp duty payable on the mortgage instrument for an equitable mortgage is SGD 2 for every SGD 1,000 of the loan or part thereof, 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 gross annual rental during the lease period and the length of the lease period. The rates of stamp duty are as follows:

Lease Period	Duty Payable
Not exceeding one year	SGD 1 for every SGD 250 of the annual gross rental or part thereof
Exceeding one year, but not exceeding three years	SGD 2 for every SGD 250 of the annual gross rental or part thereof
Exceeding three years (or for any indefinite term)	SGD 4 for every SGD 250 of the annual gross rental or part thereof

- Leases involving premium:
  Stamp duty payable on lease documents involving premium will be computed on the gross rent of the rented property and the premium paid for the tenancy term.
- Leases involving variable/unknown rental:
  Stamp duty payable on lease documents with variable/unknown rental will be computed on the gross or open 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 amount to either 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 number of transactions made by the taxpayer, the financial capacity of the taxpayer) in deciding whether a gain is 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 that is 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 the country.

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' or 'rural centre and settlement' 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; or
- 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 it 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 Taxation

Companies are taxed on profits derived from sources in Singapore and on income received in Singapore from sources outside Singapore, 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 startup companies
   - With effect from YA 2008, tax exemption is given to qualifying startup 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 2010, this scheme will be extended to include companies limited by guarantee. A company that does not qualify for a tax exemption for new startup companies will be given partial tax exemption.

2. Partial tax exemption for companies
   - With effect from YA 2008, 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

3. SME Cash Grant
   - It was announced in Budget 2012 that for YA 2012, all companies will receive a one-off cash grant, pegged at 5% of the company's total revenue for YA 2012, subject to a cap of SGD 5,000. To be eligible for the cash grant, the company must have made Central Provident Fund ('CPF') contributions for at least one employee who is not a shareholder of the company during the basis period for YA 2012.
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 a double tax relief or a unilateral tax credit.

Double Tax Relief (DTR)

- A 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
Belgium
Brunei
Bulgaria
Canada
Chile (limited treaties)
China
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Fiji
Finland
France
Georgia
Germany
Hong Kong (limited treaties)
Hungary
India
Indonesia
Ireland
Israel
Italy
Japan
Kazakhstan
Kuwait
Latvia
Libya
Lithuania
Luxembourg
Malaysia
Malta
Mauritius
Mexico
Mongolia
Myanmar
The Netherlands
New Zealand
Norway
Oman
Pakistan
Papua New Guinea
Panama
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saudi Arabia
Slovak Republic
Slovenia
South Africa
South Korea
Spain
Sri Lanka
Sweden
Switzerland
Taiwan
Thailand
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States of America (limited treaties)
Uzbekistan
Vietnam

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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 on or after 1 June 2003, if the highest corporate tax rate of the foreign country from which the income was received is at least 15%, and 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 for a newly introduced 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 foreign income meets certain conditions. The amount of FTC to be granted is based on the total Singapore tax payable on the foreign income and the pooled foreign taxes paid on this income.

Non-resident individuals and companies are subject to a 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 and 2]
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	10%[1 and 2]
Rent or other payments for the use of movable properties	15%[1]
Technical assistance and service fees	Prevailing corporate tax rate[3]
Management fees	Prevailing corporate tax rate[3]

[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: 20%

[2]The reduced withholding tax rate of 10% applies to payments due and payable on or after 1 January 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 20% on the gross payment.

Personal Taxation

The Comptroller of Income Tax treats individuals as tax residents if they are:

- Singaporeans;
- Singaporean permanent residents; or
- foreigners who have stayed/worked in Singapore for at least 183 days in the previous year.

Otherwise, they will be treated as a non-resident 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 20%.

Tax residents are taxed on all income derived in Singapore, after provisions are made for certain tax deductions and personal reliefs.

From YA 2012 onwards, income tax is levied on a graduated scale ranging from 0% to 20%, as follows:

Chargeable Income	Rate (%)	Gross Tax Payable (SGD)
First SGD 20,000	0	0
Next SGD 10,000	2	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	17	6,800
First SGD 200,000	-	20,750
Next SGD 120,000	18	21,600
First SGD 320,000	-	42,350
Above SGD 320,000	20	

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 and securities issued by a supranational agency or a Singapore statutory board; and
- 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 the 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 local or foreign non-property companies, in government securities and securities issued by a supranational agency or a Singapore statutory board, or in 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; and
- it should not derive more than 10% of its revenue from sources other than the rental payments from the tenants of the real estate held by it, or the interest, dividends and other similar payments from SPVs and other permissible investments of the property fund.

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 on 8 April 2011, a REIT can borrow up to 35% of its deposited property. Borrowings exceeding 35% (up to a maximum of 60%) will be allowed if a credit rating from Fitch, Moody's or Standard and Poor's is obtained and disclosed to the public. The REIT should continue to maintain and disclose a credit rating, so long as its aggregate leverage exceeds 35% 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 from 18 February 2010 to 31 March 2015.

A foreign non-individual investor is one who is not a resident of Singapore for income tax purposes and:

- who does not have a permanent establishment in Singapore; or
- who carries on any operation in Singapore through a permanent establishment in Singapore, where the funds used by that person to acquire units in the REIT are not obtained from that operation.

In the Budget 2012, it was announced that 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

There is a GST remission 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 from 18 February 2010 to 31 March 2015.

Remission of Stamp Duty

The stamp duty chargeable on any instrument relating to:

- the sale of any immovable property situated in Singapore to a REIT; or
- the transfer of 100% of the issued share capital of a Singapore-incorporated company that holds, or was set up solely to hold, immovable properties situated outside Singapore to a REIT.

is remitted if the REIT was listed or to be listed on the Singapore Exchange within six months from executing the chargeable instrument. This remission is effective for instruments executed during the period from 18 February 2010 to 31 March 2015.

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Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Feet
Rental Payments	
Rents	SGD/sq ft/month or SGD/sqm/month inclusive of service charges
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 or quarterly
Typical rent deposit (expressed as x month's 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 increases or rent review	At lease renewal
Service Charges, Operating Costs, Repairs & Insurance	
Responsibility for utilities	Electricity, telecommunication and water consumption are separately metered and payable by each tenant
Car parking	Allocation is usually based on sq ft leased at seasonal charges
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 unless to a subsidiary, otherwise 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: Jones Lang LaSalle

SOUTH KOREA

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 10 years with possible extension for a further 10 years.
  - Commercial buildings: Essentially 12 months, but can be 3 to 5 years.
  - Housing (government-built apartments): For 'long-term housing', the minimum lease term is 5 years. For '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 (YooHanhoesa)
- Partnership (HapMyunghoesa)
- Limited partnership (HapJahoesa)
- Branch
  - Regular 'branch' conducting profit-generating activities in Korea.
  - 'Liaison office', which does not carry on profit-generating activities, but merely undertakes non-profit-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 through 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.
- Non-taxable 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, the Factory Act and the 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 pre-constructed factories.

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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 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 10% 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

- As for a manufacturing business, the first day of manufacturing goods from each base.
- As for a mining business, the first day of mining or extracting of minerals from each site.
- As 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 the 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 the foreigners through a capital increase, and through such an investment the firm becomes the a foreign-invested company, such 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 in 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 for 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 (Acquisition Tax, Registration Tax, Property Tax) Exemption

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 3 to 5 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 2 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 can 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 3 to 5 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

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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); and
- 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 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 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.

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: 0.6-4% of the price of the competent property (determined by the government)
- Regional education tax: 20% of property tax/aggregate land 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 (13% or 25%) or an individual income tax (8-35%) 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 to KRW 350,000.

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: 2% of purchase price
- Special tax for rural development: 10% of acquisition tax
- Registration tax: 2% of purchase price
- Education tax: 20% of registration tax
- 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.

The above information has been obtained from the Economist Intelligence Unit.

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 of the calculated tax, multiplied by FDI rate by 100% for the first 5 years and 50% for the following 3 years. The period and ratio of reduction may be extended 8 to 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: 8 – 35% of capital gains
  - Inhabitant tax: 10% of transfer income tax
- Corporation
  - Corporation tax: 13% or 25% of capital gains (The gains generated from transfer are included in non-operating profits and are thus subject to corporation tax)
  - Inhabitant tax: 10% of corporation tax

The surcharge on transfer income tax shall be increased by 60% 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 'non-resident 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.
- Non-resident 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 100 million	13%
Above KRW 100 million	25% (on the amount exceeding KRW 100 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. Non-resident 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 4 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
- Income from forestry

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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 10,000,000	8%
KRW 10,000,001 – 40,000,000	KRW 800,000 + 17% on the additional amount
KRW 40,000,001 – 80,000,000	KRW 5,900,000 + 26% on the additional amount
Over KRW 80,000,000	KRW 16,300,000 + 35% on the additional amount

Under scheduler taxation, severance payments, capital gains and forestry income are taxed separately at varying rates.

Tax Treaties: Avoidance of Double Taxation

Treaties in existence:

Australia
Austria
Bangladesh
Belgium
Brazil
Bulgaria
Canada
China
Czech Republic
Denmark
European Union
Egypt
Fiji
Finland
France
Germany
Greece
Hungary
India
Indonesia
Ireland
Israel
Italy
Japan
Kazakhstan
Kuwait
Luxembourg
Malaysia
Malta
Mexico
Mongolia
Morocco
The Netherlands
New Zealand
Norway
Pakistan
Papua New Guinea
Philippines
Poland
Portugal
Romania
Russia
Singapore
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Tunisia
Turkey
United Kingdom
United States
Uzbekistan
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 Acts (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 REITs

- Under the revised REICA of 15 April 2010, the minimum capital requirement is KRW 500 million.
- 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 30% of issued and outstanding shares. However, the limits on possession have been relaxed up to 35% until 31 December 2012. By 31 December 2012, if the possession of shares exceeds 30% 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, renovation and disposal of property
- Real estate development
- Property leasing
- Acquisition and disposal of stocks and bonds
- Deposit on banks
- Acquisition, management and disposal of property using rights such as Land Using Right and Leasing Right

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

1. Ordinary REIT (with revised REICA)

- Acquisition tax: 50% deducted
- Registration tax: 50% deducted
- Capital gains tax: 50% deducted

2. CR-REIT

- Corporate tax: Exempted on corporate tax when over 90% of profit is returned to shareholders
- Acquisition tax: 50% deducted
- Registration tax: 50% deducted
- Capital gains tax: 50% deducted

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Common Terms of Lease/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	1-3 years with renewals for 1 year (longer terms of 3-5 years are possible with annual rental review)
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months rent)	10 months or Chonsei 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 Prime Grade A building have accepted a cap of 5% or 7% in fixing rent reviews
Frequency of rent increases or rent review	Annual
Service Charges, Operating Costs, Repairs & 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
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: Jones Lang LaSalle

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Property Tenure/Ownership

There are two types of property tenure in Sri Lanka:

- Freehold
- Leasehold

The terms of leases granted by the government may vary and may depend on the purpose for which the land is to be used.

Major Property Legislation

Some of the main legislations are as follows:

- Apartment Ownership Law No.11 of 1973, as amended;
- Ceiling on Housing and Property Law;
- Finance Act No.11 of 1963 as amended;
- Prevention of Frauds Ordinance;
- Registration of Documents Ordinance;
- Stamp Duty Act;
- Land Reform Law; and
- Registration of Title Act No. 21 of 1998.

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 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, they 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 does not confer validity on such deeds, but only provides priority.

Recently, the government enacted the Registration of Title Act No. 21 of 1998. This is not in operation in full throughout the island as yet. Under this act, registration of title has been introduced. The purpose of this act is that 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 concerning units of condominium property.

Operational Requirements for Foreign Corporations

Entities can be registered in Sri Lanka either as:

- a fully owned subsidiary of an overseas company incorporated as a corporate entity; or
- an overseas company.

The procedure would entail filing the relevant forms with the Registrar General of Companies in Sri Lanka. The following areas of investment are restricted to 40% foreign ownership:

- production of goods where Sri Lanka's exports are subject to internationally determined quote 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;
- fishing (deep sea fishing);
- mass communications;
- education;
- freight forwarding;
- travel agencies; and
- shipping agencies.

The following areas are completely restricted to investment only by Sri Lankans:

- money lending;
- pawn broking;
- retail trade with a capital of less than USD 1 million;
- providing personal services other than for export or tourism sector; and
- coastal fishing.

The registration or licensing requirement for any commercial entities in Sri Lanka would be dependent on the type of industry and business that the foreign investor would be engaged in.

In relation to foreign employment restrictions in the country, foreign nationals are not permitted to be employed unless it can be proved, that their expertise is essential to the national economy. All foreigners working in Sri Lanka must obtain valid working visas.

Restrictions on Foreign Property Ownership

Under the Finance Act No. 11 of 1963, as amended, in the event of a transfer of property to a non-citizen or to companies where the foreign shareholding exceeds 25%, then 100% of the value of the property would have to be paid as tax in addition to the stamp duty payable.

This, however, does not apply to condominium apartments located on the fourth floor and above.

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The 100% property tax is also not applicable to any land transferred to an enterprise authorized by the Board of Investment of Sri Lanka (BOI) to develop on such land as:

- a project to construct not less than 100 residential housing units, each constructed on a piece of land not exceeding ten perches (one perch is approximately 25 sqm), or a registered condominium property of not less than 100 units of residential or non-residential accommodation, if the value of such land is met by an inward remittance of foreign currency and the investment on the project is not less than USD 50 million or its equivalent in Sri Lankan Rupees (LKR);
- a project for a construction and operation of a hospital or a hotel where the investment is not less than USD 10 million, and the purchase consideration of the land is met by an inward remittance of foreign currency;
- a project relating to an infrastructure development or any other development approved by the Minister of Finance, and where the investment is not less than USD 50 million and the purchase consideration of the land is met by an inward remittance of foreign currency; and
- a project solely for the manufacture of non-traditional goods for export, for the establishment of its manufacturing plant, office, storage facilities or dormitories for workers, where the investment is not less than USD 1 million and the purchase consideration of the land is met by an inward remittance of foreign currency.

Foreign Investment Incentives

In the 2012 Budget, a new tax incentive regime has been introduced to promote both domestic and foreign private investments. Different incentives are applicable to different categories of investments, as follows:

- small enterprises;
- medium enterprises;
- large enterprises;
- project expansions; and
- strategic import replacement enterprises.

There are also different qualifying criteria and tax incentives for different sectors such as manufacturing, agriculture and services.

Some sectors are not open for foreign investments and may be subject to government approval and/or regulations. Foreign investors are advised to check the website of BOI to see if their business fall into these sectors.

As part of the investment incentive, the applicable value added tax, customs duty, and port and airport development levy for the importation of project-related plant, machinery and equipment will be deferred during the project implementation period. This deferment will be treated as an exemption on the fulfillment of the conditions specified by the BOI.

Sri Lanka welcomes foreign investors. Further information relating to foreign investment incentives can be found on the website of BOI - Invest in Sri Lanka.

Exchange Control Regulations

The consent of the Controller of Exchange is required in the event of any transfer of property by a non-resident. Persons who are deemed to be non-resident are defined in Gazette No. 15007, dated 21 April 1972 and published under the provisions of the Exchange Control Act. Consent is required for:

- the parties to proceed with the sale of the property and to make payment to a non-resident; and
- the non-resident who received payment to remit the proceeds out of Sri Lanka.

As a result of recent relaxation in exchange control regulations, general permission has been granted to Sri Lankan resident buyers to make payments to non-resident in respect of the purchase of a real estate. However, non-resident are still required to obtain consent for the remittance of the sale proceeds out of Sri Lanka.

If a non-resident sells or transfers an immovable property in Sri Lanka, the proceeds of such a sale would not be remittable in full. The non-resident would be permitted to remit the proceeds to the extent of the amount brought into Sri Lanka by way of inward remittances at the time of the non-resident's purchase of that property.

In the case of Sri Lankan emigrants, in accordance with the current rules and with the consent of the Controller of Exchange, an initial remittance of USD 150,000 is permitted, followed by a subsequent remittance of USD 20,000 annually.

Taxes on Acquisition and Transfer of Real Estate

Stamp duty on a deed of transfer is as follows:

- 3% for the first LKR 100,000/-; and
- 4% for every LKR 100,000/- or part thereof.

Stamp duty on a lease agreement is LKR 10/- for every LKR 1,000/- or part thereof.

Stamp duty is usually payable in the event of a transfer by the purchaser and of a lease agreement by the lessee, unless the lessor and the lessee have an agreement to the contrary

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 30 April 2012:

Australia
Bangladesh
Belgium
Canada
China
Denmark
France
Finland
Germany
Hong Kong
India
Indonesia
Iran
Italy
Japan
Korea
Kuwait
Malaysia
Mauritius
Nepal
The Netherlands
Norway
Oman
Pakistan
Philippines
Poland
Qatar
Romania
Russia
Saudi Arabia
Singapore
Sweden
Switzerland

The information in this guide is current as at 31 August 2012.

TAIWAN

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 (BOT) infrastructure projects, where superficies are granted to superficiaries.

Generally, leasehold titles cannot be longer than 20 years. However, superficies can have 35 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 issued in June 1995, and are being used to standardize 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.

Restrictions on Foreign Ownership

Foreign individuals and companies (except for nationals and companies of the People's Republic of China or 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 properties 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 properties 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 Ministry of Interior.

Companies established in Taiwan by foreign investors, also referred to as Foreign Investment Approval (FIA) companies, may purchase or lease real properties for their operations in Taiwan.

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 Permit for PRC Citizens to Acquire, Create or Transfer Real Property Rights in Taiwan
- 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; and
- 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/Licensing 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); and
- 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.

In 2003, the MOEA launched a lease incentive measure for investment projects located in state-owned industrial parks. Under the measure, eligible companies will be exempt from rental during the first and second years, get a 40% discount of the rental during the third and fourth years, and get a 20% discount of the rental during the fifth and sixth years. Investors may contact the Industrial Development and Investment Center of the MOEA for further details.

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; and
- 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.

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.

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.

House Type	Min. Rate	Max. Rate	Actual Rates Enforced*
Houses for residential purposes	1.2%	2%	1.2%
Houses for business purposes	3%	5%	3%
Houses for private hospitals, professional offices, as well as the premises of non-profit civil organizations	1.5%	2.5%	2% or 1.5%

*Actual rates enforced are fixed by the government of each county or city, approved by the local people's assembly and submitted to the Ministry of Finance.

Land Value Tax

Land value tax is payable on an annual basis to the local county or special municipality (i.e., Taipei City, New Taipei City, Taichung City, Tainan City and Kaohsiung City, collectively referred to as '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:

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.

Formula	Condition	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%)

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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%

Capital Gains Tax

Capital gains from the sale of property or other assets, excluding land and stocks, are treated as regular income and taxed at a corresponding personal or corporate income tax rate. No capital gains taxes are charged on profits made from investment in the stock market, but losses cannot be deducted from income for tax purposes. Please note that, after 1 January 2010, an enterprise must include capital gains generated from investment in stocks in the calculation of its basic income, and an individual must include capital gains derived from transactions of the following securities in the calculation of his/her basic income:

- share certificates, certificates of entitlement to new shares, stock payment certificates and documents of title to any of the securities issued or placed privately by a company that is not listed in a stock exchange or traded in the over-the-counter market; and
- beneficiary certificates of privately placed securities investment trust funds. Gains from the sale of land is exempt from income tax, but is assessed under land value increment tax (LVIT).

LVIT is levied on the sale of all real estate. 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
1	Less than 100%	20%
2	100% to less than 200%	30%
3	200% and above	40%

Selective Commodities and Services Tax

The Statute for Selective Commodities and Services Tax took effect on 1 June 2011.

According to this statute, any seller who sells real property, including:

- a building and the land on which the building is located; and
- a piece of urban land for which a building permit can be issued within one or two years of acquiring the same

is subject to a Selective Commodities and Services Tax (the so-called 'luxury tax') at 10% or 15%, respectively, of the sum of the sale price and the value added tax (VAT) payable for the sale. Please note that luxury tax is a special tax payable by sellers in addition to the regular taxes payable on the sale of a property (i.e., LVIT and deed tax)

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, as follows:

Description		Service Life
Buildings for use as office, stores, residences, public places and others not otherwise classified.	1. Reinforced concrete construction, pre-fabricated concrete construction	50 years
	2. Reinforced brick construction	35 years
	3. Brick construction	25 years
	4. Metal construction (with cover treatment)	20 years
	5. Metal construction (without cover treatment)	15 years
	6. Wooden construction	10 years

Current tax regulations allow the straight-line, the fixed-percentage, the sum-of-years-digits, the production, the working-hour, 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 the straight-line. If no report is submitted, the business will be assumed to have opted for the straight-line method.

Corporate Taxation

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	Exempt from tax
More than TWD 120,000	17% of total taxable income, but the tax payable shall not exceed 50% of the portion of taxable income above TWD 120,000

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 1 January 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/her non-Taiwan-sourced income received in a calendar year does not exceed TWD 1 million.

Individuals who were in Taiwan for at least 183 days during a calendar year are treated as residents for income tax purposes and are taxed at progressive marginal rates, as follows (for the taxable year of 2011):

Taxable Income	Tax Rate
TWD 0–500,000	5%
TWD 500,001–1,130,000	12%
TWD 1,130,001–2,260,000	20%
TWD 2,260,001–4,230,000	30%
TWD 4,230,001 and above	40%

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., non-residents for income tax purposes) are liable for a withholding tax on gross income at a flat rate of 20%, but if a non-resident 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 non-resident's Taiwan-sourced income.

Tax Treaties: Avoidance of Double Taxation

Double taxation agreements as of 12 September 2012:

Australia
Belgium
Denmark
France
Gambia
Hungary
India
Indonesia
Israel
Macedonia
Malaysia
New Zealand
The Netherlands
Paraguay
Senegal
Singapore
Slovakia
South Africa
Swaziland
Sweden
United Kingdom
Vietnam

International Transport Tax Treaties for Shipping or Air Transport* as of 12 September 2012:

Canada
EU
Germany
Israel
Japan
Korea
Luxembourg
Macau
Netherlands
Norway
Sweden
Thailand
United States

*Generally, International Transport Tax exemptions allow countries to import and export cargos to a country and allow them to avoid taxes on these products. Such treaties enhance the location as a shipping/transportation center.

Real Estate Investment Trusts

Introduction

Taiwan passed the Real Estate Securitization Act (RESA) in 2003. The Ministry of Finance 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

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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 to be listed on the Taiwan Stock Exchange in March 2005. The REIT raised TWD 5.83 billion to acquire two office buildings, an apartment building and a commercial building in Taipei City. Several new issues are expected in 2012/2013.

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.
   - To be eligible to act as a trustee of a REAT, an entity must have a paid-up capital of TWD 300 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 or more are eligible to be listed on the Taiwan Stock Exchange. Trusts with assets of TWD 2 billion or more are eligible to be listed on the over-the-counter (OTC) market.
   - REATs with assets of TWD 500 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 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 must be invested in bank deposits, government securities, 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.
   - 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 have net assets of over TWD 10 million (or TWD 15 million for couples), or an annual income over TWD 1.5 million for the previous two years (or over TWD 2 million for couples). Corporations investing in private funds must have assets over TWD 50 million.
   - Restrictions on borrowing, liquidity ratios, appraisal regulations, investment plans, control reports and execution records, and other such restrictions on public funds will not apply.

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 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.

Common Terms of Lease/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	Reinstated to original condition
Basis of rent increases or rent review	Reinstated to original condition
Frequency of rent increases or rent review	At lease renewal or every 2-3 years
Service Charges, Operating Costs, Repairs & 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)	Landlord reinstated to original condition
Responsibility for external/structural repairs	Landlord reinstated to original condition
Responsibility for building insurance	Landlord reinstated to original condition
Disposal of Leases	
Tenant subleasing & assignment rights	Reinstated to original condition
Tenant early termination rights	Reinstated to original condition
Tenant's building reinstatement responsibilities at lease end	Reinstated to original condition

Source: Jones Lang LaSalle

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Property Tenure/Ownership

Land ownership, possession and use come under 2 types of tenure:

- Freehold
- Leasehold

Lands are usually granted for 2 purposes:

- Residential purpose – 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 for ownership. These are normally granted by the Crown Property Bureau and the government or state organizations. Private land owners also offer leasehold title.

Strata-title ownership is common among residential, office and retail projects in Thailand.

A bill on property leasing was enacted in May 1999. The bill allows foreigners doing business in Thailand to lease real property primarily for commercial or industrial purposes. Another provision in the bill 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 bill also allows leases to be transferred to third parties either by sale or inheritance.

Major Property Legislation

- Bankruptcy Act
- Bankruptcy Court Act
- Civil and Commercial Code
- Commercial and Industrial Property Lease Act
- Condominium Act
- Exchange Control Act
- Foreign Business Act
- General Building Construction Code
- 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/Licensing Requirements

According to the Foreign Business Act, a foreigner refers to:

- an individual of non-Thai nationality;
- an entity registered in another country; or
- 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 licenses 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.

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. There are two applications must be processed simultaneously, i.e.,

- an application to receive a work permit, submitted to the Ministry of Labour; and
- an application for a one-year non-immigrant visa extension, 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 announcement of the BOI No. 1/2553, as amended by the announcement of the BOI No. 2/2554 that came into force on 17 January 2011, priority of investment promotion is given to small and medium industries that have a minimum level of investment capital of THB 500,000 (excluding cost of land and working capital). Each project that applies for an investment promotion must have an investment capital (excluding cost of land and working capital) of not exceeding THB 30 million, and the total fixed assets or investment capital of the business (excluding cost of land and working capital) must not exceed THB 200 million. BOI privileges include:

1. Criteria for Project Approval

- For a project with an investment capital (excluding cost of land and working capital) not exceeding THB 500 million, the following criteria are used:
  - The value added is not less than 20% of the sales revenue, except projects that manufacture electronic products and parts or process agricultural produce, as well as projects granted special approval by BOI.
  - 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 potential environmental threat, the BOI shall prescribe special conditions on both the location of the project and the manner of pollution treatment.
- For a project with an investment capital (excluding cost of land and working capital) exceeding THB 500 million, the same criteria as for projects with an investment capital not exceeding THB 500 million shall be used, and a feasibility study of the project, as prescribed by the BOI, must be submitted.
- 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 bid's 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 privatization of state enterprises, if it requires governmental support, the appropriate budget should be determined after the privatization of the state enterprise as per the State Enterprise Corporatisation Act. In the event of expansion after the privatization, 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 totaling to 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.
- 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

There are three investment zones based on economic factors, i.e., the level of income and the availability of infrastructure in each province.

- Zone 1: Comprises 6 central provinces with high income and good infrastructure - Bangkok, Samut Prakan, Samut Sakhon, Pathum Thani, Nonthaburi and Nakhon Pathom.
- Zone 2: Comprises 12 provinces - Samut Songkhram, Ratchaburi, Kanchanaburi, Suphanburi, Ang Thong, Ayutthaya, Saraburi, Nakhon Nayok, Chachoengsao, Chon Buri, Rayong and Phuket.
- Zone 3: Comprises the remaining 59 provinces with low income and less developed infrastructure. All areas in Zone 3 provinces are designated as investment promotion zones.

- The more developed provinces are the following 36: Krabi, Kamphaeng Phet, Khon Kaen, Chanthaburi, Chai Nat, Chumphon, Chiang Rai, Chiang Mai, Trang, Trat, Tak, Nakhon Ratchasima, Nakhon Si Thammarat, Nakhon Sawan, Prachuab Khiri Khan, Prachin Buri, Phangnga, Phattalung, Pichit, Phitsanulok, Phetchaburi, Phetchabun, Mukdahan, Mae Hong Son, Ranong, Lop Buri, Lamphang, Lamphun, Loei, Songkhla, Sa Kaew, Sing Buri, Sukhothai, Surat Thani, Uttaradit, and Uthai Thani.
- The least developed provinces are the following 23: Kalasin, Nakhon Phanom, Narathiwat, Nan, Buri Ram, Pattani, Phayao, Phrae, Maha Sarakham, Yasothon, Yala, Roi Et, Si Sa Ket, Sakhon Nakhon, Sathun, Surin, Nong Bualamphu, Amnat Charoen, Chaiyaphum, Nong Khai, Udon Thani, Ubon Ratchathani and Bueng Karn.

4. Criteria for Granting Tax and Duty Privileges

- Zone 1: Approved projects located in Zone 1 shall be granted:
  - A 50% reduction of import duty on machinery that is subject to import duty of not less than 10%.
  - An exemption from import duty on raw or essential materials used in the manufacture of export products for one year.
  - A corporate income tax exemption for three years for projects located within the industrial estates or promoted industrial zones, provided that such a project with capital investment of THB 10 million or more (excluding cost of land and working capital) obtains an ISO 9000 or a similar international standard certification within two years from its startup date; otherwise, the corporate income tax exemption will be reduced by one year.
- Zone 2: Approved projects located in Zone 2 shall be granted:
  - A 50% reduction of import duty on machinery that is subject to import duty of not less than 10%. There shall be an exemption of import duty on machinery for projects located within the industrial estates or promoted industrial zones in which the application for investment promotion is submitted before 31 December 2014.
  - An exemption from import duty on raw or essential materials used in the manufacture of export products for one year.
  - A corporate income tax exemption for three years, increased to seven years for projects located within the industrial estates or promoted industrial zones, provided that such a project with a capital investment of THB 10 million or more (excluding cost of land and working capital) obtains an ISO 9000 or a similar international standard certification within two years from its startup date; otherwise, the corporate income tax exemption will be reduced by one year.
- Zone 3: Approved projects located in Zone 3 shall be granted:
  - An exemption from import duty on machinery.
  - A corporate income tax exemption for eight years, provided that such a project with a capital investment of THB 10 million or more (excluding cost of land and working capital) obtains an ISO 9000 or similar international standard certification within two years from its start-up date; otherwise, the corporate income tax exemption will be reduced by one year.
  - An exemption from import duty on raw or essential materials used in the manufacture of export products for five years.
  - A deduction from net profit of 25% of the project's infrastructure installation or construction costs in addition to normal depreciation, and such a deduction can be made from the net profit of one or several years within ten years from the date of the first revenue derived from the promoted activity.
- Approved projects located in Zone 3 shall be granted further privileges, depending on whether they are located in the more developed provinces (36) or the least developed provinces (23).

Moreover, there are more additional incentives for the activities such as priority activities, activities of special importance and benefits to the country, and the Investment Promotion Policy for Sustainable Development, or additional incentives under the skill, technology and innovation (STI) scheme.

For details on the BOI's announcement regarding the policies and criteria for investment promotion, please refer to http://www.boi.go.th/index.php?page=policies_for_investment_promotion.

Regional Operating Headquarters (ROH) Scheme

In 2002, the cabinet endorsed a package of tax incentives aimed at encouraging foreign companies to set up regional offices in Thailand. The company must be registered in Thailand with at least THB 10 million of paid up registered capital, has at least three offshore affiliates in other countries, and receives income from its offshore affiliates accounting 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 Revenue Department). The tax incentives came into force with the issuance of a Royal Decree in 2002. These incentives include:

- A reduction in corporate income tax from 30% to 10% on income derived from performing administrative, technical, research

and development (R&D), and other qualifying services for ROH offshore branches or associated enterprises.

- A reduction in corporate income tax from 30% to 10% on royalties derived from ROH foreign branches or associate enterprises for the use of R&D performed in Thailand by the ROH.
- A reduction in corporate income tax from 30% to 10% 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 that 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.
- 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.

The prospective investor who wishes to qualify to obtain ROH privileges may either seek BOI's promotion or simply register with the Revenue Department.

However, the new ROH package has been issued on 27 October 2010 and is now 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 at the end of each accounting period, and must provide services to associated enterprises in foreign countries. The company also must have a total business spending of at least THB 15 million per year ('business spending' refers to the total operating costs paid to individuals or companies in Thailand, but excludes the operating expenses paid overseas, royalties and know-how fees, raw materials, components and packaging), or must have an investment spending (actual payment) of at least THB 30 million paid in Thailand per year that is directly related to ROH. Moreover, foreign-associated enterprises must have a management and employees working, as well as actual business operation including maintaining skilled staff of at least 75% of the total employees and having an average remuneration per worker of at least THB 2.5 million per annum for at least five employees by the end of the third accounting period. Investors must notify the Revenue Department about the ROH's incorporation within five years from the date the law became effective.

The new benefits 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 for ten years on net profits for income derived from services provided to the ROH's domestic branches or associated enterprises.
  - A 10 % corporate income tax for ten years on net profits for qualified royalties.
  - A 10 % corporate income tax for ten years on interest received from the ROH's foreign branches or associated enterprises for loan granted, provided that such loans are made from other sources and extended to the ROH's branches or associated enterprises.
  - A corporate income tax exemption for ten years for dividends received by the ROH from associated enterprises.
  - A corporate income tax exemption for ten years for dividends paid out of the ROH's concessionary profits to its juristic shareholders who are incorporated abroad and not carrying on business in Thailand.
- For the income of expatriate employees
  - Expatriates employed by an ROH are subject to a tax at the rate of 15% on remuneration, derived from the 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 persons or corporations are not permitted to hold title to land, but they are allowed to purchase 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

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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 into Thailand over a minimum period of five years in a specific businesses or activities. Moreover, the land to be acquired shall be located in Bangkok Metropolis, Pattaya City, or Tessaban (municipality), or in the area specified as a residential zone according to the law on town and country planning, and shall not be situated in a military safety zone according to the law on military safety zone. However, the land may be disposed if it is not utilized for residence within two years from the day of the land acquisition registration, or if the alien who is granted permission to acquire such land does not comply with the rules and conditions specified.

Condominiums

Foreigners can purchase, in any condominium project, up to 49% of the total space of all units in that condominium at the time of the application for registration without the need for permanent residence. Eligible foreigners include:

- those with residence permits;
- those granted permission to enter the Kingdom 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; and
- foreign individuals or juristic persons remitting foreign currency into the Kingdom 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.

Before 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. 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) and the Ministerial Regulation No. 13 (B.E. 2497), issued under the Exchange Control Act (B.E. 2485), 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 centralize the 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 authorized financial institution within 360 days of receipt, except for foreigners temporarily staying in Thailand for not more than three months, foreign embassies and international organizations, including people with diplomatic privileges and immunities. Additionally, any person bringing into or taking out of Thailand an aggregate amount of foreign currency exceeding USD 20,000 or its equivalent must declare as such to a customs officer. Regarding Thai currency (THB), tourists may carry up to THB 500,000 to neighboring countries and up to THB 50,000 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 authorized financial institution or deposited in a foreign currency account with an authorized 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 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 USD 100 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 (SEC's) guidelines and approval from the Bank of Thailand.

- Outward remittances to Thai emigrants who are permanent residents abroad are allowed up to USD 1 million per recipient per year for each purpose.
- Fund transfers to public for donation are allowed up to USD 1 million per person per year for each purpose
- Purchase of immovable properties abroad is allowed up to USD 10 million per person per year.

Remittances overseas are subject to a 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%
Payments 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 Nonresidents

Nonresidents 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, the nonresidents may open Thai baht accounts with authorized banks in Thailand for: (1) Nonresident baht account for securities (NRBS) – The 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 and financial derivatives transactions traded on the Thailand Futures Exchange and Agricultural Futures Exchange of Thailand; and (2) Non-resident baht account (NRBA) – The account may be debited or credited for general purposes, except funds related to an investment in securities such as trade, services, foreign direct investment, investment in immovable assets and loans. Please note that total daily outstanding balances for each type of account shall not exceed THB 300 million per non-resident, and this is permitted 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 (Part V). The tax rate varies greatly, depending on the location and the assessed value of the land. Typically, it ranges from THB 0.5 to THB 70 per rai.

House and Land Tax

This is a tax on assessed rental income and only applies to properties that are rented out.

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

Sale of Freehold Real Estate

Fees Payable	Rates
Ownership transfer fee	2% of assessed value
Additional stamp duty	THB 1 per THB 200 of declared amount, or an assessed value 0.5% of the declared amount or assessed value, whichever is higher
Specific business tax	3% of the declared amount or assessed value, whichever is higher
Municipal tax	10% of specific business tax
Withholding tax	For juristic person – 1% of the declared amount or assessed value, whichever is higher For individual – 5–37% of assessed value

Taxes on Acquisition and Transfer of Real Estate

Stamp duty is waived in transactions that are subject to specific business tax.

The ownership transfer fee for transactions under debt restructuring agreements has been reduced to 0.01% from 2%.

Disposition of Leasehold Real Estate

Fees Payable	Rates
Lease Registration Fee	1% of the total lease consideration or the assessed rental value, whichever is higher
Municipal Tax	0.1% of the lease registration fee

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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
Loan Agreement Stamp Duty	0.05% of Mortgage Registration Fee

For transactions under debt restructuring agreements, a mortgage registration fee of 1% will be applied from 1 January 2005 onwards.

In addition, mortgage interest payments are tax-deductible for personal income tax purposes, subject to a cap of THB 100,000. 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 30%.

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 a foreign individual are currently not taxed. Foreign companies or other juristic persons doing business in Thailand are subject to pay a 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 itemized separately from the price of the goods or services, so that consumers know the goods' or services' actual amount.

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; and
- agents for foreign businesses conducted in Thailand.

Those exempt to pay VAT include:

- small enterprises with annual sales not exceeding THB 1.8 million; and
- leasing of immovable property.

There are two VAT rates:

- 0% - Persons who or businesses that do not have to pay VAT will be refunded the amount of VAT they had previously paid. Those eligible for the zero rate include:
  - exported goods;
  - services provided in Thailand for persons in foreign countries;
  - international transportation by air and sea by Thai juristic persons; and
  - 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 1 October, 2003, to be applied until 30 September 2014.

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%

It is noted that a company adopting generally accepted accounting principles (GAAP), 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 the business in Thailand, including companies listed on the Stock Exchange of Thailand, are subject to pay a 23% corporate income tax on net profits. The corporate income tax will be reduced

to 20% in years 2013–2014. 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 taking into account all revenues arising from or in consequence of the business carried on an accounting period minus expenses, as prescribed by the Revenue Code.

Small-to-medium enterprises (defined as those having registered a capital not exceeding THB 5 million) shall pay the tax rate of 23%, which will be reduced to 20% in years 2013–2014, based on the level of net profits as shown below:

Net Profit	Tax Rate
Not exceeding THB 150,000	0%
Over THB 150,000–1,000,000	15%
Over THB 1,000,000–3,000,000	23%

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 a corporate income tax of 2% and 10% of the gross income, depending on type of business activity.

Net losses may be carried forward for 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 a personal income tax, whether such income is paid in or outside the country. The tax is applied on a graduated scale ranging from 10% to 37% (based on the assessable income) and is 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, up from THB 100,000, with effect from 2008. This means that individuals will only pay tax on income above THB 150,000.

Tax Treaties: Avoidance of Double Taxation

Treaties in existence:

Armenia
Australia
Austria
Bahrain
Bangladesh
Belgium
Bulgaria
Chile
Canada
China
Cyprus
Czech Republic
Denmark
Finland
France
Germany
Great Britain and Northern Ireland
Hong Kong
Hungary
India
Indonesia
Israel
Italy
Japan
Kuwait
Laos
Luxembourg
Malaysia
Mauritius
Myanmar
Nepal
The Netherlands
New Zealand
Norway
Oman
Pakistan
Philippines
Poland
Romania
Russia
Singapore
Slovenia
South Africa
South Korea
Spain
Sri Lanka
Sweden
Switzerland
Seychelles
Turkey
Ukraine
United Arab Emirates
United States of America
Uzbekistan
Vietnam

Real Estate Investment Trusts

Introduction

The trusts for transactions in the Capital Market Act B.E. 2550 (2007) prescribe that trusts may be established in the capital market through real estate investment trusts (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.

REITs are similar to the existing SEC-listed property funds for public offering (PFPOs), and the SEC has approved the current fund structure of the PFPOs. REITs have more tax advantages and less flexibility in terms of gearing ratio, fundraising channels and investment choices than do PFPOs.

Some features of REIT's include:

- they may invest in freehold or leasehold property;
- they may invest in property overseas;
- they may borrow up to 65% of total assets with credit approved (the PFPO limit is 10%);
- they may invest in greenfield property, but to a maximum of 10% of total assets; and
- they may make an unlimited public offering and acquire or liquidate assets, with approval from the trustee and/or unit holders, subject to deal size.

The benefits of REITs to investors or unit holders include:

- they have more investment choices, i.e., improved prospects for growth in terms of size and return over time;
- they have strong dividend yield;
- they have limited allowance to diversify risk from the property market by investing in low-risk tools such as government bonds; and
- they have the alternative to invest in recurring-income assets.

The benefits of REITs to developers or property owners include:

- they may hold as much as 50% of the total units;
- they may adjust the trust size according to the market; and
- they may have more flexibilities as to fundraising channels and may increase gearing ratio up to 65%

Common Terms of Lease/Tenancy Agreements

Unit of Measurement	
Unit of Measurement	Square Meters
Rental Payments	
Rents	THB/sqm/month (net area)
Typical lease term	3 years; longer terms of 6 years or more are available in some buildings for large-space users
Frequency of rent payable (in advance)	Monthly
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 outset of the lease
Frequency of rent increases or rent review	At lease renewal or annually or 3 yearly in longer leases
Service Charges, Operating Costs, Repairs & Insurance	
Responsibility for service charge/ management fee	Usually quoted with rental charge and payable monthly in advance
Responsibility for utilities	Electricity and telecommunication 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
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	Only by break clause, usually subject to penalty
Tenant's building reinstatement responsibilities at lease end	Reinstated to original condition

Source: Jones Lang LaSalle

VIETNAM

Property Tenure/Ownership

Major Property Legislation

Property Law in Vietnam is governed by the:

- Constitution;
- Land Law[1];
- Housing Law;
- Planning Law;
- Construction Law;
- Law on Investment; and
- Law on Real Estate Business,

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; and
- 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); and
- Provincial/City People's Committees (local PC).

Operational Requirements for Foreign Corporations

All foreign corporations 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 must have an investment project specifying, inter alia, the location of the project, the required land area and the land acquisition plan. The licensing authority evaluates the feasibility of the investment project for the issuance of an investment certificate. The first investment certificate for a foreign-invested enterprise (FIE) in Vietnam is also its certificate of incorporation and business registration. An FIE must subsequently register for a tax code and seal with the relevant departments of the local PC for its full and lawful operations. The FIE then can enter into the land lease agreement with the provincial people's committees or infrastructure developers.

There are two methods in which a foreign corporation can participate in real estate business activities and/or acquire land use rights in Vietnam:

- establishing a wholly foreign-owned entity in Vietnam. 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; or
- end from the state and subsequently contributes the value of the land use right to the joint venture.

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 6 billion (approximately USD 290,000). In addition, the investors' ownership capital must account for at least:

- 20% of their total invested capital for the projects in new urban areas or industrial parks;
- 15% for residential projects of under 20 ha; and
- 20% for residential projects of over 20 ha.

The current laws on real estate business mandates that those organizations and individuals permitted to provide real estate brokerage business services and real estate trading floors must have internationally recognized licenses. Individuals who wish to register a real estate brokerage and obtain the relevant practicing certificate must satisfy certain conditions and successfully complete a trading course in real estate brokerage (for a real estate broker's certificate) and property assessment (for a real estate valuer's certificate). Real estate broker's and real estate valuer's certificates issued in foreign countries will be recognized in Vietnam.

Existing investors may now assign or transfer new urban area development projects, residential projects and projects for development of industrial zones to other investors, subject to prescribed conditions and approval from competent authorities. Some conditions for assignment of the projects include:

- projects not belonging to subjects recovered under the law;
- projects having been duly approved;
- the investors having legitimate land use rights, either in the form of a land lease or a land allocation; and
- compensation and site clearance having been completed for the whole project or for the relevant phase of the project

[1]On 19 September 2012, the Standing Committee of the National Assembly reviewed the first draft of an amended Land Law. This law shall be considered to be passed in June 2013.

Foreign Investment Incentives

- Newly established enterprises in investment projects in high-technology, scientific research and technological development sectors, investments in the development of especially important infrastructure facilities of the state and the production of software products, as well as businesses operating in the sectors of education and training, occupational training, healthcare, culture, sport and the environment shall be exempted from corporate income tax (CIT) for a maximum period of four years and shall be entitled to a 50% reduction of the amount of CIT payable for a maximum period of nine subsequent years from the first year in which the enterprise has taxable income.
- The newly established enterprises from investment projects in areas with difficult socio-economic conditions shall be exempted from corporate income tax for a maximum period of two years and shall be entitled to a 50% reduction of the amount of corporate income tax payable for a maximum period of four subsequent years from the first year in which the enterprise has taxable income.
- The normal CIT rate is 25%. The preferential rates of 10%, 15% and 20% apply to investment projects that satisfy certain conditions, such as investments in certain fields of business and/or encouraged geographical locations.
- An import duty exemption on equipment, machinery and specialized vehicles (including spare parts, accessories, etc) imported for creating the assets of the project, as well as fuel, raw materials and supplies imported for implementing the project.
- Protected industrial property rights, technical know-how, technological processes and technical services required to implement the project will be exempt from payment of taxes relating to technology transfer or income derived from royalties.

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:

- Vietnam-domiciled companies being:
  - fully Vietnamese-owned;
  - fully foreign-owned; or
  - partly Vietnamese-owned and partly foreign-owned; and
- individuals being:
  - Vietnamese citizens and residents;
  - Vietnamese individuals residing overseas; and
  - in limited circumstances, foreign individuals residing in Vietnam.

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 to exclusively use and deal with the land in a specified manner; and
- 'ownership of houses and assets attached to land' (building ownership), which relates not to the land itself, but to the buildings and other structures attaching to land.

There are two main categories of LURs that may be held in Vietnam, being:

- land allocated by the state (allocated land); and
- 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; or
- 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 a 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.

In both land rental scenarios, 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 investment certificate, which is usually not longer than 50 years. 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.

The provincial or city people councils have the authority to annually set out the land value list applicable in their province or city. The land values are used as the base prices to determine the applicable rents in accordance with the location and grade of the land.

It should also be noted that interests in the land or the buildings or assets attached to the land can be held in the form of leases from various different kinds of lessors not being the state. The LUR of a foreign investor varies depending on the payment arrangements of the land rental. The Law on Land contemplates two payment arrangements of land rentals:

- annual rentals payments ('annual payment'); and
- one-off payment of rental for the entire lease term ('one-off payment').

Under a land lease for the annual payment, the FIE has the following rights[2]:

- use the assets on the land as secured assets under security arrangements (including mortgages, guarantees) in favor of credit institutions licensed to operate in Vietnam, and use the assets on land as a capital contribution in a company;
- assign or transfer the assets on land under the FIE's ownership to Vietnamese and foreign entities;
- lease a residential house or apartment on land, provided that the FIE has been licensed to develop and lease residential real estate in accordance with the Law on Real Estate Business in Vietnam.

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 can enjoy a broader scope of rights in relation to LUR and assets on the land, as follows[3]:

- use the LURs and assets attached to the land as secured assets under a security interest arrangement (mortgage or guarantee) in favor of licensed credit institutions in Vietnam during the term of the land lease;
- assign the right to use the leased land and the assets owned by them, attached to the land, during the term of the land lease;
- sublease the LUR and the assets owned by them, attached to the land, during the term of the land lease;
- make capital contributions using the LUR and the assets owned by them, attached to the land, to engage in business or production cooperation during the term of the land lease; and
- sell or lease the residential houses or apartments to eligible residential house owners in Vietnam if the FIEs have been licensed to develop the residential houses or apartments for sale, in accordance with the Law on Residential Housing and the Law on the Real Estate Business.

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 a 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 latter entity to continue the subproject developments.

An FIE can sublease land from licensed infrastructure developers in the industrial, high-technology 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 (SMAs). While the rights of an FIE over the subleased land under the annual payment method are limited to the use of only assets attached to land as the collateral and capital contribution into another entity during the sublease term in accordance with the approval of the SMAs, the FIE adopting a one-off payment of land rentals can enjoy broadened rights and benefits in relation to not only the assets on the land, but also the land use right. Any assignment of the LUR during the sublease term in an industrial zone, a high-technology zone and an economic zone must be subject to the approval of the relevant SMA and the developer. Upon the approval of the relevant SMA, the assignor shall terminate the existing land sublease agreement, and the assignee shall enter into a new land sublease agreement with the developers for the remaining term of the land sublease. If the assignor has paid in full the land rentals for the entire land sublease term, the assignee will not need to pay any further land rental.

In build-operate-transfer (BOT) projects and public private projects (PPPs) in the infrastructure sector, the state shall allocate or lease the land to a BOT enterprise or a PPP enterprise. BOT/PPP enterprises shall be exempted from land use fees with respect to the allocated land or land rental, in relation to the leased land for the

[2]Article 119.2 of the Law on Land
[3]Article 119.3 of the Law on Land

entire project duration. It is unclear under the current Law on Land whether a BOT/PPP enterprise is permitted to mortgage the land use right in favor of the foreign lender.

It is important to note that land users for land acquired for public purposes by way of land allocation by the state, in certain specified circumstances[4], will not be issued with a unified certificate. This is a major legal impediment that needs to be addressed to facilitate external debt funding from financiers for the development of public service projects in Vietnam if no certificate over the LUR will be given to the foreign investors and FIEs.

Pursuant to Article 66.1 of Decree 88[5], land users have not been able, since 1 January 2008 onwards, to exercise their land rights or otherwise grant a mortgage over the relevant LURs, unless they possess an LUR certificate.

The newly amended Housing Law permits foreign organizations and individuals within certain categories to purchase and own residential houses in Vietnam. A foreign individual shall be permitted to own one unit in a residential apartment building for a maximum period of 50 years and must, inter alia, be currently living in Vietnam. Foreign individuals must also have permission from a competent state body of Vietnam to reside in the country for a period of at least one year.

Enterprises with foreign-owned capital shall be permitted to own numerous units in a residential apartment building for people working at such enterprise for a period corresponding to the duration stipulated in its issued investment certificate, including any extended duration.

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 official US dollar to Vietnamese dong exchange rate daily by averaging rates from the previous day's interbank foreign exchange transactions.

Taxes on Possession and Operation of Real Estate

Under the regulations of taxes on housing and land, as the FIEs have to pay land rental, the tax on land does not apply to FIEs. In Vietnam, there is no tax levied on the ownership of a house.

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 and 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.

The amount of CIT payable in any tax assessment period for activities relating to the assignment of real property shall equal to the assessable income from such activities multiplied by a tax rate of 25%.

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 shall not be deductible against other income relating to production and business activities, but these losses may be carried forward to taxable income from real property assignment activities 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.

[4]Article 91.3(a) (land used for public purposes) of Decree 181/2004/ND-CP of the Government, dated 29 October 2004, to implement the Law on Land.

[5]Decree 88/2009/ND-CP of the Government, dated 19 October 2009, on the issuance of a land use right certificate.

VIETNAM

Stamp Duty

All property documents and transactions, and all property instruments including contracts for sale and purchase, mortgages and leases, must 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 10 million (approximately USD 480) 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 either treated as ordinary 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 an assignment of a part of or the enterprise's entire capital already invested in it to one or more other organizations or individuals (including the sale of the entire enterprise). The CIT rate applicable to income from a capital assignment and from transfers of securities is 25% of the profit.

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 at 10%.

Tax Depreciation

The Vietnam government 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 managing them the method of depreciation for fixed assets that they are choosing to apply before implementing 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, including where they adopt the accelerated method. 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 a corporate income tax on taxable income at a flat rate of 25%.

Personal Taxation

Under the tax system, personal income tax is levied on the aggregate income of an individual during the calendar year on both regular and irregular income. All individuals are required to declare their taxable income for the annual finalization of income tax.

Tax Treaties: Avoidance of Double Taxation

The following jurisdictions have entered into a tax treaty with Vietnam:

Australia
Algeria
Austria
Bangladesh
Belarus
Belgium
Bulgaria
Burney
Canada
China
Cuba
Czech
Denmark
Egypt
England
Finland
France
Germany
Holland
Hong Kong
Hungary
Iceland
India
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Ireland
Israel
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Poland
Qatar
Romania
Russia
Singapore
Slovakia
South Korea
Spain
Sweden
Switzerland
Taiwan
Thailand
Ukraine
United Arab Emirates
Uzbekistan
Venezuela

Real Estate Investment Trusts

Real estate investment funds (REIFs) have been officially permitted in Vietnam since 15 September 2012, when Decree No. 58/2012/NĐ-CP of the Government, providing for the implementation of the Amended Law on Securities, came into force. A REIF must maintain 65% or more of its total asset value in real estate. The remaining portion of the asset value can be invested into valuable papers, securities and government bonds. In addition, REIFs are not allowed to directly develop any real estate development projects, provide any financing or guarantee for any real estate project.

Common Terms of Lease/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 gross 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	Only for the duration of the tenancy, no guarantee beyond the original lease term
Basis of rent increases or rent review	No, unless an option to renew is agreed at the outset and specified in the lease
Frequency of rent increases or rent review	At lease renewal or every 2-3 years
Service Charges, Operating Costs, Repairs & 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 based on one parking lot per 150-200 sqm. 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, sometimes only accepted for the tenant's affiliates with landlord's consent
Tenant early termination rights	Typically not allowed under fixed-term lease but can be negotiated in certain circumstances
Tenant's building reinstatement responsibilities at lease end	Original condition, allowing for wear and tear

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