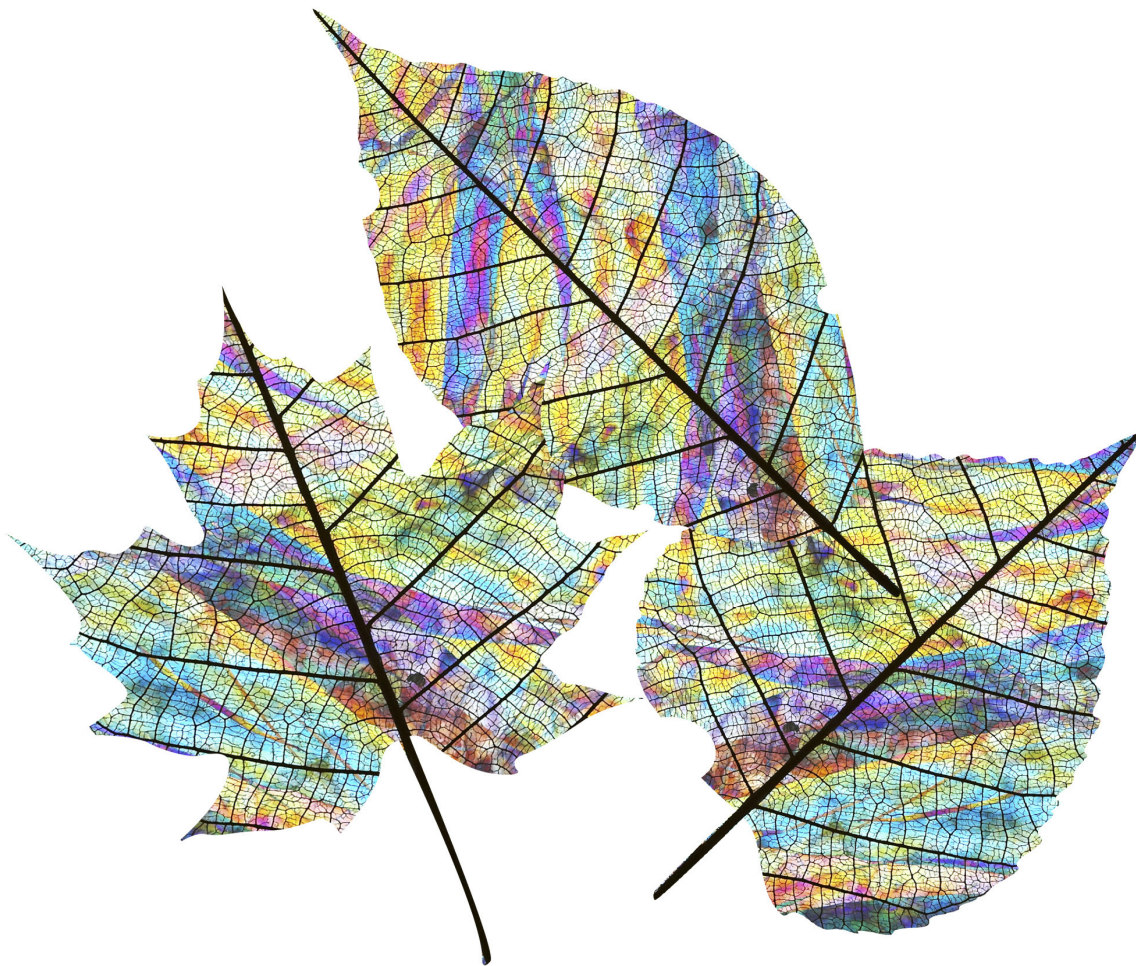


# Legal ratings survey of global real estate

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Produced by the Allen & Overy Global Law Intelligence Unit and  
Real Estate Department together with Global Relationship Firms

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September 2017

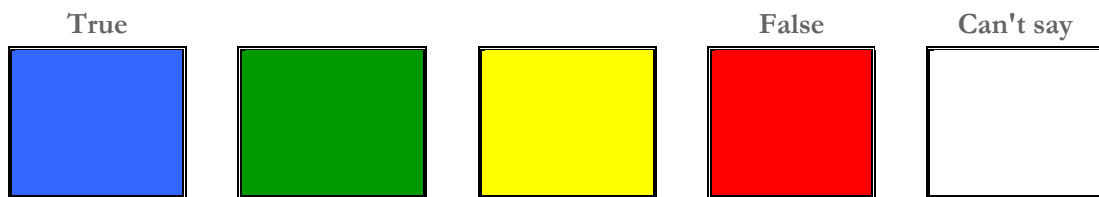


# Legal ratings survey of global real estate

**Over 130 jurisdictions with commentaries and maps**

A production of the Allen & Overy Global law Intelligence Unit and the firm's  
Real Estate department together with global relationship firms

2017







# Preface

I am pleased to present this survey of legal ratings of real estate throughout the world. I certainly hope that the visually dramatic portrayal of the results will advance understanding in this vital area and I hope that the responses of the firms in each jurisdiction and the other commentaries will inspire interest.

We believe this is one of the largest and comprehensive surveys of this area which has ever been undertaken. We feel great excitement and enthusiasm for this field of our practice and we know that the firms that participated feel the same. We certainly hope that the survey will generate some of the same excitement and enthusiasm amongst other participants in the business of real estate.

We are extremely grateful to all of the firms who sent us their excellent responses and which are the backbone of this production: their commentaries are full of fascinating and succinct information. Our thanks also go to all of those involved in the process of putting this large volume together, including those who contributed essays. We owe a particular debt of gratitude to Philip Wood and Melissa Hunt of our Global Law Intelligence Unit for designing and producing this survey.

**Imogen Moss**

Global Head of Real Estate  
Allen & Overy LLP  
London

September 2017



# Introduction

This work examines and combines the most fundamental asset of all together with an important aspect of probably the most fundamental ethical code which we have.

Land is our most fundamental asset. Very obviously, since we would be nowhere without the planet. Less obviously but also truly, the law is our most fundamental ethical regime because, although you can have societies without other philosophies, you cannot have a society without law. The law relating to land is a critical aspect of the universal religion of law – which practically everybody believes in.

We have chosen to exhibit the international law of real estate or real property or land, whatever you may wish to call it, through the lens of ten basic questions relating to real estate. These concern:

1. Alien ownership of real estate
2. Absolute ownership
3. Proof of title
4. Cost of land transfers
5. Mortgages
6. Controls on terms of leases of land
7. Termination of leases
8. Foreign direct investment
9. Development of land
10. Environmental law

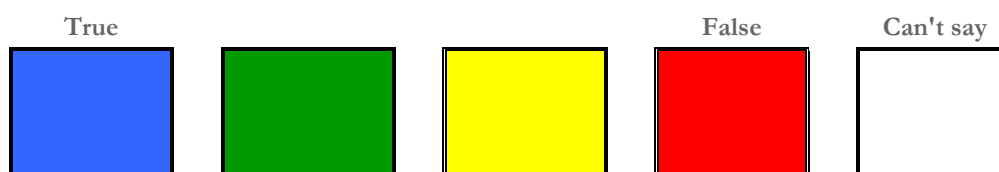
We certainly could have asked many more questions – hundreds of them – but it seemed to us that the above matters are some of the key areas in practice and that between them they display a useful view of some of the fundamentals of land law in each jurisdiction.

The general law in modern times is excessively complex and we have therefore used advanced and innovative techniques to simplify and distil, as well as to make our results visually dramatic and striking. In the first place these are legal ratings: we are not writing scholarly treatises or textbooks on land law. Our respondents were instructed to keep their commentaries as short as possible, sufficient only to bring out the main points. The rationale is that the enquirer can enquire further into the exact position and is able to contact the respondent firm concerned. If we had invited respondents to write, say, 20 pages on their land law, then this publication would comprise nearly three thousand pages and would not in any event have been completed within a reasonable time period or at all.

Secondly, we have used a simple colour-coding of four colours for the ratings. The complete colour-coding for most of the world is set out in a table so that the planet can be seen at a glance. Our view is that this overall view makes a significant contribution to comprehension.

Thirdly, we have translated the colour-coded results for each question into a world map for that question so that, again, the whole spectrum for most of the world can be viewed quickly.

The methodology we used was (1) to set ten statements about real estate law in each jurisdiction, eg. "there are no restrictions on the ownership or leasing of land by aliens" or "mortgages of land and related assets are very protective of the mortgage as creditor", (2) to identify certain criteria relevant to assessing the validity of the statement, and (3) to invite the respondents to say whether the statement was true or false on a four-point spectrum of blue, green, yellow and red, with an additional "can't say" option. These four bands were deliberately broad to enhance distillation and visibility of the result. Sometimes the rating can be subjective, especially if it involves several variables and has to be positioned on an international scale.



The colour-coding is neutral on policy. The scale is whether the law is free (blue) or restrictive (red), or in between (green or yellow). It is a matter of opinion as to whether the law should be liberal or controlling. Freedom may be interpreted as anarchy and control as order or despotism, according to the case and your opinion.

The colour chosen is shown in the margin of each question in the individual country replies.

We hope also that the commentaries and snapshot essays will be found valuable and interesting.

We might remark that the respondents comment only on the written law. They do not take into account whether the jurisdiction applies the law as written or on the strength of the legal infrastructure or the degree of political risk. These matters would only blur the portrayal and in any event are sufficiently well known in general to well-informed readers. Our Intelligence Unit has separate tables on legal infrastructure.

The information is not for reliance purposes and those undertaking transactions must ascertain the precise position.

We in the Intelligence Unit express our warmest thanks to all our respondents and contributors and to all others who have played a part in producing this volume.

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# Summary of main conclusions

Some of our conclusions are startling. The best way to view the data on which our conclusions are based is to look at the tables starting on page 14 and the global maps on each question, starting at page 19.

## 1. Alien ownership

In probably about half of the world's land surface it is not possible for aliens to own land, either individually or through companies. Most of the countries are in Asia, Africa and South America; they include two of the world's four largest countries – Russia and China. This shows that our most precious asset is often our most protected.

## 2. Absolute ownership

In some very important countries, it is not possible for nationals to own land absolutely – they only have rights of occupancy. And in other countries there are significant restrictions on absolute ownership. Again, most of the countries concerned are in Asia and Africa. The origins of this situation seem to lie either in communism or in more ancient concepts of communal ownership of land, both rejecting private property. Examples are Nigeria and China. Altering this situation presents obstacles, whether for projects or residences.

## 3. Proof of title

Most jurisdictions in the world claim that they have adequate systems for proving the title of ownership to land, typically by virtue of a land register. The United States is exceptional in not having a countrywide land registration system. Instead land title is investigated by insurance companies who provide title insurance so that effectively land registration is privatised. In most countries, however, it is still necessary to carry out some investigation of title in varying degrees of complexity. However, the situation is much better than is often thought.

## 4. Cost of land transfers

It is hard to say whether transfer costs are higher in developed countries than developing countries since there are many exceptions. The high costs in some countries may be driven by a tax policy which seeks to tax the rich – who are identified as landowners. Costs remain quite high in the UK, England, Canada and Australia, for example, as well as Germany and Brazil. One of the aims of government should be to reduce costs in the interests of marketability of land.



## **5. Mortgages**

Most respondents expressed confidence in the validity and enforceability of mortgages of land. Nevertheless, in practice in many countries, enforcement can involve considerable delays and expense if it has to be carried out through the courts, which is often required. Many advanced countries have bankruptcy freezes on sales of collateral which further delay the process.

## **6. Leases of land**

On the whole, there is considerable freedom for landlords and tenants to agree whatever terms they want in leases of commercial premises. But there are many exceptions to this proposition in the form of protections given to commercial tenants.

## **7. Foreign direct investment**

Throughout the world there is an extraordinary variety of acceptance or hostility towards foreign investment e.g. as regards compensation for expropriation, exchange controls on repatriations of profits and capital of land, and material withholding taxes on the interest of foreign loans. On the whole, there is a greater receptivity to foreign direct investment in land in western countries.

## **8. Development of land and environmental**

Most respondents thought that the controls on developing land and environmental protection were very strict in their jurisdictions. Both are areas illustrating the enormous growth of regulation of all kinds in modern economies. It may be that in some cases the tight environmental controls on paper are not matched by energetic enforcement.

## **9. Conclusion**

Overall we conclude that the law and regulation relating to land in some countries require reforms. Nevertheless the law in most countries is well-developed and practical, and we find this to be an encouraging result.

# Consolidated colour-coded table of all jurisdictions

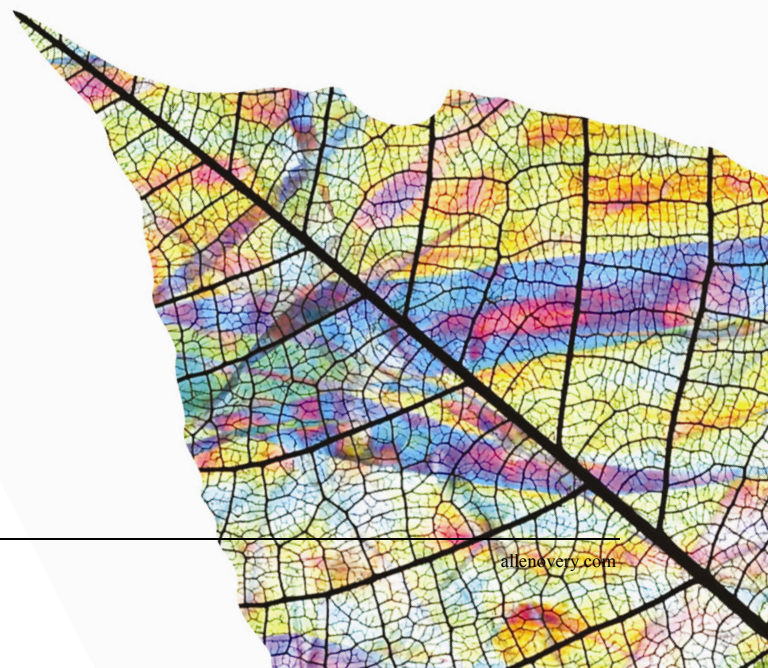
	1. Alien ownership	2. Absolute ownership	3. Proof of Title	4. Cost of land transfers	5. Mortgages	6. Control on terms of leases of land	7. Termination of leases	8. Foreign direct investment	9. Development of land	10. Environmental
Abu Dhabi										
Albania										
Angola										
Argentina										
Armenia										
Aruba										
Australia										
Austria										
Bangladesh										
Belarus										
Belgium										
Benin										
Bermuda										
Bolivia										
Bosnia and Herzegovina										
Brazil										
British Virgin Islands										
Bulgaria										
Cameroon										
Canada										
Cape Verde										
Cayman Islands										
Chad										
Chile										
China										
Colombia										
Costa Rica										
Croatia										
Cyprus										
Czech Republic										
Denmark										
Dominica										
Dubai										
Ecuador										
Egypt										

	1.Alien ownership	2.Absolute ownership	3.Proof of Title	4.Cost of land transfers	5.Mortgages	6.Control on terms of leases of land	7.Termination of leases	8.Foreign direct investment	9.Development of land	10.Environmental
El Salvador										
England										
Eritrea										
Estonia										
Finland										
France										
Gabon										
Gambia										
Georgia										
Germany										
Ghana										
Gibraltar										
Greece										
Grenada										
Guatemala										
Guernsey										
Honduras										
Hong Kong										
Iceland										
India										
Indonesia										
Iran										
Iraq										
Ireland										
Israel										
Italy										
Japan										
Jersey										
Kazakhstan										
Kenya										
Korea										
Kuwait										
Latvia										
Lebanon										
Liberia										
Libya										
Lithuania										
Luxembourg										
Macau										
Macedonia										
Malawi										
Malaysia										
Malta										
Mauritius										

	1.Alien ownership	2.Absolute ownership	3.Proof of Title	4.Cost of land transfers	5.Mortgages	6.Control on terms of leases of land	7.Termination of leases	8.Foreign direct investment	9.Development of land	10.Environmental
Mexico										
Moldova										
Monaco										
Mongolia										
Montenegro										
Mozambique										
Namibia										
The Netherlands										
New Zealand										
Nicaragua										
Nigeria										
Norway										
Oman										
Panama										
Paraguay										
Peru										
The Philippines										
Poland										
Portugal										
Puerto Rico										
Qatar										
Romania										
Russia										
Rwanda										
Saint Lucia										
São Tomé										
Saudi Arabia										
Scotland										
Serbia										
Seychelles										
Singapore										
Slovakia										
Slovenia										
South Africa										
Spain										
Sri Lanka										
Sweden										
Switzerland										
Taiwan										
Togo										
Trinidad & Tobago										
Turkey										
Turkmenistan										

	1. Alien ownership	2. Absolute ownership	3. Proof of Title	4. Cost of land transfers	5. Mortgages	6. Control on terms of leases of land	7. Termination of leases	8. Foreign direct investment	9. Development of land	10. Environmental
Uganda										
Ukraine										
United States of America										
Uruguay										
Uzbekistan										
Venezuela										
Vietnam										
Yemen										
Zimbabwe										

# Maps on each question



## Question 1 *Map on alien ownership*

In this case the statement to be rated by the colour codings was:

"There are no restrictions on the ownership or leasing of land by aliens"

The template sample comments included the following points:

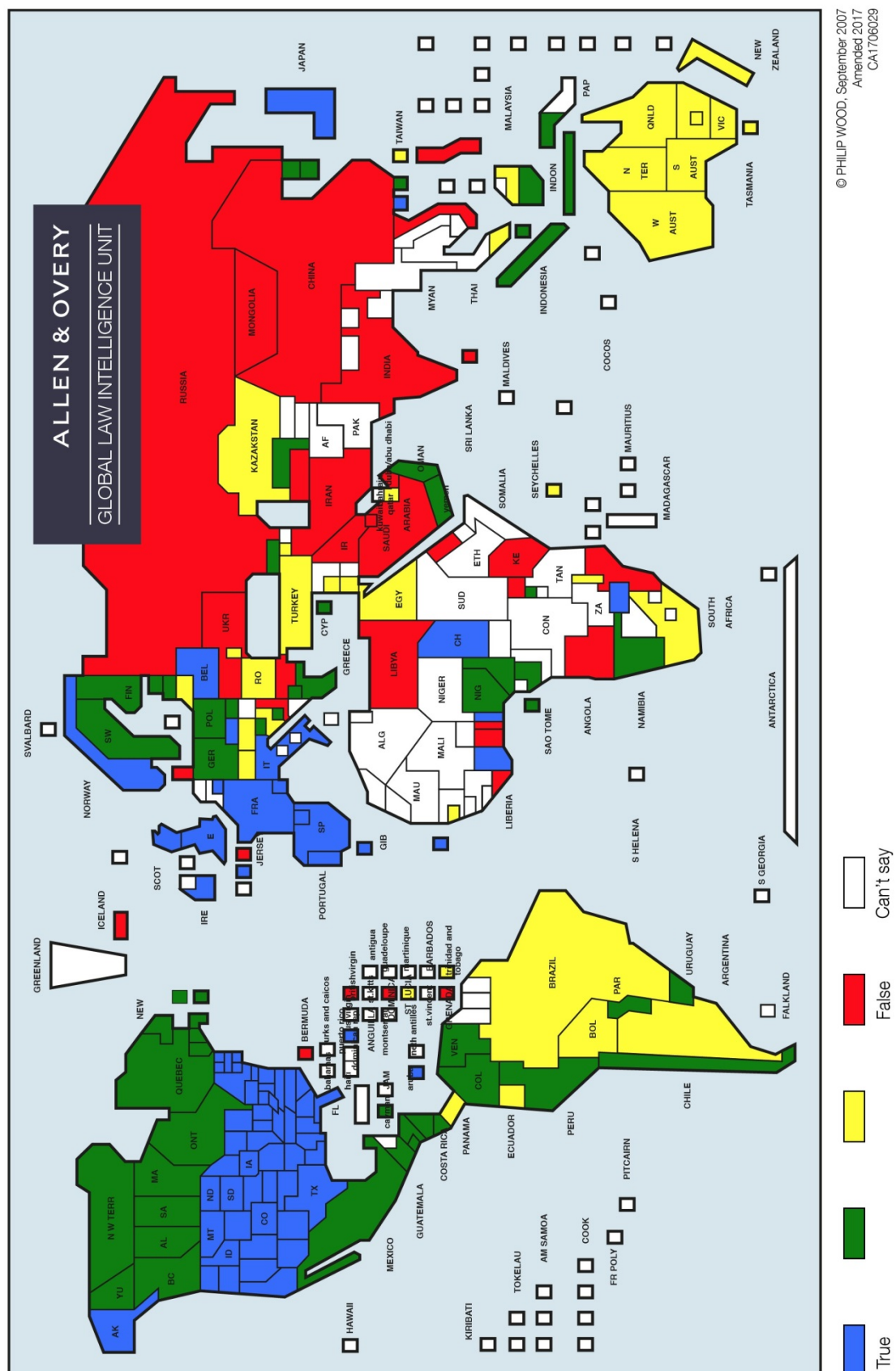
- whether alien individuals and alien corporations are permitted to own or lease local land directly
- whether local corporations owned or controlled by aliens or having alien directors can own or lease local land
- whether government permissions are rare or are commonly given for major projects. The purpose of this point was to identify whether any policy prohibiting alien ownership could be overridden in the case of infrastructure projects, such as power stations.

The results of the responses are shown in the map opposite.

The map shows that a very large proportion of the land surface of the world is reserved for nationals of the country concerned. These nationality restrictions are not limited solely to developing countries but also include some highly developed countries in the western world.

Despite these trends, there is a rough division between western countries, where on the whole a prohibition on alien ownership is not the rule, and countries in Asia and Africa, especially Asia, where the opposite is the case.

## Q1: Alien Ownership





## Question 2 *Map on absolute ownership*

In this case the statement to be rated by the colour coding was:

"All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights"

The templated sample comments included the following points:

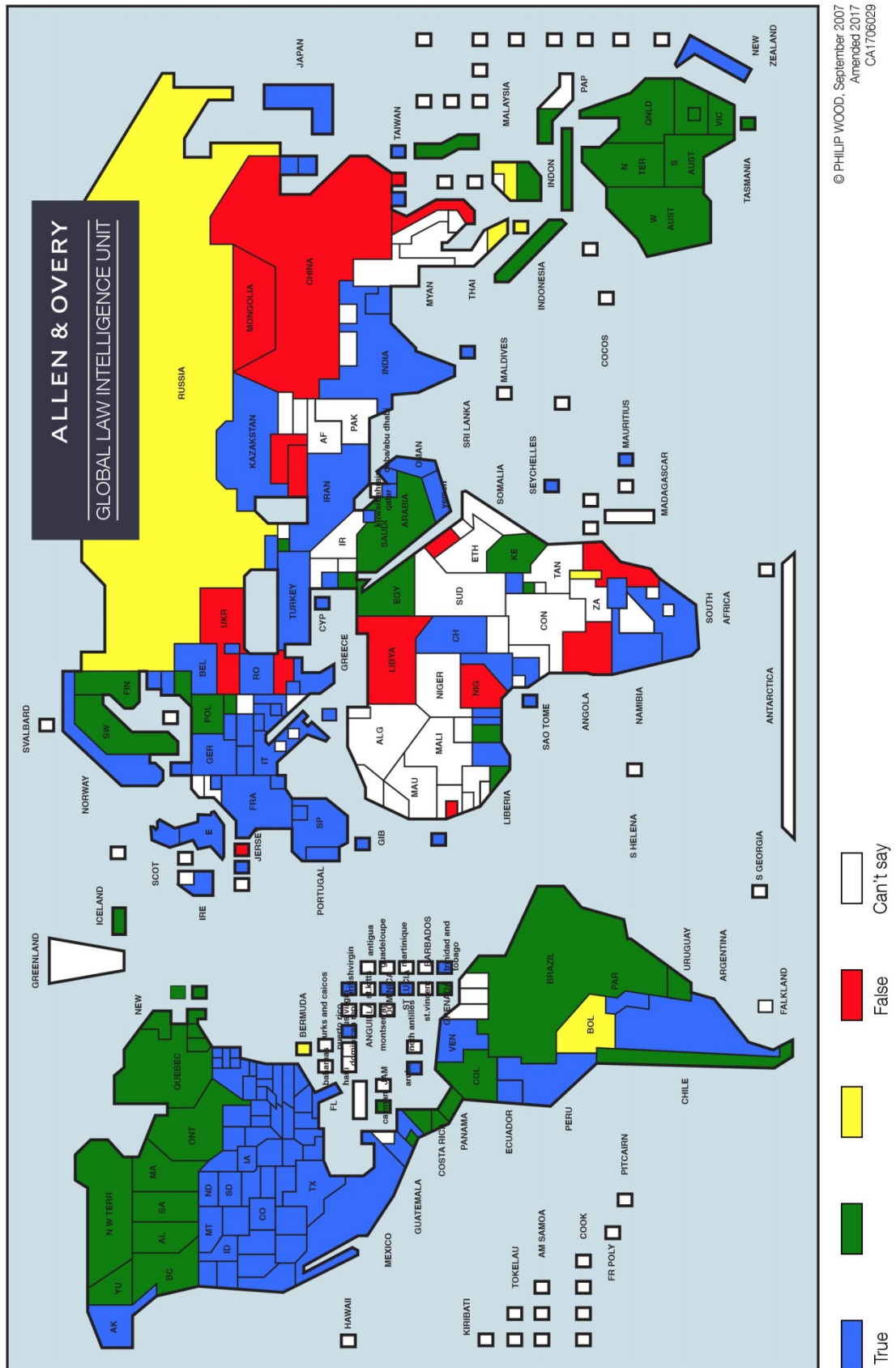
- whether nationals including local companies can own land outright or whether they only can have leases and occupancy rights for a limited period of years. If so, is there a right to renew?
- whether occupancy rights can be sold or mortgaged without official approval and the free availability of government permissions.

The results of the response are shown in the map opposite.

It can be seen that the number of countries which prevent their citizens from owning land is less than the number of companies which exclude aliens, but still quite significant.

The original importance underlying the refusal of absolute ownership may have originated in traditions of common land in agricultural countries and also in countries with a communist philosophy. Once ownership is vested in the state, it becomes exceedingly difficult and complicated to confer absolute ownership, as is shown by the travails of, say, China and Nigeria (which nationalised all land in 1978) in resolving this issue and its relative indelibility in those countries.

## Q2: Absolute Ownership



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CA1706029

## Question 3 *Map on proof of title*

In this case the statement to be rated by the colour codings was:

"Proof of title to land is quick and safe"

The templated sample comments included the following points:

- Whether there is a registered title to land for most of the country, especially urban areas
- Whether the land register shows the extent of the land, ownership, mortgages, longer term leases and certain other important rights such as rights of way and pre-emption rights
- Whether the state guarantees the accuracy of the register and whether the register is reliable. For example, in England and in other systems adopting the Torrens of system of land registration pioneered originally in Australia, the state guarantees the accuracy of the register
- Whether problems over title are common or rare
- Whether extra due diligence, e.g. into rights of occupation, is or is not usually straight-forward.

The results of the responses are shown in the map opposite.

This map demonstrates that considerable progress has been made on land registration around the world.

There are some surprises though. For example, most states in the United States do not have a comprehensive system of land registration. Instead, buyers rely on title insurance so that the providers of title insurance effectively are a privatised land registry.

Generally there are two major systems of land register. The first is the Torrens system prevalent in England, Australia, most of Canada, India, Malaysia and elsewhere where all major interests are entered on the register which is state guaranteed. The second is the "pile of notarised deeds" type of register where transfers and mortgages of land, plus other documents, have to be deposited with the land register but purchasers still have to investigate the title which is not summed up in land registry certificate. There is a spectrum of practices in between. The notary system is typical of most countries in the civil law camp, including both the Napoleonic and Roman-Germanic families. In practice there is considerable convergence on how land registration systems operate.

**ALLEN & OVERY**  
GLOBAL LAW/INTELLIGENCE UNIT

Map showing the global presence of Allen & Overy, with locations marked by country codes and names.

Legend:

- Green: North America (AK, VT, NH, ME, MA, CT, RI, NY, NJ, PA, OH, IN, IL, MI, WI, VA, NC, SC, GA, FL, TX, OK, KS, NE, MN, IA, MO, CO, UT, AZ, NV, ID, MT, ND, SD, WY, NM, OK, KS, NE, MN, IA, MO, CO, UT, AZ, NV, ID, MT, ND, SD, WY, NM)
- Blue: South America (AR, BR, CL, CO, CR, CU, EC, SV, GT, HN, NI, PA, PE, PR, PY, UY, VE)
- Yellow: Europe (AD, AE, AF, AG, AI, AL, AM, AN, AO, AR, AS, AT, AU, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BM, BN, BO, BR, BS, BT, BV, BW, BY, BZ, CA, CC, CD, CF, CG, CH, CI, CK, CL, CM, CN, CO, CR, CU, CV, CY, CZ, DE, DG, DK, DM, DO, DQ, DR, DU, DV, DW, DX, DY, DZ, EC, EE, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FI, FJ, FK, FL, FM, FO, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GD, GE, GF, GG, GH, GI, GL, GM, GN, GP, GQ, GR, GS, GT, GU, GV, GW, GY, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UV, UW, UX, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YY, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ
- Red: Africa (AD, AE, AF, AG, AI, AL, AM, AN, AO, AR, AS, AT, AU, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BM, BN, BO, BR, BS, BT, BV, BW, BY, BZ, CA, CC, CD, CF, CG, CH, CI, CK, CL, CM, CN, CO, CR, CU, CV, CY, CZ, DE, DG, DK, DM, DO, DQ, DR, DU, DV, DW, DX, DY, DZ, EC, EE, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FI, FJ, FK, FL, FM, FO, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GD, GE, GF, GG, GH, GI, GL, GM, GN, GP, GQ, GR, GS, GT, GU, GV, GW, GY, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UV, UW, UX, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YY, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ)
- Green: Asia (AD, AE, AF, AG, AI, AL, AM, AN, AO, AR, AS, AT, AU, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BM, BN, BO, BR, BS, BT, BV, BW, BY, BZ, CA, CC, CD, CF, CG, CH, CI, CK, CL, CM, CN, CO, CR, CU, CV, CY, CZ, DE, DG, DK, DM, DO, DQ, DR, DU, DV, DW, DX, DY, DZ, EC, EE, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FI, FJ, FK, FL, FM, FO, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GD, GE, GF, GG, GH, GI, GL, GM, GN, GP, GQ, GR, GS, GT, GU, GV, GW, GY, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UV, UW, UX, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH,

Legend:

- True (Blue)
- False (Red)
- Can't say (White)
- (Green)
- (Yellow)

## Question 4 *Map on cost of land transfers*

In this case, the statement to be rated by the colour coding was:

"There are no material costs in transferring land or a lease of land used for business purposes or in granting a long lease of land used for business purposes other than normal legal and registration fees and reasonable taxes on any gains.

The templated sample comments included the following points:

- whether, apart from normal legal fees depending on the scope of the work, there are very substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.
- whether taxes on the gains of a transfer of the land or leases are reasonable or are very substantial.

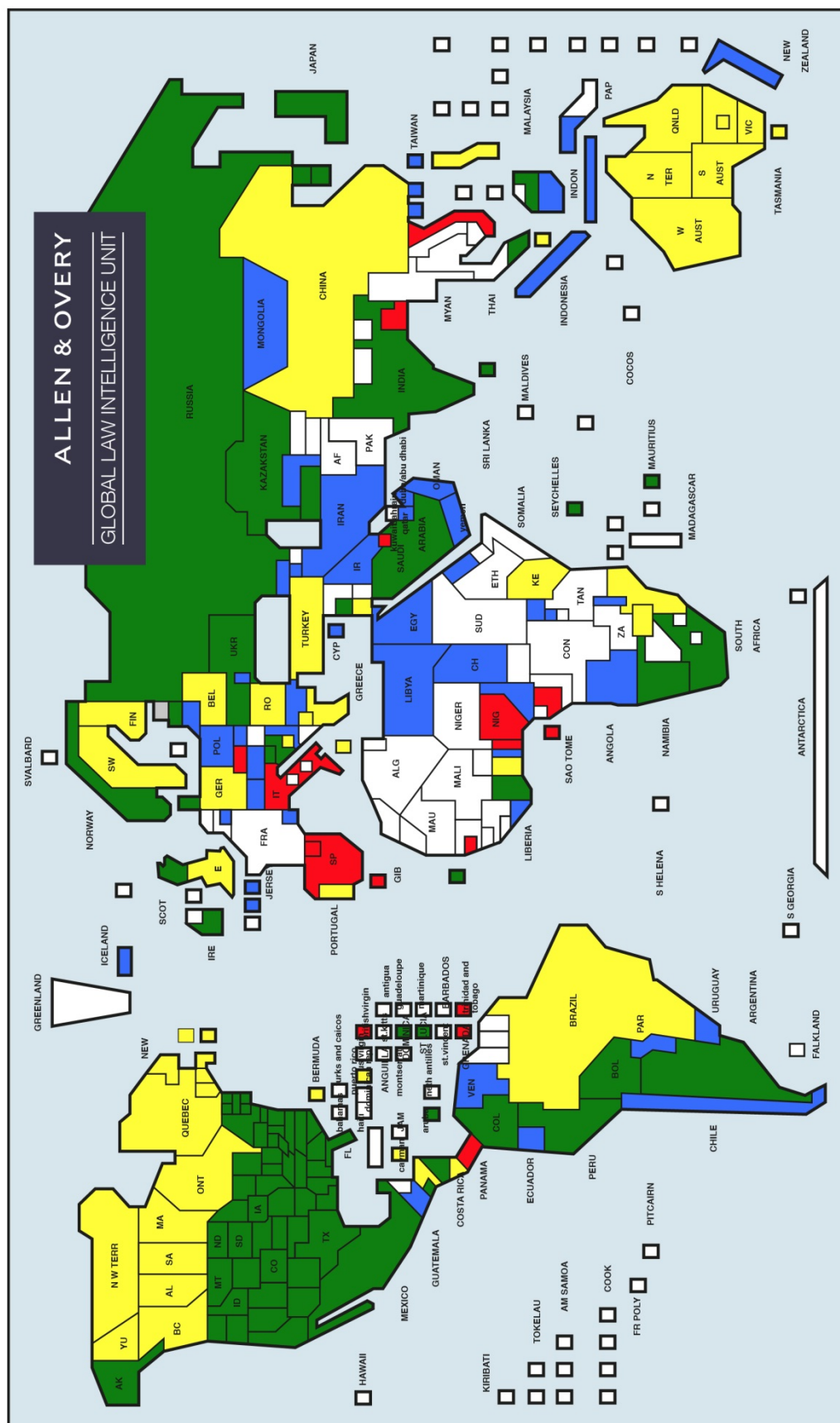
The results of the responses are shown in the map opposite

According to the map, it is only partially true to say that transfer costs are lower in developed countries than developing countries since there are many exceptions to this trend. One of the aims of government should be to reduce the costs of the marketability of land. The high costs in some countries may be driven by a tax policy which seeks to tax the rich – who are identified as landowners.

ALLEN & OVERY

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- ☐ True
- ☐ False
- ☐ Can't say



## Question 5 *Map on mortgages*

In this case the statement to be rated by the colour coding was:

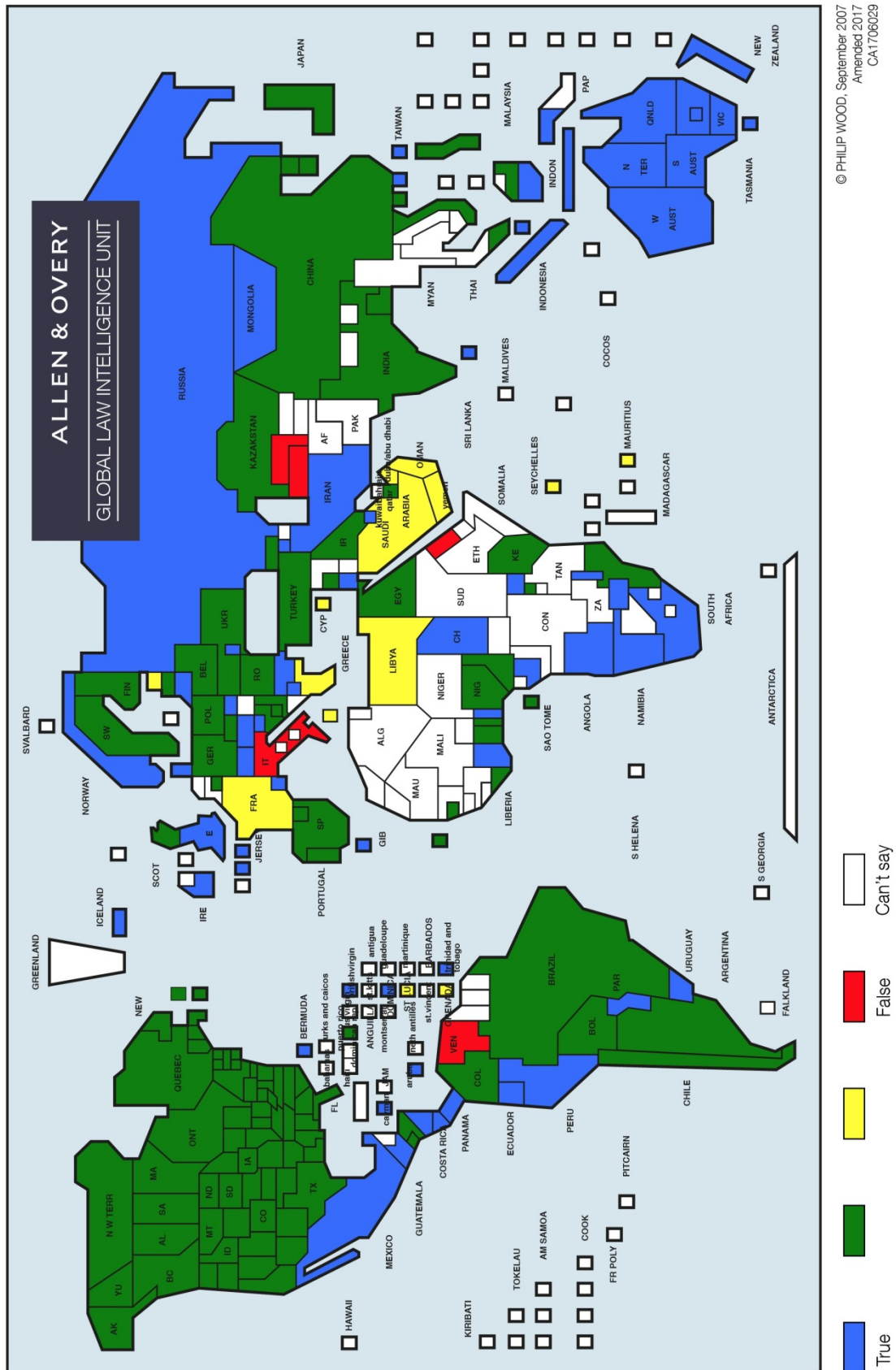
"Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor".

The templated sample comments included the following points:

- whether the owner of land can mortgage unspecified land
- whether the mortgage can secure all present and future debt generically or must specify the debt precisely, can secure future debt, or must specify a maximum amount
- whether the mortgage can be in a foreign currency or, if not, can be indexed to a foreign currency
- whether the mortgagee can sell immediately on a default by private sale, if so provided, without a court order or public auction
- whether there are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee or the insolvency estate
- whether on insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs or ranks after these creditors
- whether there are substantial costs or fees involved in land mortgages
- whether it is possible for a tenant to mortgage the lease if permitted by the terms of the lease, whether the above comments in general also apply to this mortgage of a lease, and whether these principles generally apply to associated assets such as insurances, shares and a bank account for rents.

On the whole the respondents expressed considerable confidence in the validity and enforceability of the mortgages of land. Nevertheless, in practice enforcement can involve considerable delays and expenses if it has to be carried out through the courts, which is often required. Outside insolvency proceedings, the normal approach of creditors is to request the debtor to sell rather than to take over the procedure, if at all possible.

# Q5: Mortgages





## Question 6 *Map on controls of terms of leases of land*

In this case the statement to be rated by the colour codings was:

"The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)."

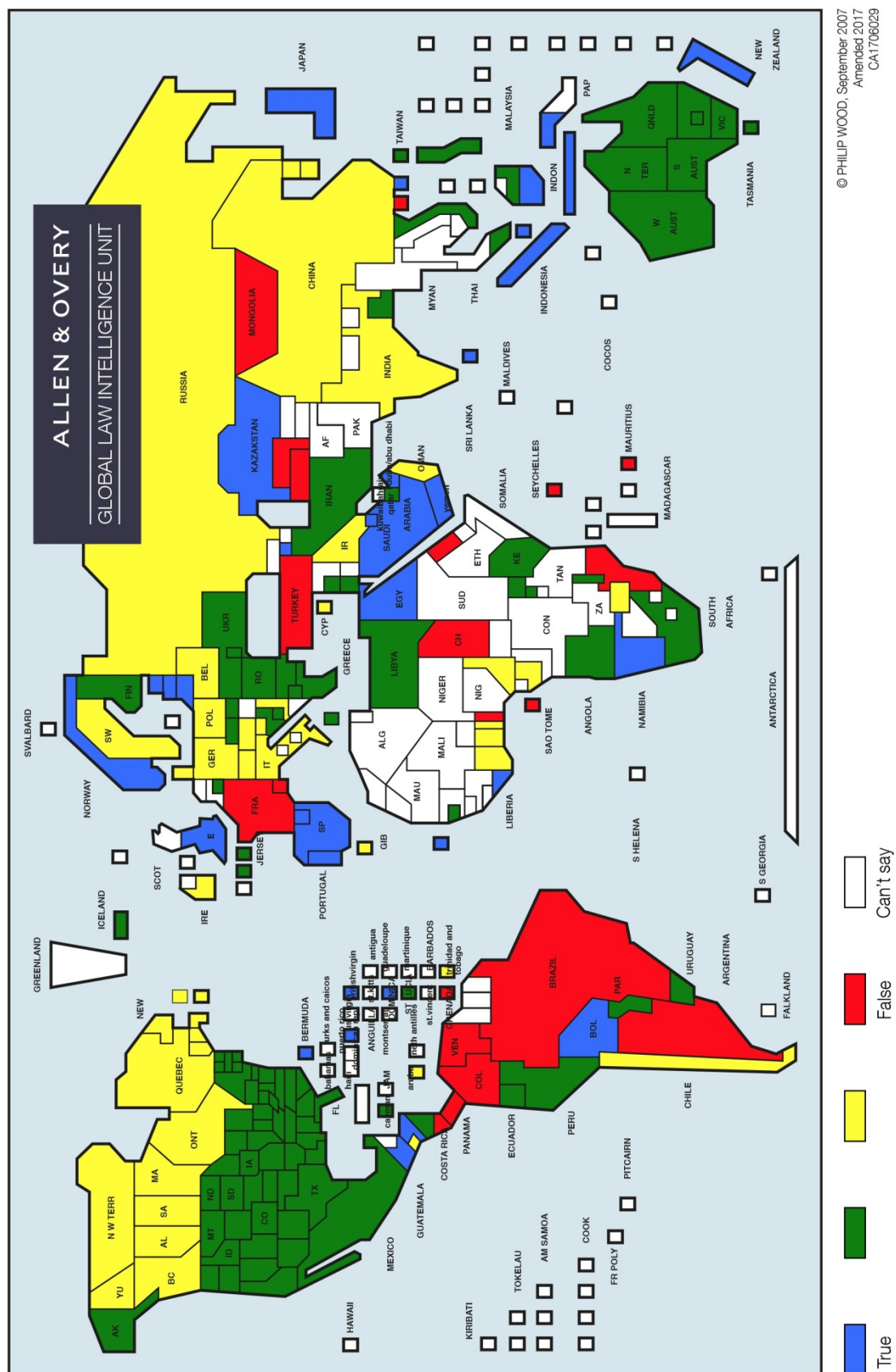
The templated sample comments included the following points:

- whether the law restricts or controls the terms of the lease of commercial premises to protect the tenant; for example such points as whether there are controls on rents
- whether the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease
- whether when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease
- whether the lease can validly exclude the ability of the tenant to assign or sub-lease
- whether a lessee is released from its obligations under a lease when it assigns the lease

It is to be noted that the question related only to commercial premises, not residential.

The degree of protection of landlords or tenants does not show particular tendencies according to whether or not the jurisdiction is a developed or emerging country or according to the family of law.

# Q6: Controls on terms of leases of land



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## Question 7 *Map on termination of leases*

In this case the statement to be rated by the colour coding was:

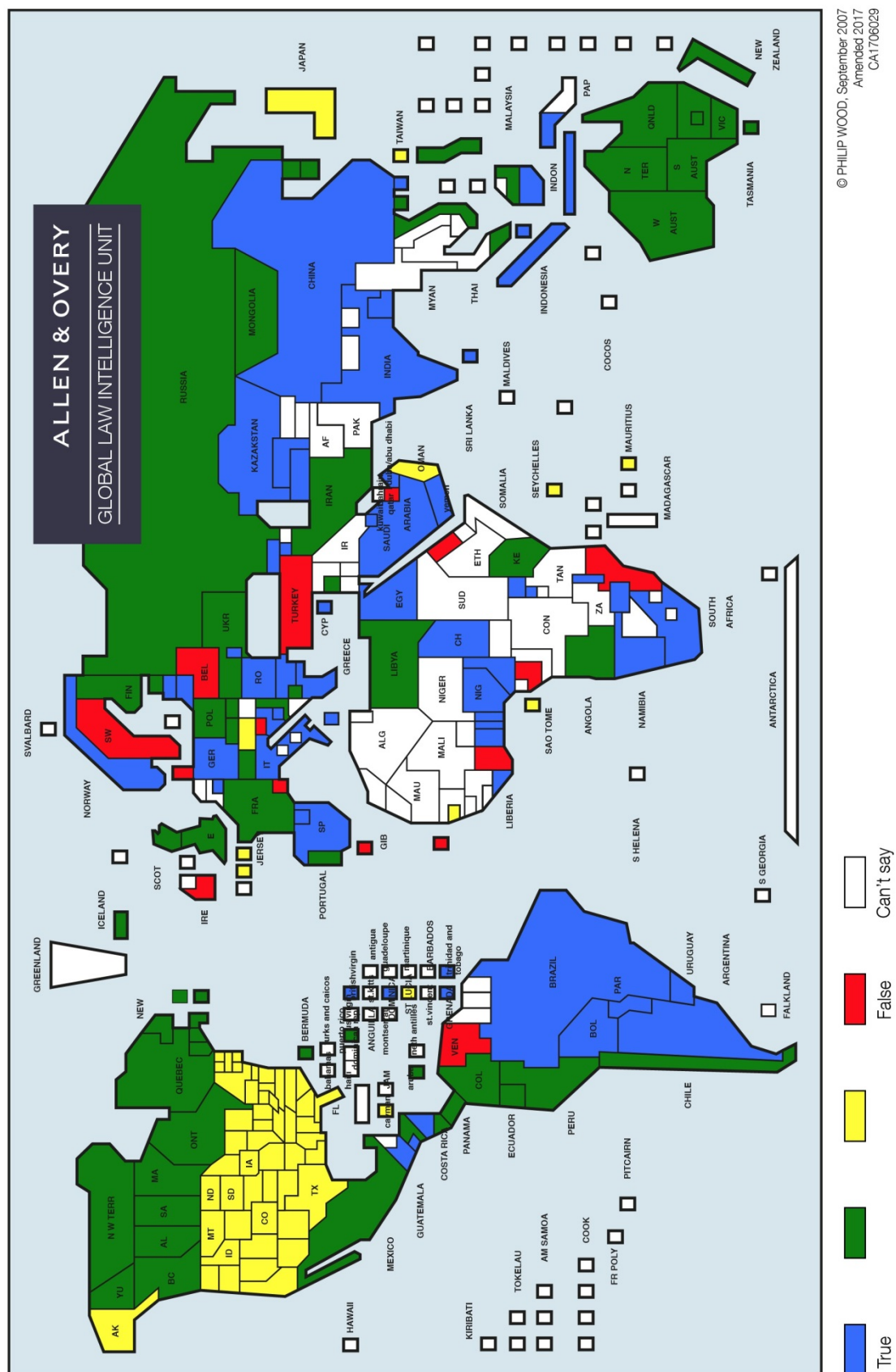
"A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides"

The templated sample comments included the following points:

- whether a landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided or whether the landlords termination rights on a default are restricted
- whether, if the tenant becomes bankrupt, the landlord can terminate the lease of the land if so provided.

On the whole, the responses of the respondents tend to show that provisions for termination of a lease of commercial premises are widely honoured.

# Q7: Termination of leases



## Question 8 *Map on foreign direct investment*

In this case, the statement to be rated by the colour coding was:

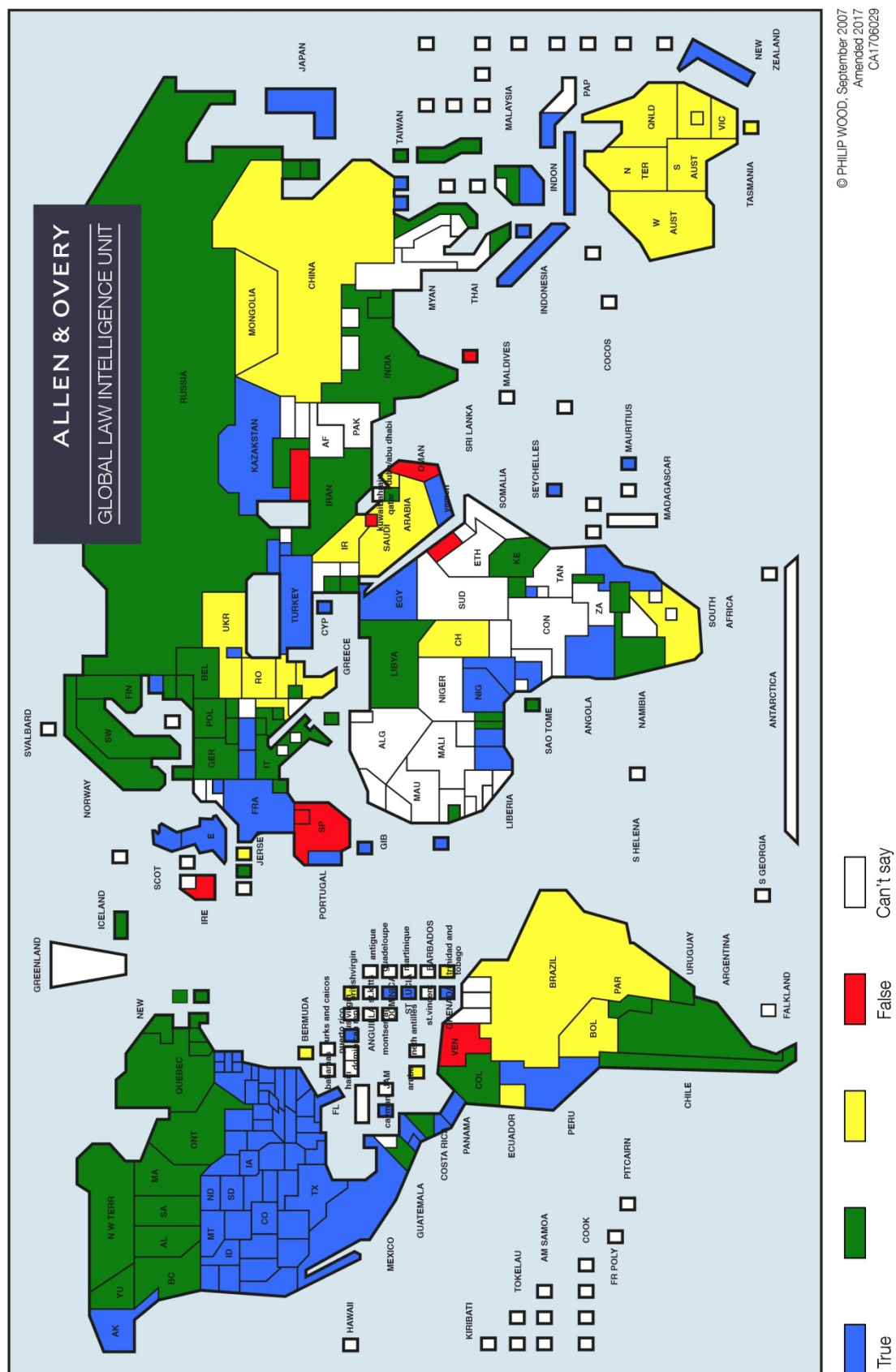
"The law is friendly to foreign direct investors in land"

The templated sample comments included the following points:

- whether the government has to pay compensation for a compulsory purchase of land promptly and in cash
- whether there are any subsidies and special zones where taxes are relaxed
- whether there are exchange controls or restrictions on repatriations of profits and capital from land
- whether there are any material withholding taxes on the interest on foreign loans which are difficult to avoid.

The map shows an extraordinary variety of acceptance or hostility towards foreign investments on these criteria. On the whole, there is a greater receptivity on foreign direct investment in western countries.

# Q8: Foreign direct investment



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## Question 9 *Map on development of land*

In this case the statement to be rated by the colour coding was

"No official permissions are required to build on or change the use of land other than normal public safety and environmental restrictions"

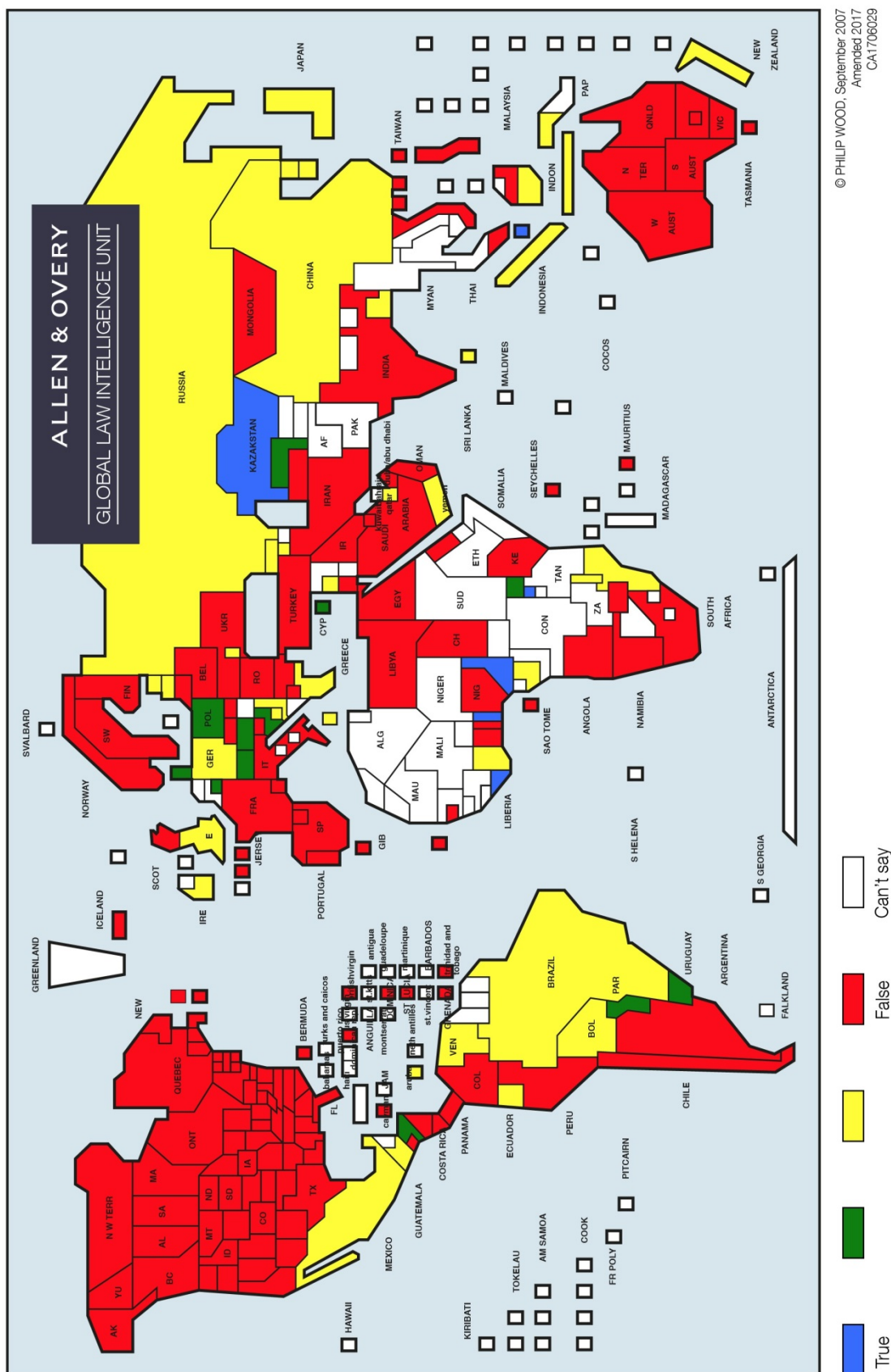
The templated sample comments included whether developments and the change of use of land are tightly regulated including for both business and residential developments and whether there are different rules for urban and agricultural land.

The results of the responses are show in the map opposite.

From this it will be seen that the development of land is highly regulated in most jurisdictions.



# Q9: Development of land



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## Question 10 *Map on environmental law*

In this case, the statement to be rated by the colour coding was:

"The rules governing the environment and liability for clean up in relation to land are very light and relaxed"

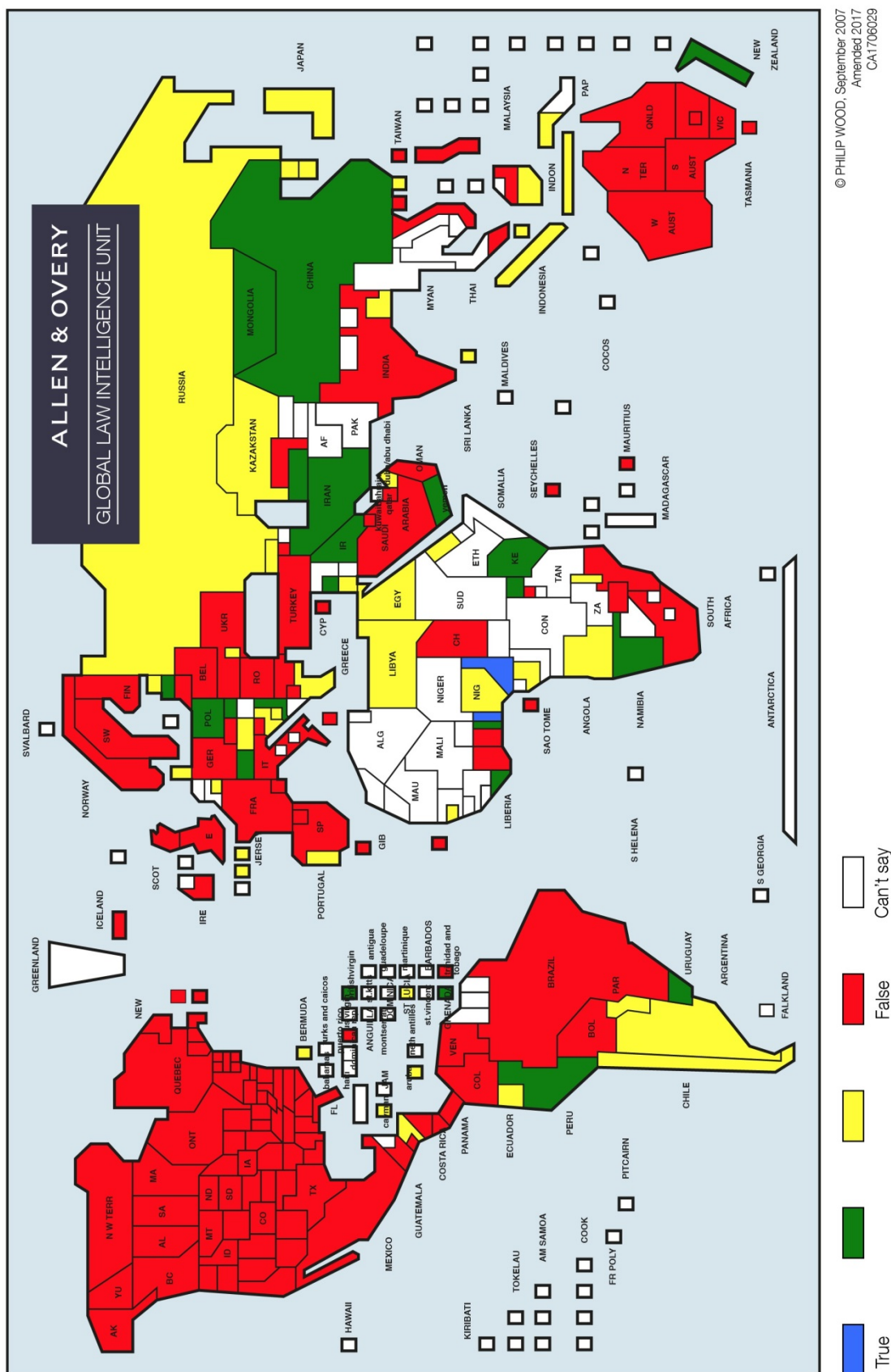
The templated sample comments included the following points:

- whether the environmental rules are strict with tight liabilities for clean-up and penalties
- whether an owner or lessee of land is liable to clean up contamination by previous owners or lessees
- whether shareholders and directors of a company owning or leasing the land can be personally liable for contamination caused by the company.

The results of the responses are shown in the map opposite.

As with controls on the development of land, most countries have tight environmental controls, although it will be appreciated that the degree of enforcement will vary substantially.

# Q10: Environment



# Snapshot essays on global real estate

# 1. Complex financial structures in real estate financings

by **Simon Roberts, Allen & Overy LLP**

There are few transactions which so thoroughly exploit the marvel of the corporate idea to such ingenious perfection as complicated multi-tier financings of real estate, whether investment loans or development loans.

The essence of these transactions is a stack of single purpose companies piled on top of each other like children's bricks. We will call them Topco, which wholly owns Holdco which wholly owns Pledgeco which wholly owns Propco i.e. the borrower which owns the properties.

The original structures were developed in a long tradition beginning with the single purpose company for ships, an idea taken up by project finance and simple senior real estate loans and then subsequently developed into tiers of companies by high yield bonds and leveraged loans, then private equity loans and through to real estate financings. These real estate transactions represent a flowering of the genre.

The equity investors own Topco and inject cash by way of equity on subordinated debt. The proceeds are on-lent in downstream loans so as to reach the borrower Propco.

The senior creditors lend direct to the borrower Propco and take full security over the properties and the borrower's other assets. Typically Pledgeco will guarantee these loans and grant the senior lenders security over the Pledgeco shares in the borrower and all its other assets.

The junior or mezzanine creditors lend to Holdco. The proceeds are on-lent to the borrower to buy the properties or to finance construction costs. The intercompany on-loans are all subordinated to the senior and mezzanine creditors.

The objectives of using the corporate form piled up like this in tiers is firstly to insulate the shareholders of each company from the insolvency of the company and also to insulate the company from the insolvency of the shareholders. Secondly, if the mezzanine lend to Holdco, then they are structurally subordinated (that is subordinated by the structure of companies) because Holdco only receives on its shares what is left after the borrower has paid off all its creditors. A further reason is that senior creditors can, by virtue of their security over the shares of the borrower held by Pledgeco, sell the borrower's shares on a default as an alternative to selling the borrower's assets separately – and the mezzanine can also sell Holdco, in some cases without triggering repayment of the senior loan. Hence the structure hits many targets.

Some of the main problems that have to be considered are whether there are any infringement of rules preventing a company from giving financial assistance to buy its own shares, whether the guarantees

are valid, e.g. there is corporate benefit and a limited risk of being set aside as preferential transactions at an undervalue on insolvency and whether tax objectives can be met, e.g. interest is deductible, there is no withholding tax on any of the loans. Tax problems can be exacerbated if the companies are very thinly capitalised which is often the case.

The creditors all take maximum security over the assets of the companies to which they lend or are guaranteed, e.g. as appropriate, over the properties, leases, bank accounts, shares, insurances, on-lending loans and so on. Security is typically given to a trustee for the relevant creditors. The Propco level security, including the mortgage over the property, is held by that security trustee for the senior and mezzanine creditors, but there will be an intercreditor agreement which restricts the rights of the mezzanine and subordinates their claims.

The loans may be fixed or floating and if floating there is typically a hedge agreement at the senior level in the form of an interest swap or a cap done under an ISDA master. Any hedging counterparty may share in the security.

The borrower will open separate accounts for rentals, for other deposits such as cash sweeps and lease prepayments, for disposal proceeds and for retentions as a buffer, plus a general operating account for the borrower. All of these can be ultimately controlled by the lenders and there are detailed provisions for applications of proceeds, including waterfall or cascade clauses as between creditors.

Mezzanine claims and security (other than in respect of their Holdco security) are all subordinated to senior creditors. In addition, the mezzanine creditors are restricted from enforcement action by standstill and other clauses and there are payment blocks in certain circumstances e.g. after a default. The mezzanine must typically release their security to enable senior creditors to sell on a default. There are many variations of the above structure.

The documents typically include the credit agreements, an intercreditor agreement, security documents, interest rate hedges, shareholder loan subordinations agreement, collateral warranties from constructors and consultants, a property management agreement and duty of care, and various expert reports – on title, on valuations, on environmental risks, and on the insurances, for example.

## 2. Financial ratios in real estate financings

by Arthur Dyson, Allen & Overy LLP

Financial ratios are a well settled method to allow lenders to monitor the financial condition of their borrowers. In the context of real estate financings, the traditional and most common covenants are loan to value and debt service cover ratio. The covenants are used both to define the available amount of the loan and to measure performance of the loan during the term of the facility.

Loan to value ratio is a measure of the market value of the property against net debt (the balance of the loan after deducting cash collateral that is available to pay down the loan). A loan to value ratio will usually only decline if the market value decreases and, as a result, lenders and borrowers focus on the provision that defines how often (and at whose cost) new valuations can be undertaken. The usual outcome is that lenders are entitled to an annual valuation at the borrower's expense or also if the loan is in default. At present, advance rates for senior loans in the UK typically have opening LTV ratios in the 60-65% range. Default levels are generally set slightly higher to allow the borrower some headroom against immaterial movements in value.

A debt service cover ratio compares net income from the property to interest, fees and any scheduled amortisation for selected test periods (typically 12 months on both a historical and a projected basis). It is a measure of the affordability of the loan payments. The ratio will be tested quarterly to reflect the fact that rents are paid quarterly in the UK. Net income is defined as gross lease rentals after deduction of insurance contributions, tenant service charges and VAT payable by the tenants. A deduction will also be made for property costs that the borrower has to pay and which are not paid for by tenants (such as void costs, irrecoverable maintenance charges and headlease costs). Lenders want the debt service cover ratio to focus on stable and predictable income, so rentals from tenants that are in arrears or insolvent will be disregarded, as will rents payable after a date on which a tenant is entitled to break its lease. At present, advance rates for senior loans in the UK typically have opening debt service cover ratios in excess of 1.5x and, again, default levels are generally set slightly higher than the advance rate to allow the borrower some headroom against immaterial movements in income.

If a financial ratio is breached the borrower will be given a short period to cure the breach, otherwise there is an event of default. This will allow the lender to accelerate the loan and enforce the security. This tends to be a last resort for lenders and as often as not lenders prefer to use the breach of a financial covenant to encourage the equity owners to introduce new monies to reduce the loan balance, or to re-cut the loan terms.

There has been much discussion in the industry since the financial crisis of how fit for purpose the traditional loan to value and cover ratios are. In the UK, commercial property values dropped by some

40% at the time of the financial crisis and the loan to value ratios served little purpose except to tell lenders what they already knew - all of their loans were in default.

There have been several responses to this.

One is that it is increasingly common to see cash trap and cash sweep provisions in a real estate financing. These allow the lender to trap surplus cash and, after a specified time, to apply the trapped cash in accelerated prepayment of the loan. The cash trap and sweep levels are usually set below the default levels so that the lender can take advantage of surplus income before the loan hits its default levels.

Another is the application of alternative measures of performance, the most common of which is the debt yield covenant which measures net income against net debt (a bit like a net leverage test in a corporate facility). This is a measure of the level at which a property would need to be sold or valued for mortgage purposes in order for the lender to be repaid in full. US based lenders in particular use debt yield for both cash trap/sweep and default covenants.

A third is a broader push to identify a measure of long-term worth that is not directly linked to the traditional definition of market value (which is a snapshot of “value” on the date of valuation). This is relevant to lenders to shape their lending policies and assess the health of their loan books, but also to regulators and government who set the capital charges associated with real estate lending by regulated entities and monitor the health of the real estate finance sector, as well as rating agencies. One such measure of worth is the concept of long-term sustainable value that underpins German mortgage *pfandbrief* (covered bonds linked to mortgage loans). There is also a recent initiative from the Property Industry Alliance (a group of industry representative bodies) to promote the use of “Adjusted Market Value”, which compares current market values to a long-term trend derived from the inflation-adjusted long term capital value index.

### 3. How big are sovereign states?

by Melissa Hunt, A&O Intelligence Unit Project Director

How big are sovereign states in terms of land? Set out below are some maps showing the size of the world's countries in square kilometres. The maps show legal jurisdictions of which there are many more than sovereign states (thus the UK has about seven jurisdictions) but have we measure the size of sovereign states, not jurisdictions.

In October 2011, the number of human beings broke through the seven billion barrier. Because there are nearly 149 million square kilometres of land, this means that each person, theoretically, then had about an oblong of 200 metres x 100 metres to him/herself. By 2050, human beings are expected to peak at 9.2 billion. The biggest increases are projected to be in Africa so that Nigeria might have 700 million people by 2100, at which date Tanzania might have over 300 million people, about the same as the US now.

The first map shows the real giant territories - over 3 million square kilometres. The lighter colour shades show a low density of people and the darker shades show high concentrations. In this map note that India and China have got very high densities whereas Canada and Australia are practically empty, not surprisingly if you consider the conditions. India is just a little bit smaller than the whole of Western Europe and countries like Brazil and Australia are twice as big as Western Europe.

The second map shows territories between 500,000 and 3 million square kilometres. Astonishingly, most of them are situated in Africa.

The third map shows territories of 500,000–100,000 square kilometres and the fourth map shows numerous territories of up to 100,000 square kilometres.

Only one-eighth of the earth is suitable for humans to live in. At least half is either desert or high mountains or other less hospitable terrain. Only 1.5 per cent of the rest of the land is an urban area. About 70 per cent of the rest is arable land, permanent crops and pastures, forest and woodlands – quite a lot of landscape left. The other 30 per cent is something else.

About three-quarters of the earth's surface is covered by oceans.

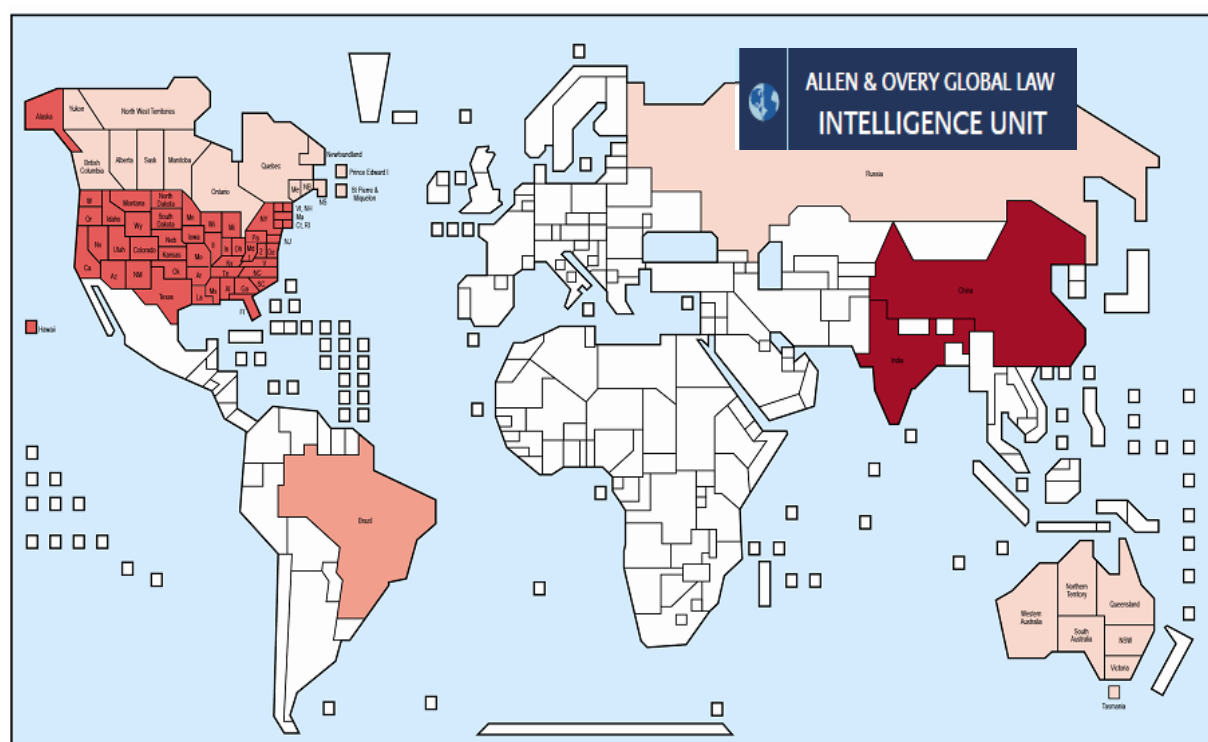
A good way to picture this is to imagine carving an apple. Cut the apple in half and throw away one half. Cut up the remaining half into two quarters and throw away one of the quarters. That gets rid of three quarters of the apple this is the coverage of the oceans of the planet. At least half of the remaining quarter of the apple is dessert or high mountains or other inhabitable terrain. So cut the



remaining quarter into two and throw away one of the bits. This leaves you with an eighth of the original apple. This is the zone we inhabit and use.

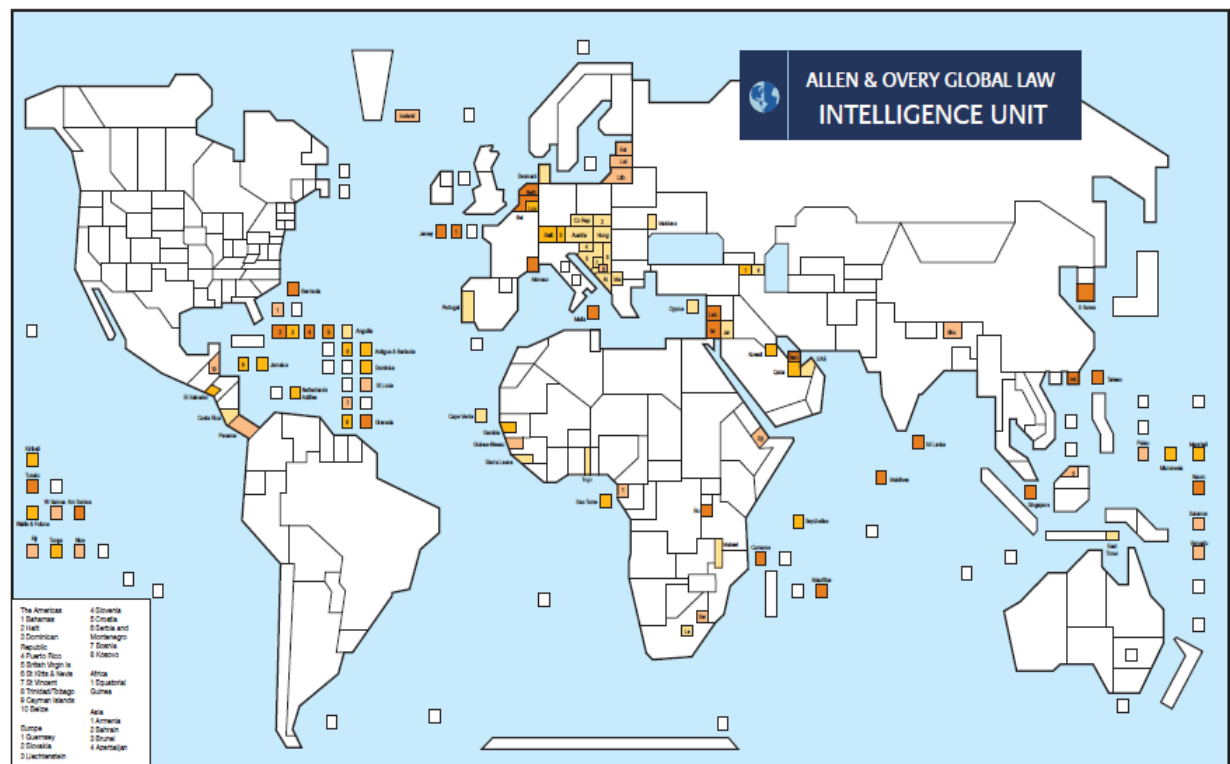
If you then strip off the skin of the apple, then that is equivalent to the sub-soil of the planet which sustains us. It is also incidentally roughly equivalent to the depth of the atmosphere of our planet. So you could say that, that as we roll round the sun in our darkness, we are quite vulnerable.

## Over three million square kilometres





Up to 100,000 square kilometres



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## 4. How do we tell who owns what land?

by Nick Saner, Allen & Overy LLP

One of the big issues is whether it is possible to achieve predictability of ownership in land and of interests which can affect land, such as mortgages, leases and rights of way, as well as restrictions on the use of the land and even taxation.

Amazingly, even highly developed countries have very different ideas about how you do this.

Probably the most advanced system is the Torrens registration system. Sir Robert Richard Torrens (31 May 1814 - 31 August 1884) was the third Premier of South Australia and a pioneer and author of a simplified system of transferring land.

Under the Torrens system, the title is guaranteed by the government and the government pays compensation if the title is wrong. The system covers the major interests in land, notably ownership, mortgages, tenancies above a threshold duration, and easements such as rights of way, as well as some other interests. The Torrens system is prevalent in Australia, New Zealand, most of Canada and parts of Singapore, Malaysia and India, and may also be found in some other countries. The English system is basically Torrens. But the system does not necessarily guarantee the boundaries of the land with great precision.

The second most developed system is the large official pile of deeds. The law provides that sales of land, mortgages of land and other material transactions in land must be in the form of a notarial deed – which is a document drawn up and authenticated by a notary – and that this deed must be filed in a central office and added to the pile concerning that piece of land. Title investigation involves going through this pile. The deeds are often supported by a cadastral survey of the land. This type of registry is typical of civil code countries, who number about two-thirds of the world's jurisdictions.

The final and most limited system is the private pile of deeds held by the owner, although often some interests, mainly mortgages and public charges, are registerable in a public registry. A prospective buyer or creditor investigates title by going through the deeds to a "root" of title, eg 15 to 30 years ago, and searching in the mortgages and public charges registers.

This system is found in many common law countries which have not yet switched to a comprehensive Torrens land registration system. For instance, in Hong Kong there is no title register: all land in Hong Kong is leasehold, except the Anglican Cathedral.

Surprisingly, most US states have no comprehensive land registry but in practice the registration of land is highly developed and is in private hands. This is because insurance companies decided to provide title insurance because they were so often involved in insuring buildings so they got to know the land well. Hence, they developed their own data for proving title. They were helped by the fact that most land in the United States does not have a very complicated title.

As with all things relating to land, there is much variation as to the question of who owns natural resources, such as minerals under the land and oil and gas. For example, in Britain these assets are owned by the state but this is not so in the United States. So fracking is difficult in Britain, but not so much in the US.

## 5. To trust or not to trust

by Aemelia Allen, Allen & Overy LLP

In two-thirds of the world's jurisdictions, it is not possible (except in specific narrow circumstances) to transfer land to a trustee to hold on behalf of the real owner. The result is that, if the trustee of the land becomes insolvent, then in those non-recognising countries, the land is taken by the trustee's private creditors.

In essence, a trust is a situation where one party holds the most public title to the asset in its own name (such as by possession of goods or by registration on an asset title register for land, securities, intellectual property, ships or aircraft), but so that if the trustee becomes bankrupt, the assets go to the real owner or beneficiary, not the trustee's private creditors.

As will be seen from the map below (as at 2007) the absence of the general concept of a trust is a feature of most civil law countries (which constitute about two-thirds of the world's jurisdictions). Civil law countries may have specific trust like concepts such as a "trust" for goods, which is called a bailment or deposit, and many of them have a trust for investment securities because of the need to protect bank custodianship of securities. The latter concepts are prevalent mainly in the countries coloured yellow in the map. However, the countries coloured blue, mainly in the English common law group, do have a more general concept of trusts based on the universal trust of all assets developed in England. The idea came from the Norman invaders who took over the country in 1066 and brought with them some basic Roman Law ideas about the trust, which they then developed. Meanwhile, back in France, at the time of the Revolution in 1789, the trust was completely abolished, mainly because of resentment about land being tied up in families for generations and therefore not marketable. However, interestingly France recently introduced a universal trust of all assets, as did China.

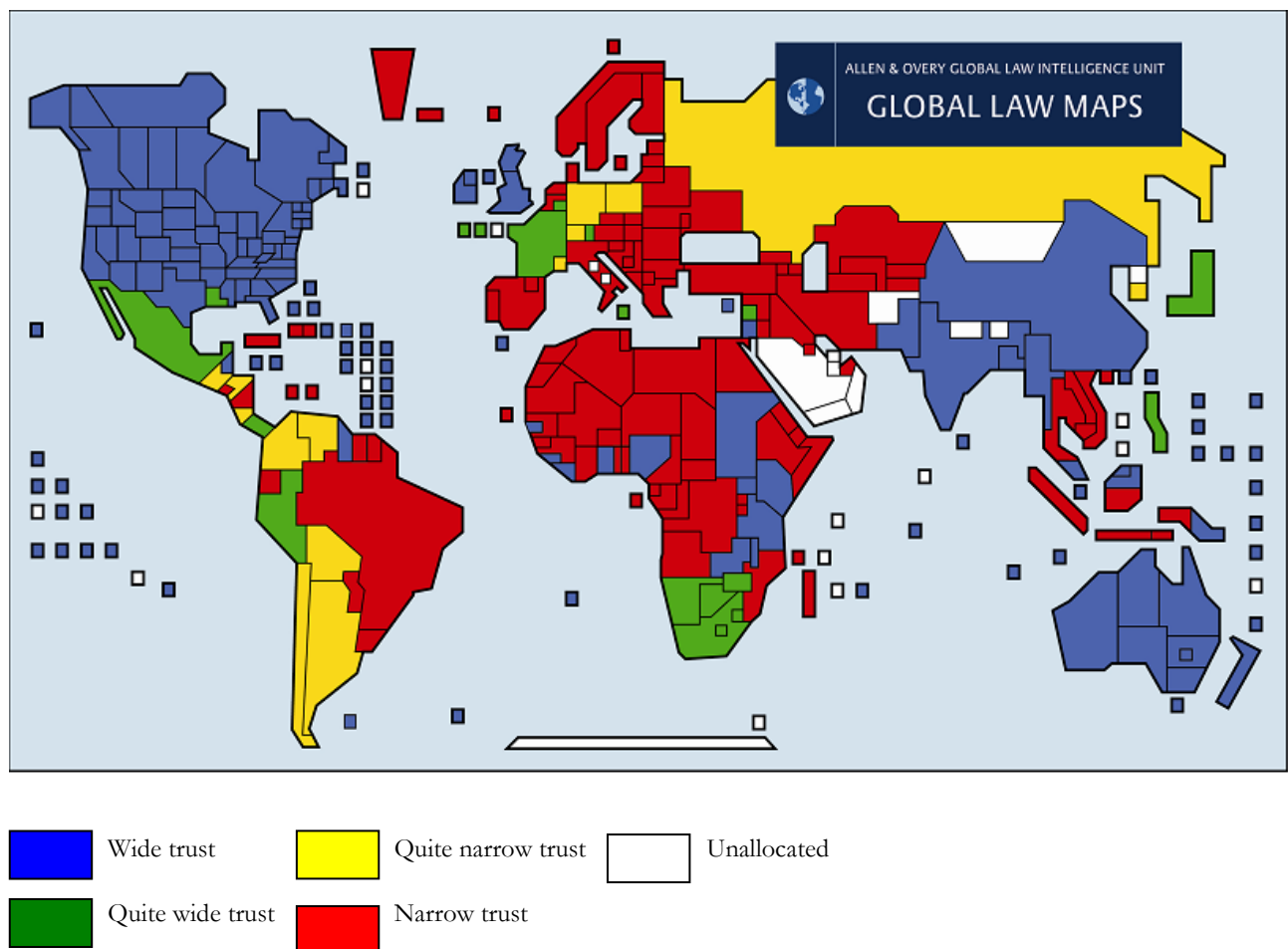
The fact that these ancient conflicts still continue is shown by the difference between China and Russia. Both countries started with a virgin legal field in the area of private law after the introduction of a market economy in the last quarter of the 20th century. Nevertheless China adopted a universal trust but Russia (apart from certain limited exceptions) allows it only for investment securities. This is an extraordinary twist of history and requires an explanation.

Trusts of land are useful for trustees of bondholders who have a mortgage on land, and trustees of security interests in the form of agent banks acting on behalf of a syndicate of banks in relation to infrastructure and other projects. They are also the basis of a number of property structures such as real estate investment trusts (REITs) and unit trusts. Otherwise the main commercial uses of the trust are custodianship and securities settlement systems. The US Depository Trust Corporation (through Cede & Co) and Euroclear hold securities valued at many trillions and are the largest trusts in the world.

Apart from problems about the marketability of land, the trust was rejected in non-trust countries because of the pre-accounting doctrine of false wealth inducing false credit (many possessions but no assets), tax evasion and fears that asset title would be insecure if there could be a real but hidden owner.

International approaches to trusts therefore vary widely and the fundamental question remains: to trust or not to trust?

## The trust



## 6. Transferring real estate loans

by Daniel McKimm

Market sales in the secondary market are routine but nevertheless bank loans, and especially secured bank loans, are compared to, say, securities or goods, still extraordinarily complicated to sell in legal terms, notwithstanding the epic efforts of the Loan Market Association in London (and its affiliates around the world) and the Loans Syndication Transfer Association in the US.

This note is concerned with ordinary secondary market sales as opposed to securitisation sales or sales of non-performing loans to a government entity or by a bad bank to a good bank on bank resolution.

### Main types of transfer

Apart from security assignments, the main types of transfer are as follows:

- **Novation** The selling bank transfers all its rights and obligations to the buying bank. The main rights are the right to payment of the loans already made so that this is just transferring a debt. The main obligation which has to be transferred from the selling bank to the buying bank is the obligation of the selling bank to make fresh loans to the borrower, unless the credit is fully drawn. If the selling bank does not transfer this obligation and is not released from this obligation by the borrower, but merely arranges for the buying bank to agree to make future loans, then if the buying bank becomes bankrupt, the selling bank would still be liable to the borrower to make the loans and hence would have a continuing risk exposure to the buying bank. The regulators would require the selling bank to hold capital against this exposure.
- **Assignment of rights and assumption of obligations** The overall effect is very similar to novation. The selling bank sells its *rights* to loans to the buying bank. The buying bank agrees to assume the *obligations* of the selling bank to lend and the borrower releases the selling bank from these obligations. The differences are: in the case of a novation all of the original rights of the selling bank against the borrower are *cancelled* and are replaced by exactly the same rights in favour of the buying bank. In the case of assignment and assumption, the existing rights to the loan are *not cancelled* but the benefit of these rights is transferred from seller to buyer. The other leg of the transfer is the same as novation, i.e. the seller is released from its obligations to lend and these are assumed by the buyer. This difference arose historically because there were UK stamp duties on assignments of debts but not on novations.



- **Assignment of rights** In this case the seller simply assigns its rights to the loan and does not transfer its obligations to lend or have a release from the borrower from these obligations. This is more typical where a loan is fully drawn. But in syndicated credits, the seller may have other obligations which should be transferred to the buyer so as to release the seller, eg an obligation to indemnify the agent bank and an obligation to share unequal recoveries by a lender with the other lenders under a pro rata sharing clause.
- **Sub-participations** The buyer places a deposit equal to the amount of its participation in the loan with the seller on terms that the seller only has to pay back the deposit to the buyer if and when it receives corresponding payments from the borrower on the main loan agreement. The buyer has no contract with the borrower at all but the risk of the borrower failing to pay is passed on to the buyer because, if the borrower does not pay the seller, the seller does not have to pay the buyer. A sub-participation is usually a last resort, eg because the borrower's consent is required for all of the other options and is not forthcoming. It is a last resort for several reasons, one of which is that, if the seller becomes bankrupt and fails to pass on payments received from the borrower to the participant, the buyer is just an unsecured creditor in the seller's bankruptcy and so it has a double credit risk – the risk of the borrower not paying and the risk of the seller not passing on a payment.

The above transactions, if permitted, are generally subject to various restrictions, eg the bankers' duty of confidentiality to the borrower (a separate clause or left silent), a requirement for consent (sometimes not to be unreasonably withheld or subject to exits), or a principle that various top-ups, such as tax and regulatory costs, are not payable to the buyer if they were not payable to the seller so that the borrower is not made worse off by the loan transfer.

An important idiosyncrasy is that, if the loan is secured, eg on real property, then the novation method may cancel the security because the old debt is cancelled and therefore the old security goes with it. It is not usually practicable to recreate the security each time. To avoid this problem and for other reasons, in the case of syndicated loans, it is usual for the security to be held by a security trustee in favour of the lenders from time to time. In this case the security would not be cancelled because the borrower has covenanted to pay the security trustee as well and granted security to the trustee for that obligation to pay. Unfortunately, two-thirds of the jurisdictions of the world do not recognise the trust, so that, despite many alternative structures of great sophistication, a transfer by novation would sometimes not be possible without prejudicing the security and therefore a complete clean transfer is ruled out in those cases. The problem can sometimes be addressed by parallel debt clauses.

Other points which can cause problems are withholding taxes and the costs of re-registering mortgages which can in turn make a sub-participation, with all of its disadvantages, the only feasible alternative.

In distressed sales, buyers will pay particular attention to the effectiveness of the security, the procedures for enforcement and the costs, the risk of termination of hedging agreements, the creditors who can control the voting and who can therefore mount blocking actions, whether any creditors have sufficient power to be holdouts, whether the mezzanine can overturn the subordination or block enforcement by the senior creditors, and the insolvency regime in the jurisdiction concerned.

## 7. The secret art of securitisations

by Lucy Oddy, Allen & Overy LLP

The history of securitisations shows an epic rise of the transactions, beginning around 1977 with a Bank of America securitisation and a calamitous fall with the onset of the financial crisis in 2007. The transaction therefore enjoyed a flourishing and energetic life of about 30 years before the regulators, incandescent with rage about what they thought had caused the catastrophic financial crisis, reached up to slow down securitisations.

Securitisations grew out of an ancient idea practised at least since the Renaissance, first by Italian banks. Merchants who were owed the purchase price by buyers of their goods would sell these receivables at a discount to a bank and thereby receive most of the value immediately and also cease to be liable for the collectability of a receivable payable by the original purchaser. If the original receivable was dressed up as a bill of exchange – which was usual in the early days, especially so as to hide interest prohibited by Catholic anti-usury laws in Europe – then the transaction was called forfaiting. In the 19th century, when bills of exchange became less common, but manufacturing receivables shot up, the transaction was known as factoring or discounting of debts.

So securitisations have a venerable and ancient origin and the technique was then and thereafter considered perfectly normal and proper. That would still be the case, but for the not altogether rational indignation inflamed by the financial crisis of 2007.

What transformed the somewhat sleepy practice of factoring of debts in around 1977, was the ingenious idea of (in substance) selling the receivables to bondholders without recourse back to the originating bank. Typically the receivables were home loans made by the bank to finance the residences of ordinary individuals. The quantities of these home loans was gigantic and indeed for many banks then and even now lending for the finance of real estate, whether residential or commercial, was and is a very large part of the business of banks.

Since it was impracticable to sell the benefit of these home loans to thousands of bondholders so that they each owned a bit of each loan, the technique was for the originating bank to sell the home loans to a specially formed single purpose company. The single purpose company would issue bonds in the capital markets to bondholders and would grant security over the home loans to the bondholders via a trustee. The SPV would then use the proceeds of this issue to pay the purchase price to the bank for the home loans. The originating bank would have no liability whatsoever if the home loans proved insufficient to pay the principal and interest due on the bonds but various techniques were adopted to ensure (or so everybody thought) that the bondholders would always get paid. All this was purely innocent mechanics.

Since the interest payable to the bondholders was typically much less than the interest payable by the borrowers of these home loans, the SPV would make a nice profit. It would pass this profit back to the originating bank, again by various clever techniques, such as characterising the profit as a deferred portion of the purchase price for the receivables which was only payable after the senior and other bonds had been paid off.

So the overall effect was that, hey presto! The originator raised finance from a diversified source, improved its balance sheet, removed the risk that the home borrowers would not pay and also got back the profit, or most of it, just as if it had continued to be the owner.

An important aspect of a securitisation is that it is “true sale”, that is, treated as a complete and final transfer of the receivables from the originator to the SPV so that the receivables were no longer assets of the originator. This is important for the purposes of isolating the securitised assets from the insolvency of the originating bank which is essential for the purposes of obtaining a credit rating that is de-linked from the originator. In addition, securitisation transactions are structured so they will not be recharacterised as a security interest granted by the originator.

If the securitisation complies with rules in respect of significant transfer of risk for capital adequacy purposes, an originating bank does not have to count the receivables in working out the amount of capital it had to have, a rule imposed by regulators. This capital adequacy turned out to be crucial because in the heady days preceding the financial crisis, by reason of very low interest rates and other factors, the demand for home loans increased vastly so that the banks supplying these home loans either had to sell them off by a securitisation so they could make more loans or else they had to raise more capital (which was expensive).

This therefore was one of the factors which inflated the bubble of prices of homes. When the bubble burst, as all bubbles do, it brought down the free flight upwards of securitisations. The regulators made sure that the capital adequacy advantages were much more difficult to obtain. The availability of credit contracted massively post crisis in part due to the closure of the securitisation markets – but even in post crisis days, banks were doing private securitisations which they pledged as collateral with central banks for liquidity funding.

Securitisations are still an important financing technique and some voices have rightly questioned whether such a useful transaction should really be so oppressed by rules, especially a transaction which has been around for more than 500 years at least, in one form or another. Regulators have acknowledged the importance of securitisation as a funding tool to support the real economy and that securitisation markets still active in some areas such as RMBS are increasingly being used by non-bank lenders coming into the market and acquiring portfolios of debt from banks (eg securitisation of Northern Rock loans acquired by Cerberus)].

Since the financial crisis, securitisation has been labelled by some as obscure and arcane proliferations of wicked wizardry by financial delinquents. Home loans were described as “toxic”, as if the homes we live in are pure venom. This stems more from what was going on in the US with the sub prime crisis – European securitisation has performed very well with relatively little default but was tainted by association so subject to a plethora of regulation.

The irony of the whole thing was that before the financial crisis, you only had to know one thing. All you had to know was that home loans were overpriced. This was something that every cab driver on 52nd Avenue knew, but not apparently anyone else.

## 8. Covered bonds: why an eighteenth century idea has taken hold

**By Angela Clist, Allen & Overy LLP**

The device of covered bonds was dreamed up as a solution to the increasing demand in the 18th century onwards for home loans (as well as public sector debt such as bonds issued by the local government). As with securitisations, the structure was of ancient origin.

Covered bonds appeared first in German legislation in 1769, then in Denmark, then in France in 1852 and in Spain in 1869. They are now widespread in continental Europe. Meanwhile, England, United States and other common law jurisdictions ended up with the securitisations which have just been discussed and which were a development in the last quarter of the 20th century.

In traditional covered bond programmes seen in many continental countries, an eligible financial institution issues bonds which under the relevant statute are payable in priority to all other creditors (including tax authorities and employees) out of a pool of eligible assets (usually home loans) held by the financial institution. The financial institution does not have to charge these eligible mortgages to the bondholders since the same effect is achieved by the statute which deems them to be a separate property claimable by the bondholders in the event of a default by the financial institution.

More recently, alternative covered bond structures have been established in places like the UK, the Netherlands, Norway, Singapore and Australia. In these countries, the eligible financial institution issues bonds and loans the proceeds to a special purpose company. The special purpose company uses the loan proceeds to acquire a portfolio of home loans (or other eligible assets) from the financial institution, and guarantees payments due on the covered bonds issued by the financial institution. That guarantee is backed by the assets owned by the special purpose company.

In either structure, we see that the assets in the cover pool are segregated for the benefit of the holders of covered bonds in priority to the claims of other creditors.

Covered bonds have a number of features that make them attractive to issuers and bondholders.

First, if the pool of assets segregated for the covered bondholders is insufficient then bondholders have recourse to the other assets of the financial institution. This is often referred to as the “dual recourse” feature of covered bonds. This is quite unlike a conventional securitisation where the whole idea is that the selling financial institution is not liable if the assets are not enough to pay the bondholders.

Second, the segregated pool of assets must always be sufficient to cover the claims of the covered bondholders. Covered bond programmes therefore provide for the on-going addition of assets to the

cover pool to maintain it at the required level. Again, this is unlike securitisations, where the risk that the assets are insufficient is borne by the bondholders.

Third, the protection provided to covered bondholders is usually enshrined in statute or regulation. The regulations usually expressly provide for the priority claim of covered bondholders to the assets in the cover pool, the requirement that the assets in the cover pool be sufficient to meet the claims of the holders of covered bonds and the types of assets that can be included in the cover pool. There may also be rules regarding the on-going supervision by the relevant regulators of the covered bond programme and relevant issuers. Securitisations have not had this level of statutory oversight.

Finally, there is usually a restriction on the types of assets that can be included in a cover pool, to ensure that these are high quality. Eligible assets typically include public sector loans and first-ranking residential mortgage loans having a loan to value ratio of, say, 80 per cent. or less.

Covered bonds performed well during the financial crisis, and on the whole escaped the ire aroused by American and English securitisations and the resulting regulatory clamp-down. But not completely, because after all home loans are home loans and, after the financial crisis, these innocent creatures were regarded as "toxic".

## 9. Derivatives in real estate transactions

by **Daniel McKimm, Allen & Overy LLP**

Just as one can insure one's home against fire and one's car against damage in an accident, similarly, one can "insure" one's loan against interest rates going sky high and virtually against any other risk you can think of. You can do this by taking out a derivative. So the main objective of derivatives is insurance.

Nobody is allowed to call the transaction insurance because the insurance business is regulated by insurance regulators and by common consensus insurance regulators are tricky people. Derivative contracts are entered into by banks who are regulated by bank regulators, a different breed altogether.

There are technical legal differences and also some obvious common sense differences separating insurance business and derivative business but the result is that the insurance aspect is called "hedging". We use metaphors and euphemisms when we cannot bear too much reality. After the financial crisis, derivatives were also called "toxic weapons of financial mass destruction" by the more sensitive members of the press.

Derivatives sprang up mainly because of the collapse of the Bretton Woods fixed currency parity with the US dollar and gold in 1971, the removal of exchange controls in advanced countries in the 1980s onwards, inflation, the growth of GDP and other macroeconomic factors which led to volatility of interest rates, floating currencies, shares, bonds and commodities. Therefore, people wanted "insurance".

Luckily, the International Swaps and Derivatives Association was at hand to draft a master agreement to govern these complicated transactions. The first main master was in 1987, amended 1992, latest version 2002.

But derivatives have a much longer history. The Chicago Board of Trade introduced a grains futures contract in 1865. The London Metal Exchange was founded in 1877. The literature shows that derivatives transactions go back many centuries to antiquity. One can say that their quite fantastic expansion since 1980 into gigantic amounts attests to the twin surge in the role of financial assets and the dismantling of national barriers to the transfer of those assets, trends inelegantly called financialisation and globalisation.

Needless to say, one expects that major real estate financings will have an attached derivative. This will typically be an interest rate swap or an interest cap.

Under an interest rate swap, in the case of a floating rate loan the borrower agrees to pay the swap counterparty (usually one or more of the lending banks) interest on the loan at a fixed rate and the



counterparty agrees to pay the borrower amounts equal to interest on the loan at the floating rate. The borrower then pays the floating rate interest to the banks under the loan agreement with the banks. The effect therefore is that the borrower only has to pay fixed rate (to the counterparty) at a known and predictable rate and is not exposed to the uncertainties and potential expense of the floating rate rocketing up.

The effect of an interest cap is that the counterparty pays the borrower an amount equal to interest on the loan if the floating rate goes above a specified threshold so that the borrower is protected against an increase in rates.

The interest rate swap or cap usually has to be in place for the entire life of the loan. It is documented under the ISDA Master Agreement.

Under both US and EU regulation, certain plain vanilla derivatives have to be routed through an exchange and a central counterparty. One of the main purposes is to reduce interest rate exposures, an objective incited by the financial crisis of 2007. The use of central counterparties is in its detail extremely complex but in substance the idea is massively to reduce exposures by ensuring that, if a derivatives counterparty becomes bankrupt, then in substance the other parties can set off and net their exposures. In order to be able to set off and net against a counterparty, all the contracts must be between the same two people. This would not be the case if there are two or more parties contracting with a single counterparty that becomes bankrupt.

The mutualisation is achieved by contracts providing that, when a derivatives contract is entered into by A and then immediately the contract is split into two mirror contracts, the first between A and the central counterparty and the second between the central counterparty and X. It follows that all contracts between A, B, C, D, etc and the bankrupt X are between the central counterparty and X and therefore mutual between the two. So if X becomes bankrupt then the central counterparty just nets off the losses and gains on each contract on termination. The reduction in exposures can sometimes be as high as 90 per cent.

The central counterparty typically is owned by market participants. The parties must provide initial and variation security ("margin") to cover their exposure to the central counterparty.

One can certainly say that derivatives were an amazingly imaginative development, even though based on the very simple idea of insurance. One can also say that central counterparties are an extraordinary feat of the legal imagination. Finally one can say that the ISDA Master Agreement which covers amounts which are a many times a multiple of world GDP, is a truly epic contract.

We can therefore see that one of the most authentic and ancient loans – the real estate loan – has become the focus of legal creativity at its most inspired.



## 10. Negotiating the terms of mezzanine finance

by Emma Willoughby, Allen & Overy LLP

You could say that the most important features of a bankruptcy law are the freezes on creditor action initiated by a bankruptcy petition and then, for rescue proceedings, voting on a reorganisation plan by creditors. But, the crucial underlying ideology of bankruptcy is the bankruptcy ladder of priorities because this is the man behind the curtain with an axe who determines who gets paid and who does not get paid, whether under a work-out agreement or in a judicial rescue proceeding or in an actual liquidation.

This bankruptcy ladder of priorities is typically divided by law into around six great generic classes commencing with super-super-priority claimants with a set-off or a security interest or a beneficial ownership under a trust at the top all the way down to creditors who are effectively expropriated, such as creditors for foreign taxes or foreign penalties.

However, nowadays, there is another grand class of creditor in typical financings including in large real estate financings. This is the creditor who is subordinated by agreement – the junior creditor, the subordinated creditor, the mezzanine creditor and the techniques of subordinating these creditors and ensuring that they remain subordinated are now one of the most subtle and refined in the whole portfolio of the techniques of international finance.

In many realms of intellectual category, one finds a classification in just three groups, e.g. masculine, feminine and neuter; animal, vegetable or mineral. So it is with subordinations. There are three main types.

The first is an agreement between the debtor, the junior creditor and the senior creditor that the debtor will not pay the junior creditor until the senior creditor has been paid in full. This is the method typically used in bank hybrid capital bond issues. It inevitably results in the junior creditor getting nothing until all the creditors of the debtor have been paid, including the senior creditor. That is not the aim. Rather it is the intention that the junior creditor should be paid after the senior creditor has been paid and not have to wait until all other creditors are paid on the bankruptcy.

Hence, the turnover subordination. In this case, the debtor pays both junior and senior creditor equally but on an event of default, such as non-payment, the junior creditor must turnover its recoveries received from the debtor to the senior creditor. This is called a turn over subordination. This is fine so long as the local jurisdiction recognises this trust of proceeds received after any bankruptcy of the junior creditor. Otherwise the senior creditor will just have to prove as an unsecured creditor in the junior creditor's insolvency. Also, the local jurisdiction ideally should not re-characterise this turnover as in substance a charge or security interest by the junior creditor over the junior loan in favour of the

senior creditor. This would be the case under article 9 of the US Uniform Commercial Code and its equivalents elsewhere, such as Canada, Australia and New Zealand, were it not for the fact that subordinations are exempted.

Thirdly, the junior creditor could simply agree to pay the senior creditor amounts equal to its recovery from the debtor. In this case, the senior creditor takes the risk of the bankruptcy of the junior creditor as well as the debtor. This debtor-creditor subordination is however found as a back-up clause in most turnover subordinations e.g. where the junior creditor receives its recovery by set-off in which case there are no proceeds to turn over.

In any event, most properly drafted subordinations are turnover subordinations.

There is another essay in this volume about the structure of the more complicated forms of real estate finance from which it will be seen that mezzanine creditors are often creditors of the same company of the senior creditors and therefore they have to be subordinated.

It will be noted from the structures that there is in fact a fourth type of subordination where the junior creditor lends to a parent of the senior creditor's borrower so that the junior creditor is "structurally" subordinated because the parent only receives what is left after the creditors of the borrower are paid.

Typically in real estate finance, all of the creditors are granted the widest possible security over all the assets of the debtor and care has to be taken to ensure this priority is reflected in asset registers, such as those for land, intellectual property and shares.

The key to negotiating the terms of a subordination is for the senior creditors to ensure that the junior creditors are not in a position to get paid when a default of the debtor is looming and also to ensure that the junior creditors do not have a contract veto on a transaction which the senior creditors need to complete in the case of a restructuring of the debtor on its bankruptcy. Junior creditors on the other hand seek to retain as much power as possible in order to improve their bargaining position. The arguments of the senior creditors is that the junior creditors are compensated by a much higher rate of interest for the risk they are taking. The argument of the junior creditors is that they are creditors who are entitled to protect the principal of their loan.

These points can be demonstrated by reference to some of the key clauses.

- **Junior and senior debt** The senior creditor should aim at extending the scope of the senior debt to include not just liabilities under the senior credit agreement but also an extra amount for future advances, plus refinancings and plus damages for breach or rescission. Thus if the senior creditors think they can rescue a distressed situation by new money, they would not want a veto from the junior creditors. But this can be hard to negotiate.

- **Waterfall** Under the payment cascade clause, amounts in the proceeds accounts are typically applied to (1) operating and other permitted costs of the debtor, (2) senior debt service, (3) junior debt service, (4) reserves, and (5) the remainder for distribution to shareholders. This waterfall has to be changed on an event of default so that junior debt service is excluded. Hence the importance of negotiating the events of default which from the senior creditor's point of view must crystallise as soon as trouble is looming so as to ensure the junior creditors cannot continue to receive payment equally with the senior creditors from that point onwards.
- **Payment block on junior debt** Typically payments to the junior creditor are blocked after an event of default under the senior debt agreement. The payment may be blocked for 180 days unless earlier cure or waiver so that the senior creditors cannot sit on their rights for ever, they have to decide. Once again, the junior creditors will endeavour to exclude trivial defaults and to negotiate a shorter block period of, say, 90 days.
- **Block on junior enforcement** On an event of default, the junior creditors will typically agree not to accelerate (unless the senior has accelerated) or enforce the security, sue for the junior debt or support insolvency proceedings of a debtor. This is typically limited to a standstill period of 90 to 180 days. Sometimes the junior creditor may accelerate after a short pause period or petition for the insolvency of the debtor. The crucial point here is that there may be situations where the senior creditors may believe that the situation can be saved by forbearance which would be disrupted if the junior creditors enforced.
- **Override of junior creditor covenants** Sometimes there is a clause providing that the junior creditors are deemed to consent to a transaction approved by the senior creditors which violates the junior creditors covenants, such as new security given in violation of a negative pledge or a borrowing in violation of a borrowing limit in the junior loan agreement. In arm's length subordinations, junior creditors rarely agree to this but they do in insider subordinations, such as junior vendor loans. If there is no override, the effect is that the junior creditors can veto a transaction necessary to rescue the debtor on a default, such as new borrowings and new security.

Of course there are many other clauses such as representations and warranties, guarantee if there is no override, and other types of clauses to maintain the turnover and various miscellaneous and boilerplate position.

In the case of insider subordination, such as a vendor loan representing in effect the deferred portion of the purchase price, the insider has few rights. There would be no time limit on a payment block or a block on enforcement proceedings and the senior creditor can override junior creditor covenants.

In all cases there should be a clause providing for the release of the junior creditors security if the senior creditors enforce their security: the junior creditors look only to the proceeds. If this is not the case, then the junior creditor may by law have rights to interfere in the enforcement proceedings.

In practice, most of the arguments between senior and junior creditors in a default situation are about the valuation of the assets and whether the junior creditors will get anything at all. If they would not get anything on a liquidation then their bargaining position to receive any payments in a work-out or a share of equity on a conversion, or to vote on a reorganisations plan, would be diminished.

Unfortunately there is not a lot one can do about procuring a completely objective valuation without an actual sale.

## 11. The families of law

by Philip Wood, Head of the A&O Intelligence Unit

The legal world is dominated by three major families of law – (1) the common law jurisdictions, originally championed by England and the United States, (2) the Napoleonic jurisdictions, originally championed by France, and (3) the Roman-Germanic jurisdictions, originally championed by Germany, with others such as the Dutch. If we reflect sub-divisions including Sharia law, we end up with about seven groups – the major three plus (4) mixed jurisdictions, (5) Islamic jurisdictions, (6) new jurisdictions and (7) unallocated jurisdictions such as North Korea.

Nevertheless, if you understand the fundamental approaches of the three major groups, then you discover the formula, the key, the code, the secret to understanding all of them. If we were to take a much broader brush, then in very crude terms, a division of the world into 40% English-American common law, 30% Napoleonic, 20% Roman-Germanic and 10% the remainder would not be too far out.

One of the significant questions is the extent to which real estate law and practice are influenced by the family of jurisdictions. For example, mortgages and lease law are rooted in the family of law, whereas the same cannot be said of regulatory law, such as planning (zoning) and environmental law.

In any event, the result is now that out of the 320 or so jurisdictions, more than 280 draw their inspiration from the three fundamental approaches. This is what one can call the triple polarisation of law and is the result of 19th century empires and emulation of legal ideologies.

So far as financial law is concerned, the differences are nothing to do with the doctrine of precedent or codification. All courts everywhere more or less follow other decisions and in all jurisdictions, the most important law is codified. Instead, some of the real differences show themselves in the actual content of the law, such as the rules of bankruptcy. For example, a distinctive feature of insolvency law in the English common law jurisdictions is that priority is given to three super-super-priority claimants, namely a creditor with a universal corporate security interest, a creditor with a right of set-off against a bankruptcy debtor and a claimant under a trust, such as custodianship of securities. These fields involve colossal amounts. Although over the last few decades there has been much erosion of the differences between jurisdictions in the three groups it is in areas such as these that one really sees the distinctions.

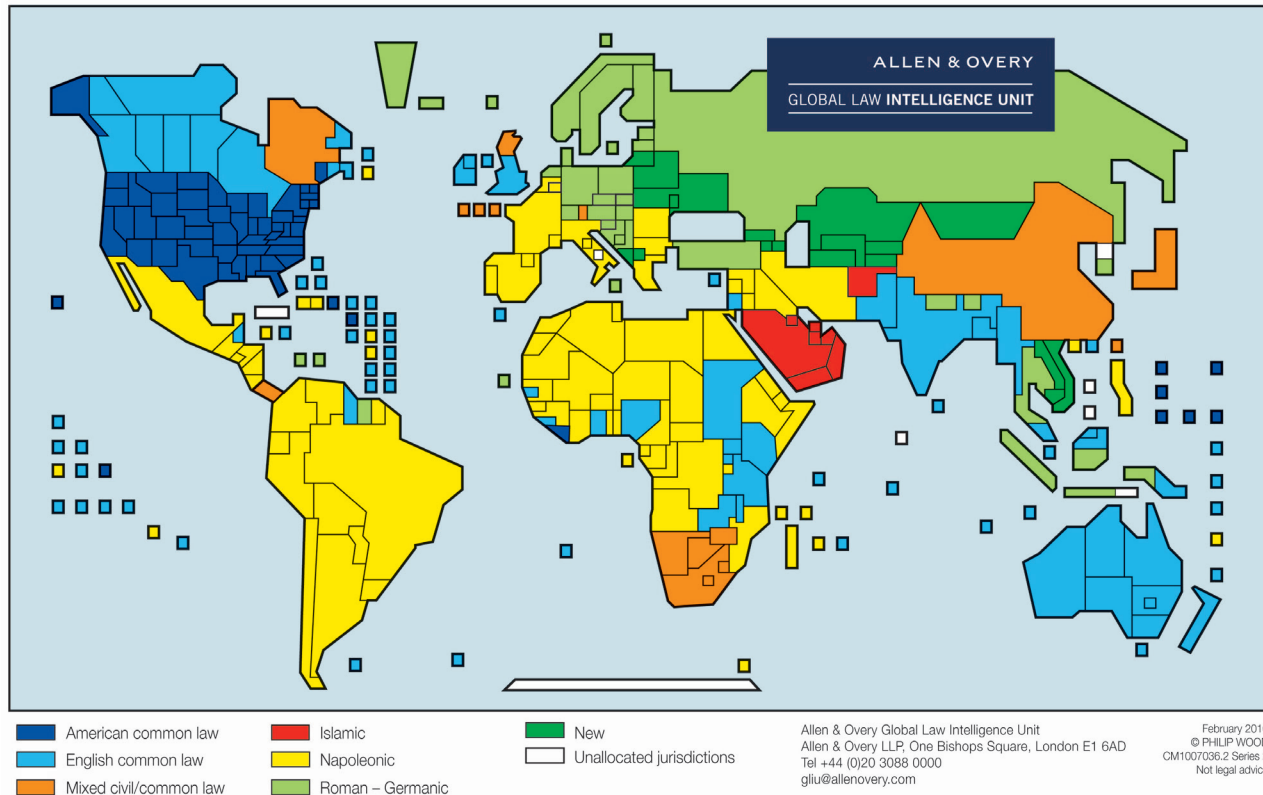
By way of contrast, contract is virtually a done deal in all significant jurisdictions. The differences tend to show themselves in slight swings one way or another in such areas as literal interpretation as opposed to good faith etc. This reflects itself in such matters as, if an acceleration is stated to be immediate, whether it means what it says, and whether the law is hard-edged so that a termination or

acceleration even for a trivial default is considered effective if the document so provides. Doctrines such as these involve a conflict between predictability and concepts of good faith so that jurisdictions have to make the choice, each of which has its pros and cons.

Families of law emanating from Western Europe were probably different not because of some cultural difference at the time, but rather because of the timing of the crystallisation of legal systems in relation to the industrial revolution in the West. Thus the charismatic Napoleonic system was set before the Industrial Revolution took hold in France, whereas the English commercial legal system was settled during a very swift industrialisation at the time of Adam Smith *laissez-faire*, when capital was king and the philosophy was that the railways had to be built. The Roman-Germanic system was framed by academic lawyers who, notwithstanding the advance of factories and finance, had some contempt for trade and were steeped in the ideologies of Roman law.

At any rate, a useful way of organising the world is by following these families of law whose different attitudes still tend to exhibit themselves, notably in our area. The result is the map below which, if not always correct, is at least colourful.

## Families of law





## 12. Mapping global law

**by Philip Wood, Head of the A&O Intelligence Unit**

The idea of mapping global law first occurred to me somewhere around 1995 when I was writing the second edition of my book on the law and practice of international finance. This spun itself up from a single volume to six volumes (which subsequently in 2007/8 became nine volumes, each of which was a lot fatter than the predecessors).

The idea came from the simple fact that the law was growing at a relentless pace and, even in specialist fields, it was becoming increasingly difficult to grasp the whole international picture. At the same time, virtually every country was aspiring to a market economy with market economy laws. Even Cambodia had a stock exchange.

Accompanying the idea of a map of the world was the experiment of using colours. Economic statisticians use figures for everything from GDP to money supply. Mathematics is their language and equations are their reasoning. Credit rating agencies use alphabetical symbols, e.g. AAA for the best investment grade and other letters for the rest. I use colours in the maps to convey the data in a similar way. The basic colours were and are the colours of children's plastic toys, the primary colours of blue, green, yellow and red, sometimes with some intermediate shades. These very broad bands correspond roughly with 100, 75, 55 and 25 or to the A, B, C and D of the credit trading agencies.

Generally, the colour coding is ethically neutral in the sense that blue is free or relaxed and red is restrictive or not allowed. It does not necessarily follow that blue is good and red is bad. It is a matter of opinion of whether the law should restrict in order to liberate us, whether freedom is anarchy and whether order is despotism. The bands are broad: the main advantage of their broadness is to condense, synthesise and distil the information so as to find the patterns, discover the keys.

Hence, the colours are not susceptible to the mathematical precision of science. Also the colouring delivers a rough representation which means that subjective judgments are safer. This is a particularly important where one is weighting numerous criteria in colouring the rating, such as the dozen or so factors you might have to take into account in assessing whether security interests are protective of creditors or not.

The design of the map is non-geographic in order to simplify the world and also to recognise the large number of jurisdictions and important micro states which would only be a dot or sliver on a geographic map, e.g. Hong Kong, Luxembourg and Singapore. This involves more distortion compared to the usual projections. Thus, Europe is 35 per cent bigger on my map than its real size and the Caribbean arcs wide into the Atlantic, way out from its route near the coast of Venezuela.

It took me about two years to draw the original maps which were then moderated by Oxford Cartographers. It took that amount of time mainly because I had to trace the maps from various publications employing quite different projections and because I had to identify all the jurisdictions. I must admit that some of the jurisdictions are doubtful e.g. the Paracel Islands, the Spratly Islands and Åland Islands in the Baltic Sea. The French South Antarctica Territory is probably populated only by penguins. On the other hand, I did omit most island dependencies which have no populations or negligible populations, such as Bouvet Island (Norway) and the Palmyra Atoll (US). I also ignored internal subdivisions where the law didn't seem sufficiently different to justify splitting, e.g. in Mexico, Russia and the Cameroon. On the other hand I did not reflect the seven emirates in the UAE or the fact that the Dubai International Financial Centre has its own law.

Since the map was drawn, there have been a few changes, e.g. the split of Sudan, the appearance of Montenegro and the break-away of East Timor.

It was not so easy to combine accuracy of territory with the simplified diagrammatic portrayal. For example, many people do not know that Kazakhstan has borders with Russia, Turkmenistan, Uzbekistan and Kyrgyzstan (amongst others) but the Kazakhs know that. So I have to reflect that.

There were a few mistakes, e.g. I did not put Maryland by the sea. Everything in life is just an uncorrected draft of what it should be.

### 13. Is there a connection between real estate law and morality?

by Philip Wood, Head of the A&O Intelligence Unit

If one thinks about it, it seems clear that, although one might well have societies without their various philosophies or even religions, it is impossible for a society to function without law. It is no longer possible to rely on customary morality or rational reciprocity or peer pressures to enforce obedience.

By the law, I mean the whole of the law, not just the law relating to the family, sex, murder and other subjects dealt with in the ten bullet points on the mountain with the burning bush or in others of the great religious codes. I also mean the law relating to such matters as money, banks and corporations, the law relating to bankruptcy and taxation, the law relating to the regulation of the environment, employment and capital markets, even the law relating to payment and clearing systems. Without these things, there would be nothing on the plate for breakfast. The entire legal regime is crucial to us for survival and indeed it is survival which is the main purpose of the law and the foundation of jurisprudence.

The law relating to real estate is crucial in this ethical and moral regime and indeed this class of law, together with practically all other classes, is drenched with morality, with the making of ethical choices about how we should live.

Some classic examples of these moral choices and of the engagement of philosophical ethics is embedded in the following aspects of the law relating to land amongst many others:

- The question about whether people should be allowed to own land at all or whether the land is communal and the general property of all the people – and is therefore owned by the state – an idea which, as we have seen, prevails in relation to perhaps a tenth of the land surface of the planet. The question here is whether the peoples of the world should be allowed to have private property, a supremely ethical choice.
- Whether a country permits foreigners and aliens to own its land. Again, the principles in collision are national identity and protective or security as against the "one world" principle, reflected often in attitudes to immigration, the openness to foreign trade and the free establishment of services from abroad. One can readily see that the principles of national identity and universal freedom of movement, trade and services sharply contradict each other, inflame passionate debate and in the worse cases, the miseries of wars and refugees.

- Whether the taxation of real estate should aim at enforcing equality or whether people should be allowed to keep what they earn or inherit in the interests of the protection of private property. The politics of re-distribution and inequality are fundamentally moral questions and the choices are reflected in the law of taxation.
- Whether the law of money, which is crucial to financings (including real property financings of course), should allow the manipulation of the money supply and the pricing of money by central banks so as to deplete the assets of savers. This competition between creditors (savers) and debtors (borrowers) is fundamental to the philosophy (of a coercive redistribution) otherwise than through the taxation system. It is obvious that inflation and the low-balling of the price of money leads to a deprivation of the property of creditors and the basis of this deprivation is a moral issue.
- The law of bankruptcy is one of the fiercest drivers of commercial law because of the despoliation of people and societies. There is a victor and a victim, for example, in the bankruptcy ladder of priorities, and hence a choice between winners and losers. The bankruptcy ladder of priorities, which stretches from super priority creditors, such as secured creditors, down to those who are expropriated (such as claimants for penalties) is a moral ladder.
- Even the questions of whether a legal system should permit immediate accelerations and repossessions or should allow possessory management through a receiver or whether homeowners can be deprived of their homes if they do not pay their mortgages, are moral questions and are issues where jurisdictions have to exercise a choice about who they protect the most.

Where does this leave us? One thing it means is that lawyers, including those that practice in the field of real estate – and perhaps especially those that practice in real estate – have a special responsibility to assist legislators to guide the sorts of law we have on this planet for our survival.

The writer is author of "*The Fall of the Priests and the Rise of the Lawyers*" (Hart Publishing 2016).

## 14. And did you know .... ?

Queen Elizabeth II, the largest landowner in the world, head of state of the United Kingdom and of 31 other states and territories, is the legal owner of about 6,600 million acres of land, one sixth of the earth's non-ocean surface. She is the only person on earth who owns whole countries, and who owns countries that are not her own domestic territory. But this ownership is only a technical legal fiction.

Antilia, a 27-story skyscraper on the pricey Altamount Road in Mumbai, is the most expensive home in the world, valued at upwards of \$1 billion. Mukesh Ambani, an Indian business tycoon and multibillionaire, moved into the 400,000-square-foot mansion in 2012 with his wife and three children.

The most expensive yacht in the world is "Eclipse" at US\$1.5 billion.



Antilia, Mumbai



Apex Regional Landfill in Las Vegas is the largest landfill site in the world measuring 2,200 acres. It has a projected life of 250 years and holds about 59 million tons of waste. Methane gas from the landfill has resulted in the generation of an 11-megawatt power plant that can meet the energy needs of 10,000 households in Southern Nevada. The power generating plant was built at a cost of \$300 million.





The Royal Penthouse Suite, Hotel President Wilson, Geneva

Switzerland has the most expensive hotel suite in the world, ringing in at £53,000 per night (US\$68,400). It has 12 bedrooms and 12 marble bathrooms.

New York Subway has a record breaking 468 stations, roughly three-fifths of which are underground.

The world's largest airport with respect to land area of 78,000 ha is King Fahd International Airport, located in northwest of Dammam, Saudi Arabia:

The busiest airport in the world is Hartsfield-Jackson Atlanta International Airport (ATL) with more than 100 million passengers in 2015. This represents an increase in traffic of over 5.5% over 2014 due to the strategic location, where it is within a two-hour flight of 80% of the US population.

The deepest canal in the world is the Corinth Canal in Greece. According to Guinness World Records, the Corinth Canal is 6.33 km (3.93 miles) long, 8 m (26 ft) deep and 24.6 m (81 ft) wide at the surface and has an extreme depth cutting of 79 m (259 ft)

The longest mountain range on Earth is actually underwater. It is called the mid ocean ridge system. It stretches for 80,000 km all around the world and is nearly 20 times longer than the longest range on the surface, the Andes Mountains. Not only that, the whole thing is completely volcanic.

The deepest spot on Earth is the Challenger Deep in the Mariana Trench. It is nearly 11 km below the surface of the ocean (7 miles) and only 3 people have ever ventured there.

Canada has 3 million lakes – more lakes than any other country.

Gotthard Base Tunnel with a route length of 57.09 km (35.5 mi), is the world's longest and deepest traffic tunnel and the first flat, low-level route through the Alps.

Dallol, Ethiopia is the hottest inhabited place on Earth. The average daily maximum temperature during the same period was 41.1 °C (106.0 °F).

Oymyakon, a village in Russia has the coldest monthly mean with −50 °C (−58 °F)

Krubera Cave in Georgia is the deepest cave in the world and stretches more than 7,208 feet (2197m) toward the earth's core. This is the only cave on Earth deeper than 2,000 metres.

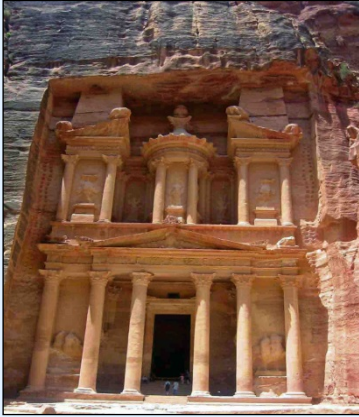
According to Guinness World Records, the Palace of the Parliament in Bucharest is the heaviest building on the planet. It contains 700,000 tonnes of steel and bronze, a million square feet of marble, 3,500 tonnes of crystal and 900,000 square metres of wood. But the Pyramids are much heavier.

The most expensive structure ever built is the Abraj al bait in Saudi Arabia (a complex of seven sky scraper hotels) at US\$15 billion

The largest archaeological site on earth is Angkor Wat in Cambodia, which may cover up to 3,000 square kilometres (1,160 square miles)!



# Beautiful planet earth



Petra, Jordan



Northern Lights, Iceland



Bagan, Myanmar



Machu Picchu, Peru



Santorini, Greece



Great Wall of China



Cotswolds, UK





Pleneau Bay, Antarctica



The Great Barrier Reef, Australia

The Moeraki Boulders, New Zealand



Lake Hiller, Australia



Zhangye Danxia, China

The Marble Caves, Chile/Argentina



# Jurisdiction by jurisdiction responses

## Description of the legal ratings

The method developed by the Allen & Overy Global Law Intelligence Unit is a system of legal ratings by colour-coding with a minimum of text. The survey is a rating of ten key indicators, not a legal treatise. If readers require a detailed report they can contact the participating relationship firms.

The questions only covered the written law, not the practice of the law or any rule of law issues.

There are ten statements relating to real property. The statements are as follows:

### **Q1 Alien ownership**

There are no restrictions on the ownership or leasing of land by aliens.

### **Q2 Absolute ownership**

All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights.

### **Q3 Proof of title**

Proof of title to land is quick and safe.

### **Q4 Cost of land transfers**

There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains.

### **Q5 Mortgages**

Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor.

### **Q6 Controls on terms of leases of land**

The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default).

### Q7 Termination of leases

A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides.

### Q8 Foreign direct investment

The law is friendly to foreign direct investors in land.

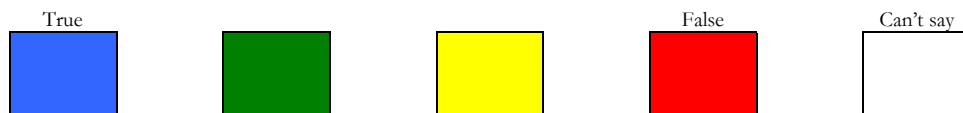
### Q9 Development of land

No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions.

### Q10 Environmental

The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed.

After each statement, there are five coloured boxes representing a range from true to false and a “can’t say” box as follows.



**Blue** generally means that the law does not intervene and the parties are free, i.e. the law is liberal and open.

**Red** generally means there is intense legal intervention, usually in the form of a prohibition.

**Green** and **yellow** are in-between.

The colour coding does not usually express a view about what is good or bad but is neutral on the policy.

Respondents carried out the following steps:

- They put a **cross** in the appropriate box.
- They write a short **comment** of not more than a few lines, e.g. explanation and relevant statutes.  
They were not writing a law book.

- The coloured line in the margin of the reply to each question shows the colour chosen for each jurisdiction.

# Abu Dhabi



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are not permitted to own or lease local land directly. (2) Local corporations owned or controlled by aliens or having alien directors cannot own or hold long leases of local land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals can own land outright. They can only have leases and occupancy rights for a limited period of 99 years. The owner has no free right to renew. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state does not guarantee the accuracy of the register but once legally registered in accordance with the law, the register is reliable. (4) Problems over title to registered land are rare. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward. (6) Due to legislation expected for some time and introduced very recently, it has not been practically possible in many cases for overseas investors to register title to land as the register would not accept such applications pending the new law being introduced. This is

expected to change following introduction of the new law.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are substantial registration fees on transfers of land used for any purposes or leases of such land or the grant of leases of such land. (2) There are no taxes on the gains on a transfer of such land or leases.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage must specify the debt precisely, cannot secure future debt and must specify a maximum amount for registration purposes in local currency. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale without a court order or public auction. The mortgagee must be licensed as a financial institution or bank by the UAE Central Bank. (5) If the owner enters bankruptcy proceedings, the general view is that the mortgagee can continue to enforce security, however, this has not been tested in the courts. (6) On insolvency the mortgage ranks prior to all unsecured creditors however there are certain preferred creditors such as costs of enforcement and any governmental debt related to the mortgaged land. (7) There are no



substantial costs or fees involved in land mortgages other than registration fees and notary fees. (8) It is possible for a tenant to mortgage the lease of greater than 10 years if permitted by the terms of the lease and the above comments in (1) to (7) generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease to protect the tenant, e.g. (1) there are no effective controls on rent increases, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of the premises expires, the landlord can evict the tenant and the tenant does not have an automatic right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee's obligations under a lease are transferred to the assignee when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and

capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) There are no specific obligations in an environmental context relating to shareholders and directors of the company owning or leasing the land being liable for contamination caused by the company, however it not as easy to establish the liability of shareholders and directors for actions of a company as in other jurisdictions.

**General comment** The practice for land transactions is developing and will be in the main quick and efficient once new legislation is implemented. Taxes on land and rents from land are not exceptionally onerous.

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# Albania



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) According to the article 5 of the law No. 7980, dated 27.07.1995 "On buying and selling of land", alien individuals and alien corporations are permitted to own local land with the condition of realising investments on the land, not less than three times the value of the land, in accordance with the construction permit, whilst they can lease local land directly. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land. (3) Government permissions are not applied even for major projects with regard to leasing or ownership.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** Problems regarding property title are common and various. Extra due diligence is usually straightforward as regards the proof of title.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** [(1) There are no other costs other than normal legal and registration fees.

In accordance to the article 28 of the law No. 9632, dated 30.10.2006 "On local tax system", as amended, the seller has to pay the tax "On property transfer", which is calculated as 2 % of the property value.

(2) As regards leases, the tenant bears local taxes such as: green tax, cleaning tax and lighting tax, which are defined on a yearly basis by the Council of the Municipality. Taxes on the property (i.e. tax on the real estate) are borne by the owner of the property.]

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) Though the mortgage of land and related assets is a protective security instrument for the creditor, in practice the creditors face several difficulties in the procedures for enforcing such instrument.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control**

### **the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law restricts or controls certain terms of a lease of commercial premises, e.g. (1) The decision of the Council of Ministers No. 469, dated 03.06.2015 "On designation of the minimal rent levels for tax purposes" provides the formula for establishing the minimal rental levels. The rental price cannot fall under the levels established by such decision. Furthermore, pursuant to the article 803 of the Civil Code, leases cannot last more than 30 years, unless the law provides otherwise. (2) In accordance to the article 805 of the Civil Code the landlord is obliged to perform all necessary repairs to the premises and the tenant bears only the daily maintenance, whilst the lease contract can validly exclude the obligation of the landlord to insure or make the premises safe. Article 816 of the Civil Code provides that the tenant is not entitled to compensation for improvement costs unless the consent of the landlord for carrying them out has been obtained. (3) When a lease of business premises expires, the landlord can evict the tenant and the tenant has no protection unless the parties otherwise have provided by the contract, such as a right to a new lease. (4) Pursuant to the article 818 of the Civil Code, the lease can validly exclude the ability of the tenant to assign or sub-lease. (5) A tenant is released from its obligations under a lease when it assigns the lease. Article 818 of the Civil Code provides for the right of the tenant to pass the lease to a third party if it has the consent of the landlord.

## **7. Termination of leases**

### **Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes insolvent, the landlord can terminate the lease of such land if so provided. However, pursuant to article 94 of Albanian Insolvency Law, if the tenant becomes insolvent the landlord cannot terminate the lease of such land for the following reasons:

- for default of lease prior to the insolvency opening procedure;
- due to the debtors' economic situation deteriorating.

## **8. Foreign direct investment**

### **Q. The law is friendly to foreign direct investors in land?**

**Comment** Albanian law, especially the Law on Foreign Investments, guarantees full legal protection for foreigners' investments. Private investments are not subject to nationalisation or expropriation, unless specifically required by law for the public interest. Parties to a dispute may agree to submit claims to arbitration. Foreign investors also have the right to submit disputes to an Albanian court.

The Law on Foreign Investments provides "special state protection" for investments/projects exceeding EUR 10 million. Such protection is granted where a dispute arises between the foreign investor and a private party claiming title over the land where the project is or will be built and/or developed.

This protection involves the state replacing the foreign investor in a court dispute and undertaking to compensate the claimant if the court rules in its favour.

Anyhow the practice shows different problematic scenarios with regard to implementation of procedures regarding acquisition and investment over the land.

## **9. Development of land**

### **Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** As per the law No. 107/2014 "On territory planning and development" any legal entity must apply for development permission with respective public authority for land development. The change of use of land is regulated by the decision of the Council of Ministers No. 410, dated 27.06.2012 "On definition of rules and procedures changing the land categories resources". As per above, developments and change of use of land are strictly regulated. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) Subject to Environmental Law, the liability for environmental damage is based on the "polluter pays" principle. It also provides for the liability of the company owning or leasing the land in cases of contamination. Additionally public administration bodies are also responsible to assure environment safety.

**General comment** The practice for land transactions is quick and efficient because they are performed by the public notary which verifies online the property status. The Real Estate Registration Office registers the rights on the property within a short term.

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# Angola



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** To aliens, the state only grants limited rights to the land, e.g. (i) civil useful domain on rural or urban land; (ii) precarious occupation right (by lease) on rural land and urban land included into the private domain of the State to build the precarious premises, being a right granted for a period of one year; (iii) surface right for construction or maintenance purposes being a right granted for a period of 60 years, renewable for equal or different periods. All these rights are granted by Government entities.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** It's possible to get land from private estate or from State, but the right of ownership (urban) may only be assigned to Angolan nationals (natural persons). These lands should fall within a development plan and have been batched.

Aliens can only get lease or surface rights. The safest is the surface right because it can be registered, transferred, mortgaged. The surface right acquired under an authorised private investment project can get tax exemption.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There are many portions of land which are not registered and therefore have no title. Land

belonging to former settlers has been confiscated and returned to the State. To determine the status of a given portion of land it is normally necessary to perform extensive due diligence exercises and sometimes official entities do also need to conduct extra due diligence to find information on the particular situation of a given land.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** For granting land (State) the dealers have to pay the price, legal fees of records and taxes.

Investors normally prefer to get land under the Surface right regime because they can register it, mortgage and transmit to others and the 60 years duration period is renewable. The price for said right can be a single fee or an annual fee. The leases of land are precarious and normally do not allow registration of permanent constructions. Investors have to pay monthly fees to the State.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The holder of Surface rights may mortgage the land as credit guarantee. The credit agreement must specify the amount of the credit to be guaranteed and the amount covered by the mortgage

if more than one creditor is competing for the payment.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises are very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law protects both, the tenant and the landlord. Although the law recognises certain rights to the tenant against abusive termination, in practice landlords have had during the recent past a very strong position due to the short premises offer. Legislation recently published improves the tenant's position which is also positively influenced by the changes (wider offer) currently occurring in the estate market.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** The landlord may terminate the lease if the tenant company does not pay the rent or breaches other terms of the land lease through judicial eviction.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The law provides for the payment to investors of compensation promptly and in cash in case of a compulsory expropriation of land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Land Law and its regulations provide for a set of principles regarding the use and enjoyment of land, which require different levels of permissions and licences for different uses or purposes.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Environment licences and/or impact assessment studies are normally required and the procedure to get the licences can be somehow difficult and highly bureaucratic. On the other hand regulations on liability for environmental damage apply to any operator of economic activity that may cause damage to the environment.

**General comment** The procedure to legalise land in Angola is a bit bureaucratic, but the rates for the acquisition or use of State land are deemed as relatively low.

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# Argentina



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly. Local corporations owned or controlled by aliens or having alien directors can own or lease local land. However, certain restrictions apply to property located in international border zones and rural land. The National Government exercises control over such zones in connection with the transfers of title, leases or rentals or any other rights in rem or in personam under which the possession of real property located in Border Security Zones should be delivered. The Law on Rural Land N° 26,737 restricts ownership and possession of rural land, irrespective of its intended use, by foreign individuals and legal entities. It is applicable throughout the Argentine territory, as a public policy rule, to any individuals and legal entities that, either by themselves or through third parties, own or possess rural land. Its purpose is to limit the acquisition of rural land by individuals and legal entities of foreign origin. The Law regards as foreign legal entities any foreign company or Argentine companies of which more than 51%, or the percentage required for decision-making purposes, is held by foreign individuals or legal entities. Pursuant to this Law, any purchase or transfer of, or assignment of ownership or possession rights, whichever the manner, the name given by the parties and the term thereof, in rural land must be previously authorised by the Argentine Registry of Rural Land. Recently enacted Decree N° 820/2016 clarified that no authorisation is required in cases of change of corporate control as well as in cases of stock's transfers. The Decree 820/2016 also included divestiture mechanisms in the case of purchase of equity interests in legal entities that own rural land.

This means that, even if a company acquires shares of a company that owns rural land, and even if the limits established by the Law on Rural Land are exceeded as a consequence of such acquisition, nothing will be absolutely null and void. Instead, the company will have a term to sell the equity interests in one of the companies of the group that owns rural land, or sell such land that caused the limits to be exceeded, or sell other land (for instance, land which is no longer used or is less productive or is smaller in area), or cause the controlled company to sell land or equity interests in legal entities that own land, or change the type of exploitation of the land if that prevents the limits from being exceeded, among others.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. They can only have leases and occupancy rights for a limited period of 20 years in case of leases for dwelling purposes, and 50 years for any other use. The owner has a free right to renew for a term not exceeding the aforementioned maximum statutory terms which are counted as from the commencement of the original lease.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in each province of the country. The land registers show the extent of the land, ownership and mortgages. The state guarantees the formal accuracy of the registers.



Delays in registration are common in certain jurisdictions/provinces.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are relevant transfer and documentary taxes, notarisation fees and registration fees on transfers of land used for business purposes. Stamp Tax is levied by most provinces on documents evidencing transactions for a consideration, such as transfer of real estate. In general, the rate applied amounts to 1% on the economic value of the agreement (or consideration to be paid under the same), except on the transfer of real estate which rate is usually higher. In case the seller is an alien there are special regulations regarding Income Tax withholdings.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage must specify the debt precisely. The mortgage can be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. Court procedures are quite slow. There are substantial costs involved in land mortgages.

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Although there is a maximum term for commercial leases (50 years) it is very long and the law is not intended to protect landlords. The lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate

the tenant for improvements on expiry of the lease. The lease can validly exclude the ability of the tenant to assign or sub-lease. A lessee is not released from its obligations under a lease when it assigns the lease. The lessee can terminate the lease agreement before the agreed term by giving prior notice.

#### 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

#### 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government does not have to pay compensation for a compulsory purchase of land promptly and in cash. There are subsidies and special zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are no relevant withholding taxes on the interest on foreign loans which are difficult to avoid.

#### 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** At the federal level, the environmental rules do not address clean-ups. In the province of Buenos Aires, the environmental rules are strict, with tight liabilities for clean-up and penalties. An owner of land is liable to clean up contamination by former owners/lessees. Shareholders of the company owning the land cannot be liable for contamination caused by the company.

**General comment** The practice for land transactions would require adequate reforms in certain jurisdictions/provinces. Taxes on land and rents from land are not exceptionally onerous.

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# Armenia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Aliens are not allowed to own the lands in Armenia; no restrictions apply in relation to lease of the land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** With noting the comment on alien ownership (restrictions in relation to non-Armenian citizens, who do not have the right to own the land), there are no other restrictions.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** State Registration of Rights to the Property regulates the state registration of rights to property and the activity of the system implementing the state registration. The body authorised for the conduct of the state unified cadastre of real estate is the national body of public administration (hereinafter to be referred to as "State Register of Real Estate"), which is responsible for the development and implementation of the real estate market overall policy within the territory of the RA, the state registration of rights to the property for the purpose of recognising and guaranteeing rights and encumbrances to the property, as well as the establishment of an information system on property, provision of information and the management and supervision of the system's activity.

Origination, change or transfer of real estate rights are registered according to the procedure prescribed by law on the **4th business day** following application for state registration, except for the cases defined by law. Subject to the applicant's request, state registration of the origination, change or transfer of real estate rights may be processed within **2-3 business days** according to an accelerated procedure. In such cases, the fees stipulated by this law are multiplied by relevant rates of state registration, provision of information and other services.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are not very many substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Guarantees for the rights of mortgagee creditors in case of disputes are protected by law and

the claims of its creditors shall be satisfied in the following order of priority:

1. The pledged property may be levied in execution for satisfaction of claims of a pledgee (creditor) in such circumstances of non-fulfilment or improper fulfilment of the obligation secured by pledge by the debtor, for which the latter bears liability.
2. For the purpose of satisfying his or her claim, a pledgee shall have the right to levy execution upon the collateral and realise it without applying to court, including transferring the pledged property to the ownership of the pledgee or a third person mentioned by the pledgee for the corresponding amount of the principal obligation, if: 1) it is provided for by the contract of pledge, or 2) there is a written agreement concluded between the pledgee and the pledger, and, when a consent or permission of a third person has been required for conclusion of the contract of pledge — also the written consent of the latter, without the court judgment on realisation of the pledged property.
3. In case of absence of the agreement stated hereto the claims of the pledgee (creditor) shall be satisfied by a court judgment, at the expense of the pledged property. Claims of a pledgee, that are provided in writing, shall be satisfied from the amount received from realisation of the pledged property or from the value of the property passed to the ownership of a pledgee or to the person he or she indicates, after deduction of the amount needed for paying the expenses of levy of execution upon that property and the realisation thereof, and the rest of the amount shall be given to a pledger.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Civil legislation is based on the principles of equality, autonomy of will, and property autonomy of the participants of relations regulated thereby, inviolability of ownership, freedom of contract, impermissibility of arbitrary interference by anyone in private affairs, necessity of unhindered exercise of civil rights, ensuring the reinstatement of violated rights,

judicial protection thereof. Early rescission of the contract upon the request of lessor.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** The lease contract may be early rescinded at court upon the request of lessee, where:

- (1) the lessor has not transferred a property for use to the lessee or has created obstacles for using the property in accordance with the conditions of the contract or the intended purpose thereof;
- (2) the property transferred to the lessee has defects impeding the use thereof, which have not been mentioned by the lessor while concluding the contract, and which were not previously known to the lessee and the latter should not have detected while concluding the contract, examining the property or checking the working order thereof;
- (3) the lessor has not, within the terms provided for by the lease contract, whereas in case of non-availability thereof — within reasonable term, fulfilled his or her obligation of making capital repair of the property;
- (4) by virtue of circumstances, for which the lessee is not responsible, the property has become useless.

In accordance with relevant Article of RA Civil Code other grounds for early rescission of the contract upon the request of lessee may be established by the lease contract.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Subjects of the land relations are the Republic of Armenia, municipalities, and also legal entities and citizens of the Republic of Armenia, foreign legal entities and **foreign citizens, the letters may be only land-users**, stateless persons, the international organisations and persons with the special status of residence permit.

The main principles of investment policy of RA are:

- application of liberal principles of economic activities in investment sphere;
- maintenance of attraction and stability of the legislation regulating the investments;
- maintenance equal, not discriminatory economic conditions for foreign and internal investors;
- granting of the national treatment and most favoured nation treatment to foreign investors and investments;
- maintenance of protection of legitimate interests of investors and investments.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** The land fund of the Republic of Armenia is subdivided on for purpose categories. The functional purpose of the land plot is a complex of the physical, qualitative and standard features fixed by normative legal acts, town-planning and land management documentation which includes borders of the allowed use of the land plots and their changes. The purpose of lands, land grounds, functional purpose of lands and restriction of use of lands are specified in regarding decisions of state and local bodies, in the certificates, contracts and other documents certifying the right for the land plot; in documents of State Registration of Rights to the Property, in schemes of zoning and use of lands, on master plans of settlements. The legal regime of lands is set on the basis of laws and normative legal acts. Unauthorised change of the target and functional purpose of lands established by regarding law, other laws and normative legal acts adopted on their basis is the basis for:

- (1) recognitions invalid in a judicial proceeding acts of state bodies and local government, and also bargains with the land plots concluded on their basis;
- (2) refusal in the state registration of the right for the land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

### Comment

1. The allowed use of the land is established on the basis of normative legal acts, schemes of zoning and use of lands, town-planning and land management documentation.
2. The allowed use of the land may contain requirements in relation to:
  - 1) prohibition of ways of use of the land and their part which lead to decline in quality and fertility of the soil or to deterioration of surrounding environment;
  - 2) the building density, height of the building, a structure and feature of their fixing on the land according to town-planning documents, norms and rules;
  - 3) placement within the corresponding zone or the land of welfare, household, production and other buildings, structures;
  - 4) the types of land use making harmful effects on health of the person or connected with increase of its danger;
  - 5) admissible norms of impact on surrounding environment;
  - 6) protection of green plantings;
  - 7) implementation of actions for prevention of desertification, an erosion, pollution, bogging, salinisation of soils and other phenomena;
  - 8) implementation of actions for protection of lands and restoration of the broken lands;
  - 9) ensuring unity of nature protection systems, sanitary and hygienic conditions, actions for protection of biological variety on lands;
  - 10) actions for protection of agricultural, town-planning, nature protection, historical, cultural values and the historical environment, established by laws and normative legal acts of state bodies and local government.

3. The requirements included in the allowed use of the land plot are established irrespective of the right for this land plot and forms of ownership.

#### General comment

The law on foreign investments is the most advanced and liberal law on foreign investments which exists in transitional economy. The basic principles of investment policy of the Republic of Armenia are:

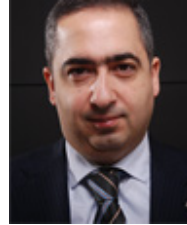
- the liberal principles in the sphere of management of investments,
- investment appeal and stability of the regulating legislation;
- foreign and local investors equal, non-discriminatory conditions;
- granting national and more favourable regime for foreign investors and investments,
- Ensuring protection of legitimate interests of investors and investments.

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# Aruba



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. They can also have (long) lease rights on land (property), for a long term of 60 years. The owner has a free right to renew. Whether the land is available for ownership or lease depends on the public designation of the land.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** Title on land in Aruba must be recorded in the public register for real estate property (*Kadaster*). The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights on the land, such as liens or pledges. However, the land register does on occasion have delays, so it is not as quick.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Real estate can be transferred legally and beneficially. If only the beneficial ownership is transferred, this does not constitute a taxable event for transfer tax purposes (but does imply 3.5% BBO/BAZV is due). The beneficial ownership does not have to be transferred via a notary but can be transferred via an agreement.

If the legal (and beneficial) ownership of real estate is transferred, this has to be done via notarial deed. Apart from normal legal fees depending on the scope of the work, there are transfer taxes and notarisation fees on transfers of land (used for business purposes) or leases of such land or the grant of leases of such land. Upon the legal transfer of the ownership of real estate, transfer tax is due which will automatically be withheld from the buyer and paid by the notary at the tax authorities. The rate is 3% over the highest of (i) the purchase price or (ii) the registered value at the tax authorities if less than AWG 250,000, otherwise it is 6%.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The right of mortgage is established by a notarial deed drawn up between parties in which the grantor grants a mortgage to the creditor (mortgagee) over registered property, followed by the entry of the deed in the appropriate public register. The deed must contain an indication of the claim for which the mortgage serves as security, or of the di, on the basis of which that claim can be determined. The amount for which the mortgage is granted must also be mentioned, or if this amount has not yet been established, the maximum amount for which recourse may be had against the property pursuant to the

mortgage (Art. 3:260 Civil Code of Aruba). If the obligor is in default of performing that for which the mortgage serves as security, the mortgagee is entitled to have the secured property sold in public through public auction before a notary with authority to do so. At the request of the mortgagor, the Court in First Instance may determine that there will be a private sale by contract submitted to it for approval, together with the request. If the grantor of the mortgage, the creditor, any possible seizer or holder of a limited right, who has an interest in obtaining higher proceeds for the property, submits a more advantageous offer to the Court before the end of the hearing of the request, the Court may determine that the sale be made to such offer (Art. 3:268 Civil Code). In the event that a debtor is declared bankrupt, creditors that are holders of a right of mortgage can exercise their rights as if there was no bankruptcy (Art. 53 Insolvency Decree Aruba, "*Faillissementsbesluit*"). It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does in some aspects restrict or control the terms of a lease of commercial premises to protect the tenant. Note (1) there are no controls on rents, (2) the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot evict the tenant without first obtaining permission from the Lease Committee.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** According to case law a landlord can terminate a business lease if the tenant does not pay

the rent or breaches other terms of a lease of land used for commercial purposes **missing text[?]** if so provided the Landlord gives the Tenant a three month notice period and permission is requested from the Lease Committee. Default of the Tenant can lead to a termination of the lease, unless the default can be excused or remedied within a reasonable timeframe.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** There are some subsidies and special zones where taxes are relaxed. There are exchange controls regulated by the Central Bank. Also foreign investors that want to engage in economic activities in Aruba through a local legal entity are required to operate with a business licence. In order for a local legal entity to acquire a business licence, the entity must have a resident with 60% of shares upon incorporation. It is also difficult for a foreign legal entity or person to obtain a director's licence. These are some hurdles that make it difficult for foreign direct investors in Aruba.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** In the case of land that is being leased (by long lease) by the government, developments and change of use of land (from residential to commercial) are tightly regulated, including both business and residential developments.

In case of ownership of the land, no official government permissions are required for a change of the use of land. However, please note that as of 2006 the Ordinance on Urban Development (AB 2006 no.38) has become effective. This Ordinance enables the introduction of a spatial (urban) development plan that is drafted to shape the spatial organisation of the Aruban territory. The urban development plan provides guidelines for governmental permissions and decisions on, *inter alia*, housing, environment, traffic, industrial zones, and conservation zones. The urban development plan is very important in determining the



future of the development and zoning of the territory of Aruba.

Furthermore, in the event the owner of the land is a company and it were to change its objectives (as stipulated in its articles of incorporation), due to the change of the use of land, then the business licence of the company will consequently have to be amended to reflect this change. For this action permission is required from the Ministry of Economic Affairs.

Otherwise, in case of ownership, restrictions can be found in contractual chain conditions (i.e. perpetual clauses – '*kettingbedingen*') that may restrict change in the use of the land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** There are some environmental rules, although these laws are not extensive they are strict, with tight liabilities for clean-up and penalties. In principle, shareholders and directors of the company owning or leasing the land cannot be liable for contamination caused by the company.

**General comment** We cannot comment on tax-related matters, seeing as this does not fall within the scope of our area of expertise.

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# Australia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Under the Australian foreign investment framework, foreign persons generally need to apply for foreign investment approval in relation to residential, commercial and agricultural land over a certain threshold amount. However this approval may not be required in limited circumstances such as where the interest in residential real estate is acquired by will or it is acquired directly from the government.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All nationals (including locally incorporated companies) can acquire freehold title to land (the most common, and comprehensive, form of title in Australia). (2) Some Crown land in rural areas of New South Wales can only be held under a lease from the government. Such leases are either held in perpetuity or for a long term but not exceeding 100 years in duration. These occupancy rights normally cannot be transferred or mortgaged without the consent of the Minister.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) New South Wales land law centres around a Torrens System of title by registration. Under this system, a piece of land is registered on a central searchable register allowing ownership and other interests in the land (including mortgages, leases

and certain other important rights such as easements and caveats) to be easily identified. (2) The register is reliable as under the Torrens System, if an interest is registered it will be indefeasible despite defects in its acquisition.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) The material costs involved in transferring interests in land arise as a result of certain taxes, supplemented by standard registration fees imposed by the registrar. (2) Land tax is an annual tax imposed on holders of freehold land and stamp duty will apply to transfers of freehold and leasehold land (stamp duty varies depending on the value of the land). An additional “foreign purchaser” stamp duty surcharge of 4% (8% on and from 1 July 2017) is payable where foreign persons acquire residential land. (3) Goods and services tax (similar to VAT in the UK and levied at 10% of the sale price) will apply to transfers of land as well as to the transfers of leases unless the lease is of non-commercial residential premises. No GST is payable on the transfer of residential land unless it is a transfer of “new residential premises”.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**



**Comment** (1) Mortgages are registrable under the Torrens system and the first-registered mortgage will take priority over any subsequent mortgages as well as any unsecured creditors (although taxes, employee benefits and insolvency costs will still take priority). (2) The mortgagee can exercise its power of sale without obtaining a court order or public auction. However the mortgagee will need to first provide written notice to the mortgagor and upon expiration of the notice period, the mortgagee may exercise its power of sale.

## Q6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default).**

**Comment** (1) Generally, commercial leases are not regulated by statute in New South Wales. (2) The terms of the lease can be determined by the landlord and tenant and the law does not restrict or control the terms of a lease of commercial premises to protect the tenant. (3) There are no controls on rent and a lease may validly exclude any obligation on the part of the landlord to make repairs, insure, or compensate the tenant for improvements on expiry of the lease. (4) When a lease of commercial premise expires and there is no holding over period stipulated in the lease, the landlord may enter and obtain lawful possession of the premises. (5) The landlord has the right to evict the tenant and the tenant has no protection, such as a right to a new lease if the lease agreement does not provide so. (6) A lease may validly exclude the ability of the tenant to assign or sub-lease. (7) Upon the assignment of the lease and/or reversion, privity of contract remains between the original landlord and tenant. Accordingly, the tenant can enforce the contract for existing breaches and the landlord can enforce the contract for existing and future breaches. In addition, privity of estate is also created between the assignee and the landlord, rendering the assignee liable to the landlord.

## Q7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides.**

**Comment** (1) In the event of non-payment of rent, a landlord may immediately terminate a commercial lease if permitted under the lease agreement. (2) If a tenant breaches an essential term of the lease (other than failure to pay rent), the landlord will need to follow certain procedures before it may terminate the commercial lease. This would require the landlord to serve a notice on the tenant specifying (i) the particular breach (ii) if the breach is capable of remedy, requesting the tenant to remedy the breach and (iii) if the landlord is claiming compensation, the amount of the compensation payable. If the tenant fails to remedy the breach within a reasonable time (or within a timeframe stipulated under the lease agreement), the lease can be terminated.

## Q8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land.**

**Comment** (1) Corporations, trustees of trust, a general partner of a limited partnership and foreign governments that meets the definition of a foreign person under Australia's foreign investment framework must seek approval before purchasing any residential property in Australia. (2) With limited exceptions, acquisition of agricultural land and commercial land is also subject to approval by FIRB. (3) There are different investment structures where taxes are more relaxed than others. (4) There are no exchange controls or restrictions on repatriations of profits and capital from land.

## Q9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions.**

**Comment** (1) Developments and change of use of land are highly regulated, including for both commercial and residential developments. (2) Development on land must be conducted in accordance with all relevant environmental planning

policies which provide rules for specific environmental matters and contain particular development controls to protect or manage certain environmental values. (3) Planning schemes vary between councils, for example, an environmental planning instrument may stipulate that certain developments do not require consent while other developments must receive consent or are prohibited. (4) Public interests and environmental issues are major considerations when assessing the submission for a major development.

## Q10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed.**

**Comment** (1) The Environment Operations Act 1997 (NSW) imposes strict liabilities for clean-up and penalties with respect to contamination, pollution and waste management. (2) A person who owns contaminated land commits an offence if they fail to notify the Environmental Protection Agency. (3) A person who causes contamination or pollution is responsible for the costs of the clean-up. (4) In some cases, directors or persons concerned in the management of a company which has failed to comply with clean-up orders may be personally liable for contamination caused by that company.

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# Austria



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** The possibility to acquire real estate is limited by the Land Transfer Acts of the nine Austrian provinces regulating, inter alia, the acquisition of land by foreigners. Citizens of the European Union (and the EEA) are treated equally to Austrian citizens. For others the acquisition of real estate might be subject to approval which is generally conditional on the applicant's ability to demonstrate a (i) social, (ii) macroeconomic or (iii) cultural interest of the province concerned in his/her acquiring a piece of real estate. Apart from restrictions for foreigners, the Land Transfer Acts also limit the transfer of agricultural and forestry land and of secondary homes.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** In order to acquire ownership in Austrian properties and apartments, a written purchase agreement with signatures to be notarised by a notary public is required. The buyer then has to apply for registration of ownership in the Land Register with the title to the property vesting in the buyer only upon such registration.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The Austrian Land Register is a public electronic register in which all properties are registered and for each piece of land an own entry with a specific

registration number is established. Information contained in the Land Register enjoys specific protection if the purchaser has relied on the correctness of the information contained in the register in good faith, therefore it is advisable to obtain all information from the Land Register before acquiring real estate.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** The purchase of a property is subject to property transfer tax ("Grunderwerbsteuer") in the amount of 3.5% and of registration fees of 1.1%. The tax base in principle is the fair value of the land, i.e. usually the consideration paid. In certain family transfers or transfers without arm's length consideration special rules apply to both tax rate and tax base.

Real estate agents earn fees of usually up to 3% of the purchase price plus VAT. Agents' fees can legally accrue on both seller and purchaser side.

The total costs for the above taxes, agents' fees and fees for lawyers and for the notary (for legalising signatures) in practice sums up to an amount of approx. 10% of the purchase price.

Lease agreements are subject to a stamp duty of 1% of the total rent (including turnover rent) plus costs. Tax base for leases with indefinite term is the triple annual rent, for leases with a definite term the stamp duty is 1% of the rent for the whole term with a maximum of 18 years.

## 5. Mortgages

### **Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Any property can be encumbered with the right of a third person (whether a legal entity or a natural person), i.e. with mortgages, easements or pre-emptive rights. Such encumbrances can be created either by contract or by decision of a state authority (court).

A mortgage becomes legally effective with effect vis-à-vis third parties by entry into the land register and creates a security valid and enforceable against the owner and any transferee of the property.

## 6. Controls on terms of leases of land

### **Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** In principle, lease agreements for both residential and business purposes are governed by the Austrian Tenancy Act ("MRG", *Mietrechtsgesetz*) - which depending on the type of premises is applicable in full, partly (e.g. for business parks) or not at all - and by the Austrian Civil Code ("ABGB", *Allgemeines Bürgerliches Gesetzbuch*). If the MRG is not applicable, only the respective provisions of the ABGB apply.

Lease agreements can be concluded either for an indefinite or for a definite term. The MRG is highly restrictive and mainly intends to protect the tenant's interests; lease agreements under the MRG for an indefinite term can only be terminated by the landlord for reason. As a consequence, there is a tendency to preferably conclude lease agreements for a definite term.

If the MRG is fully applicable (e.g. in most buildings with a construction permit before 30 June 1953), rent is restricted to market level and is subject to review by court if excessive of the admissible amount.

Furthermore, the MRG contains restrictions on ancillary costs and on cost for maintenance and repair of the leased premises.

Finally, it must be noted that following certain Supreme Court decisions dating back to 2006, there is a tendency to restrict landlords' rights under the general restrictions of the ABGB for general terms and conditions of contracts.

## 7. Termination of leases

### **Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** If the Austrian Tenancy Act ("MRG", *Mietrechtsgesetz*) is fully or partially applicable - which is true for the majority of leased premises in Austria - landlords may only terminate a lease for specific important reasons listed in the MRG, i.e. default of rent, adverse use, inadmissible sub-letting, etc. Any further reasons entitling the landlord to termination agreed in the lease is only enforceable if comparable to the taxative list set out by the MRG. (Alternatively, the tenant may terminate the lease agreement at any time without specific reasons under consideration of the terms of the lease.)

Only for premises under the sole regime of the ABGB, a free agreement of termination rights is possible.

## 8. Foreign direct investment

### **Q. The law is friendly to foreign direct investors in land?**

**Comment** As outlined above, the possibility to acquire real estate is limited by the nine Land Transfer Acts of the nine Austrian provinces. In practice, an approval (if required under these land transfer restrictions) is granted by the authorities if it can be proven that the investment is to the benefit of the (local) economy.

## 9. Development of land

### **Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** According to the Austrian constitutional law both building law and zoning law are provincial matters in terms of legislation and enforcement.

Consequently, there is no uniform building and/or zoning law in Austria since all nine Austrian provinces have enacted their own regulations in this regard. As far as administration is concerned usually the Mayor acts as Building Authority of first instance whereas the Municipal Council acts as appellate instance.

Pursuant to the building law of all Austrian provinces the construction, modification or re-construction of buildings requires a prior building permit. In the case of simple or small constructions mostly no building permit has to be obtained. Instead the builder has to file a notification of the planned construction works with the Building Authority and is allowed to begin these works unless the Building Authority issues a prohibition decision within a distinct period of time. Finally the building law of most Austrian provinces enables so-called free building projects which do not require any consent by the Building Authority (i.e. neither a prior building permit nor a notification of the planned construction). However, the definition for "free building projects" differs from province to province and is regulated on a very casuistic basis. In general, most provinces consider mere refurbishment works which have no influence on the outer shape of a building to be free building projects.

## 10. Environmental

### **Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Although there is an Act on the Remediation of Contaminated Sites, the issue of liability is not only regulated by this act, but to a large extent by the Water Law Act, the Waste Management Act, the Industrial Code, the Federal Environmental Liability Act and the nine provincial Environmental Liability Acts. In addition with regard to the Water and the Waste Management Act a distinction must be made between the acquisition of sites before and after 1 July 1990.

Concerning the acquisition of properties after 1 July 1990, the legal situation is as follows: According to the Water Law Act the buyer of a contaminated site may only be held liable for contamination of waters if he had or ought to have had knowledge of this fact. Primary liability lies with the person who had caused the contamination. The same legal result applies to treatment and disposal of waste covered by the Waste

Management Act. However, such an obligation for clean-up does not include contaminations caused before the respective industrial plant had been closed down.

If the buyer acquired a contaminated site before 1 July 1990, there is no liability under the Water Law Act at all and only a very limited liability under the Waste Management Act. According to the Industrial Code, liability for contamination caused in the aftermath of the closing down of an industrial plant lies with the plant's present owner.

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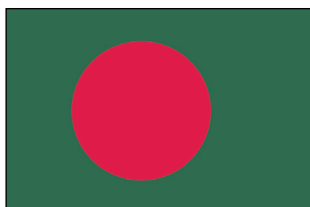
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# Bangladesh



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are not permitted to own or lease local land directly. However, local corporations owned or controlled by aliens or having alien directors can own or lease local land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. Both freehold and leasehold land ownerships are available in Bangladesh based on the type of the subject land. Freehold occupancy rights can be sold or mortgaged without official approval. However, leasehold occupancy rights can be mortgaged only if not otherwise agreed upon in the lease agreement.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights if there is any such adjudication. Problems over title are common. Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are certain substantial stamp duties and registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. The taxes on the gains on a transfer of such land or leases are very substantial at the range of 15% of the capital gain derived from such transfer.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land but the mortgage cannot secure all present and future debt generically and must specify the debt precisely. The mortgage cannot be in a foreign currency. The mortgagee can sell immediately on a default by private sale, if so provided in the mortgage agreement, without a court order or public auction. There are freezes in the mortgage if the owner enters bankruptcy proceedings. On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. There are certain costs or fees involved in land mortgages. It is possible for a tenant to mortgage the lease if permitted by the terms of the lease.



## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict the terms of a lease of commercial premises to protect the tenant. There are no controls on rents. The lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. When a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease. The lease can validly exclude the ability of the tenant to assign or sub-lease and a lessee is not released from its obligations under a lease when it assigns the lease unless such assignment is done through a novation.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are special zones where taxes are relaxed. There are no exchange controls or restrictions on

repatriations of profits and capital from land. There are withholding taxes on the interest on foreign loans which are difficult to avoid unless accorded to industrial projects.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are not strict, with relaxed liabilities for clean-up and penalties. An owner or lessee of land is not liable to clean up contamination by former owners/lessees unless the Department of Environment asks to do so. Directors of the company owning or leasing the land can be made liable for contamination caused by the company.

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# Belarus



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Only alien individuals (not alien corporations) can own land after inheriting it from relatives, when the land was granted to the relatives of the alien under the ownership of the title. Alien individuals can lease land for construction and maintenance of detached / semi-detached houses, for agriculture / farming. Alien individuals permanently residing in Belarus, can lease land for gardening. Alien individuals, performing investment activities in Belarus, can enjoy an occupancy right for up to 99 years based on a concession agreement.

Alien corporations can lease land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** National individuals can own land for constructing or maintaining a house, maintaining a flat in a semi-detached house, householding purposes, collective gardening and construction of holiday residences.

Locally incorporated companies can own land through a bidding procedure organised by the state, or by purchasing real estate with the land plot it occupies from private owners.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** Unified State Register of Real Estate, Rights Thereto and Transactions Therewith (**Register**) contains information on all rights regarding real estate with the exception of leases. The state guarantees the accuracy of the Register. All agreements regarding transfer of right (purchase, mortgage) enter into force only after registration with the Register.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Transfer of land requires payment of several fees: fee for the right of concluding a lease agreement, fees for registering the transfer with the Registry.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Mortgagee as creditor receives preferential satisfaction out of the value of collateral. However, the collateral can be sold by court enforcement officers to satisfy the demands of other creditors when the debtor does not have any other property. Thus the collateral can be withdrawn from the possession of mortgagee.



## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Business lease of commercial premises should be formalised by an agreement in a written form (one document) signed by the parties. The law sets the following material terms of a lease agreement: object of lease, purpose of lease, amount of lease payments.

Lease of commercial premises owned by the state is formalised by an agreement of a standard form, approved by State Property Committee, rates of rent payments are regulated by law, payment terms (periods, deadlines) are material conditions of the lease agreement.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** A private landlord of commercial premises can immediately terminate a lease of commercial premises on default by the tenant (i) if the lease so provides and (ii) if the tenant commits a material breach of contract: uses the premises in breach of contractual terms or purpose of the premises, damages property, twice or more times fails to pay rent on time, does not perform repair of property when obliged to do so.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** Foreign direct investors can invest in land in a very limited number of cases subject to a permission of the President of Belarus formalised by an investment or public-private partnership agreement or in a concession agreement.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** The issues of building on or changing the use of land are tightly regulated by law. There are categories of land on which no construction is possible. As to the land where construction is possible, the law sets obligation to receive a number of authorisations, such as construction permission, permissions for construction site and for works. Changing the use of land is subject to changing the purpose of the land plot imposed by state authorities.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, with extensive liabilities for clean-up and penalties. An owner or lessee of land is to clean up contamination by former owners / lessees. Directors of the company owning or leasing the land can be held liable for contamination caused by the company (are subject to administrative fines).

**General comment** Any of the above addressed rules and regulations can be changed or abolished by the Presidential decision (in the form of an Edict or a Decree). Certain exemptions or preferences can be granted to foreign investors in investment agreements. Belarus has recently introduced a Law on Private-Public Partnership which is aimed at stimulating mutually beneficial cooperation of the state and private business in the area of designing, construction and (or) reconstruction, restoration, maintenance, modernisation, technical servicing and (or) operation of objects of infrastructure (PPP). Private partners can enjoy the guarantees, envisaged by Law on Private-Public Partnership, including protection of property and other rights, the right to withdraw profit gained within PPP etc.

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# Belgium



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly. Also, local corporations owned or controlled by aliens or having alien directors can own or lease local land. Further, obtaining government permissions for major projects is subject to stringent conditions and strict procedures.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright. The ownership rights can typically be sold or mortgaged without official approval. However, in case land was initially sold by the government to an individual or a corporate at favourable conditions, specific conditions may apply pursuant to which official approval is required. In such case, government permissions are usually given if the objectives of the initial sale are still met after the transaction. They can also have rights *in rem*. Rights *in rem* are a certain type of occupancy rights similar to an ownership title. The rights can be transferred if permitted under the relevant agreement and can be mortgaged. They can further have leases and occupancy rights for any period of time up to a maximum of 99 years. Specific lease regimes, such as for residential or commercial (not including office) leases, provide for a minimum duration for leases. The occupancy rights can be transferred if permitted under the relevant agreement, but cannot be mortgaged.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There is a register containing indications of title to land, the mortgage register. The mortgage register shows transfers of ownership, rights *in rem* and, if they have a duration of more than nine years, leases, as well as mortgages and easements. The information mentioned in the register is not conclusive evidence of the title of ownership. Such conclusive evidence can only be obtained by evidencing a 30 year's uninterrupted chain of ownership. Obtaining information from the register is slow (it takes approximately 4 to 8 weeks) and could lead to delays in transactions. Nonetheless, the register proves to be reliable and problems over title are rare in practice. Extra due diligence, e.g. into rights of occupation, is straightforward, but could be slow as well.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Apart from normal legal fees depending in the scope of the work, there are no substantial notarisation or other fees applicable to transfers of land used for business purposes or leases of such land or the grant of leases of such land. Registration duties on the transfer of leases on land (0.2%) or the grant of long lease rights on such land (2%) are reasonable. Registration duties on transferring land are material (10% in the Flemish Region and 12.5% in the Brussels

and Walloon Region). In addition, VAT may apply in case the transfer concerns new buildings. Capital gains are subject to the normal corporate income tax rates.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of (a right *in rem* on) a real estate property can grant a mortgage. (2) The mortgage can secure all present and future debt to the extent the future debt is determined or determinable and must specify a maximum amount. (3) Enforcement of a mortgage requires an enforceable title (i.e. court order or, provided strict conditions are complied with, a notarial deed). In principle, the mortgagee cannot sell immediately on a default by private sale. (4) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the insolvency estate. (5) On insolvency the mortgage ranks prior to all unsecured creditors, including taxes, employee benefits, but the mortgage ranks after, creditors of insolvency costs and other less frequent creditors. (6) There are substantial costs or fees involved in registration and creation of mortgages. (7) It is not possible for a tenant to mortgage a lease. (8) The duration of mortgages is limited to 30 years and costs and formalities for transfer of a (pledge on a receivable secured by a) mortgage is generally cumbersome. (9) These principles do not apply to associated assets such as insurances, shares and a bank account for rents. The rules in respect of these assets are generally more protective of the creditor.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** From a Belgian law perspective, a distinction should be made between (i) general leases, which include office leases, and (ii) retail leases. For general leases, the law does not restrict or control the terms of a lease of premises to protect the tenant, e.g. (1) there are no controls on rents (except on the

indexation thereof), (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease expires, the landlord can evict the tenant and the tenant has no protection, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a tenant is not released from its obligations under a lease when it assigns the lease.

For retail leases, the law does restrict and control the terms of a lease of commercial premises to protect the tenant. Not only do the restrictions for general leases also apply for retail leases. In addition, (1) a retail lease must have a duration of at least nine years, (2) a tenant is entitled to terminate the lease at the end of each three-year period, (3) when a retail lease expires, the tenant can request the renewal of the lease for nine year periods up to three times, subject to a strict procedure, (4) even where the lease provides that the tenant cannot carry out alteration works to the premises, the tenant is entitled to carry out alteration works subject to certain conditions and (5) the lease cannot validly exclude the ability of the tenant to assign or sub-lease to the extent that such transfer or sublease occurs in connection with the transfer or lease of the business of the tenant.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) Under Belgian law, a clause allowing a landlord to terminate a lease at will if the tenant does not pay the rent or breaches other terms of a lease is not valid. The landlord will have to go to court in order to have the lease terminated by court decision. (2) A clause providing that a lease is terminated upon a certain event, for example the bankruptcy of the tenant, is valid. Hereto, the event has to be a future and uncertain event not linked to a breach of the lease.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The compulsory purchase of land by the government is only allowed if the following three

cumulative conditions are met: (i) the expropriation occurs in the public interest, (ii) it is required to realise certain objectives of public interest and (iii) fair compensation is paid beforehand. (2) Subsidies may be granted by the Federal State, the (Flemish, Walloon and Brussels Metropolitan) Regions and the (Flemish, French and German-speaking) Communities. They are determined by law or statute on a sectorial basis, and granted to eligible beneficiaries, often under (strict) conditions. (3) Interest payments are in principle subject to 30% interest withholding tax, but broad exemptions apply (depending on the nature of the debt instrument and the tax status and residence of the lender).

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** In Belgium, the relevant legislation for zoning and urban planning matters is determined by the Flemish, Walloon and Brussels Metropolitan Regions in relation to their respective territories. The use of land in Belgium is subject to zoning provisions, which are laid down in (regional and/or local) zoning plans. Such zoning plans divide the territory of each Region into different zones, according to their envisaged function and use. Depending on such function and use, various restrictions or prescriptions may apply. The development of and construction on land in Belgium is strictly regulated and subject to the award of a prior urban planning permit by the relevant authorities, in which certain conditions may be imposed.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** In Belgium, environmental rules are determined by the (Flemish, Walloon and Brussels Metropolitan) Regions in relation to their respective territories. Regional soil legislation sets out the situations in which soil surveys must be carried out (e.g. on the transfer of a site, the application for an environmental permit etc.). If the soil surveys show that the thresholds for soil and/or groundwater pollution set out in the relevant legislation have been exceeded, remediation will have to be carried out by the clean-up responsible party. The soil legislation typically applies the “the polluter pays”- principle and a cascade-system is in place for the allocation of liabilities in relation to soil and/or groundwater contamination, the determination of the clean-up responsible party and the obligations in relation thereto.

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# Benin



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment**

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment**

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There are three regimes: (1) titre foncier (title deed) which is safe but not quick; (2) permis d'habiter (permission for occupancy); and (3) traditional tenure.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment**

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** Mortgages are used mainly for security over titre foncier.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment**

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment**

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** Since 2013 foreigners can buy land if reciprocity is shown or allowed by an international agreement. The foreigner can be tenant if he is established in Benin.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment**

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** According to the law on environment anybody is liable for contamination.

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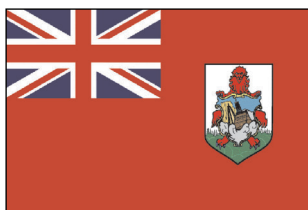
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# Bermuda



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and both local and alien corporations require Government licences or consents to own or lease land (other than leases to alien individuals for less than five years and, in the case of corporations, leases for terms up to 50 years required for their businesses). (2) The availability of residential property for alien ownership is controlled. (3) Licences and consents are generally given subject (in the case of residential property) to the payment of a licence fee.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All nationals (being individuals) can own land outright. (2) Locally owned corporations require Government consent to own freehold and leasehold other than land leased for less than fifty years required for the company's business.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is no register of title to land. Title is deduced using title deeds showing an unbroken chain of title for a minimum period of twenty years.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Stamp duty is payable on transfers of freehold property and long leasehold interests transferred for a premium payment, based on a sliding scale. The maximum rate is 7% and applies to all amounts over US\$1.5M. (2) Stamp duty on the grant and/or transfer of leases granted in consideration of an annual rent and without any premium is nominal. (3) In addition to stamp duty, foreign persons must pay a Government licence fee at a rate of 8% of the property value for freehold property and 6% of the property value for leasehold property.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage freely save in the case of mortgages to foreign mortgagees where Government consent must be obtained before taking a mortgage. (2) The mortgagee can sell immediately on the occurrence of certain statutory defaults by private sale, without a court order or public auction. (3) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings (provided the mortgage was not a fraudulent preference) e.g. the rents are payable to the mortgagee. (4) On insolvency the mortgage ranks prior to all unsecured creditors. (5) Stamp duty is payable on mortgages at a rate of 0.5% of the

secured sum if over US\$400,000 and at 0.25% for amounts under that US\$400,000. (6) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (a) there are no controls on rents, (b) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (c) when a lease of business premises expires, the landlord can evict the tenant (subject to obtaining a court order) and the tenant has no protection, such as a right to a new lease, (d) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (e) a tenant is not automatically released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord must obtain a court order to terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land. (2) There are certain subsidies and special zones where taxes may be relaxed but this usually calls for special acts of parliament. (3) There are no exchange controls or restrictions on repatriations of profits and capital

from land. (4) There are no withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated and permissions are required, including for both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are not multitudinous or particularly onerous but there are requirements for clean-up and penalties. (2) An owner or lessee of land is not usually liable to clean up contamination by former owners/lessees unless it poses a statutory nuisance or poses imminent danger to the public. (3) Shareholders of the company owning or leasing the land cannot be liable for contamination caused by the company.

**General comment** (1) Notwithstanding the unregistered land system, land sales to Bermudians are relatively quick with contracts commonly being signed within 1 – 2 weeks of a vendor accepting an offer with completion 30 days thereafter. Sales to non-Bermudians (whether individuals or companies) take longer due to the need for Government consent. (2) Government is considering the implementation of a registered land system. (3) Taxes on land ownership are not/are exceptionally onerous and there are no taxes on rents from land. (4) There is no capital gains tax on sales of land.

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# Bolivia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

### Comment

(1) Alien individuals are permitted to own local land directly in Bolivia.

With respect to agrarian land, however, alien individuals may own land so long they meet the following requirements: (a) the land is not located within 50 kilometres from an international border; (b) the alien individuals hold a Bolivian residency; (c) the land does not exceed five thousand hectares per individual; and (d) such land has concluded a title clearance (*saneamiento*) process.

On the other hand, alien individuals may lease land without limitation.

(2) Local corporations owned or controlled by aliens or having alien directors can own local land so long as the shareholders meet the above referenced requirements. On the other hand, local corporations owned or controlled by aliens may lease land without limitation.

(3) Government permissions are rare for major projects and the like for leases.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Nationals and companies held by nationals are permitted to own land outright and they are not limited to leases or mere occupancy rights.

Note that, pursuant to the five thousand hectare limitation, in corporations where the shareholding is comprised of several nationals, the corporation may own land up to the number of shareholders it has. For instance, if the corporation has three shareholders, it may own up to fifteen thousand hectares.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in all of the country, especially urban areas.

The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights.

The state guarantees the accuracy of the register.

Problems over title are common in rural areas but uncommon in urban areas.

Extra due diligence, (e.g. into rights of occupation), is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Registration requires that the buyer of land pays a registration fee to the register of title equal to 0.03% over the value of the property.

The taxes on the gains resulting from a transfer of land are reasonable (3% of the value of the transferred property).

Leases are subject to the VAT (13%) which must be declared on a monthly basis by the lessor.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

### Comment

- (1) The owner of land can mortgage specified land.
- (2) The mortgage can secure all present and future debt precisely.
- (3) The mortgage can be in a foreign currency but, if not, can be indexed to a foreign currency.
- (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order and public auction.
- (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the insolvency estate
- (6) On insolvency, the mortgage ranks prior to all unsecured creditors, but not taxes, employee benefits and insolvency costs.
- (7) There are costs or fees involved in land mortgages. To record a mortgage or an encumbrance it is required that the parties pay a registration fee to the register of title equal to 0.03% over the value of the property.
- (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease.
- (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease; (3) when a lease of business premises expires, the landlord can evict the tenant and the tenant has no protection, such as a right to a new lease; (4) The lease can validly exclude the ability of the tenant to assign or sub-lease. And, (5) a lessee is released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

### Comment

- (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

### Comment

- (1) The government has to pay compensation for a compulsory purchase of land. However, the process may be lengthy and payment may be delayed for several months or years.
- (2) In general, there are no subsidies and special zones where taxes are relaxed, however, there is a free trade zone regime which allows businesses to operate under a tax except regime.
- (3) There are no exchange controls or restrictions on repatriations of profits and capital from land.
- (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid. Pursuant to Bolivian tax legislation, the payment of interests resulting from foreign loans is subject to a remittance tax at a rate of 12.5%.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

### Comment

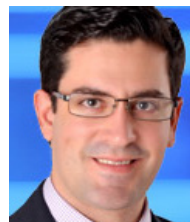
(1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** Bolivia passed a new constitution in 2009 that sets forth the main regulations that will be applied for the exploitation of Bolivian natural resources. As a result, we expect that new and additional environmental regulations will be passed in the next few years which may affect industries operating in natural resources exploitation and extraction.

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# Bosnia and Herzegovina



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and alien corporations are permitted to own land under the condition of reciprocity. Alien individuals and alien corporations are permitted to lease land without restrictions.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights.

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment:** There is a register of title to land in most of the country, especially urban areas.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** There are costs in transferring land which include notarisation fees, registration fees and taxes on transfer of real estate. There are no costs which exceed the usual regarding the transfer of lease.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** Mortgages of land and related assets are very protective of the mortgagee. The mortgage can include a prohibition on transferring the land and a prohibition of establishing further mortgages without the prior consent of the mortgagee.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law imposes very few restrictions regarding the terms of a lease of commercial premises to protect the tenant, however the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements of the premises which exceed the usual maintenance.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment:** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided by the lease agreement.



## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** Foreign investors shall have the same rights and obligations as the residents of Bosnia and Herzegovina. Foreign direct investment shall be exempted from customs and customs duties, unless otherwise is prescribed by the provisions of the Law on Customs Policy of Bosnia and Herzegovina. Foreign investors shall have the right to transfer abroad, freely and without delay, in freely convertible currency, proceeds resulting from their investment in Bosnia and Herzegovina.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, however mainly in regard of performing business activities which could represent a hazard to the environment, while the latter are relaxed regarding non-hazardous business activities. Directors of the company owning or leasing the land can be liable for contamination caused by the company.

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# Brazil



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Brazilian law considers that foreigners (individuals and companies) have the same rights to acquire real estate under the same conditions applied to Brazilian citizens and Brazilian companies. There are, however, restrictions concerning the acquisition or leasing of rural land by aliens, which requires prior approval from the Agrarian Institute (INCRA) (Acquisition of rural property by foreigners in Brazil is a very controversial issue that is currently being subject to intense legal discussions. We may provide further details on such controversy, if requested). Further, areas located (i) in the national border zone; (ii) along the shore; or (iii) within 1,320 meters from fortifications and military establishments may only be sold to foreign individuals or legal entities if authorised by the President through the National Defence Council ("Conselho de Defesa Nacional").

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright and are free to execute lease agreements, provided the restrictions related to rural lands are observed. The owner of the land is free to sell or encumber the land without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** In Brazil, title to real estate is handled through a "Registered Land" system. In order to acquire real estate in Brazil, one must have possession of the property and ensure that the transfer title is recorded with the relevant Real Estate Registry Office. The Real Estate Registrars maintain a record of all deeds and contracts involving real estate rights (ownership, condominium, trusts, mortgages, easements, usufructs, possession rights, lease agreements, etc.); therefore, title searches may be conducted upon request at the Real Estate Registrar of the jurisdiction where the property is recorded before entering into real estate transactions.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees which refers to fees related to the drawing and register of the purchase and sale deed, there is the Real Estate Transfer Tax (Taxed Transfers) – "ITBI" (Municipal Tax) which is assessed at a variable rate (depending on the municipality where the property is located) on all onerous transfers, under any heading of real estate, except in cases of contribution to the corporate capital of companies that has not real estate activities and their main activity. There are no material costs in the granting of a long lease of land used for business purposes other than the registration fees for the purposes of right of first refusal (for the sale of the

leased property) and the effectiveness clause in the case of sale of the property during the term of the lease.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** A mortgage is a real estate guarantee of a civil nature that subjects an asset owned by the debtor or a third party, without transmission of asset possession to the creditor, and which grants the latter the right to require judicial sale of the asset in the event of lack of payment, with preference to the proceeds of the sale. If properly created, a mortgage secures the principal amount of debt as well as all costs, taxes and expenses, such as damages and interest, for which the debtor may become liable if the debtor fails to comply with the terms of the underlying credit agreement.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** In Brazil, real estate leases are governed by the Lease Law (as amended), along with the general rules of the Brazilian Civil Code. The Lease Law is more protective of tenants although the ownership right of landlord is always respected.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** In case of default of the tenant or the breach of any clause of the agreement by tenant, landlord is entitled to immediately terminate the agreement and to ask for the return of the leased property by the tenant. In case the tenant does not return the property to landlord, it is entitled to present an eviction claim asking for tenant to leave the leased property.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Except for the acquisition of rural properties or of properties located at border zones and shores, as mentioned above, the Brazilian law is friendly to foreign direct investors in land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated by municipal laws of the place where the real property is located and authorisations/permits/licenses may be needed, depending on the activities to be carried out at the property. There are different rules applicable to build on or change the use of land between urban and agricultural lands.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is liable to clean up contamination by former owners/lessees. Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The acquisition of a real estate by a foreign individual will require the foreign individual to obtain a CPF number (Enrolment with the Taxpayer's System of the Federal Revenue) and to appoint a legal representative resident in Brazil. Similarly, a foreign entity must obtain a CNPJ number (Enrolment with the Taxpayer's System of the Federal Revenue) and also appoint a legal representative resident in Brazil. In both cases, payment must be made through international remittance of funds from the purchaser's commercial bank to the seller's commercial bank and registration of the funds with the Brazilian Central Bank with execution of the

respective currency exchange agreement. Any remittance of revenues arising from leases, or from the sale of the real property is treated in the same way, through the Brazilian Central Bank.

Ordinary Forms of Acquisition: (i) Purchase and sale; (ii) Donation; (iii) Exchange; (iv) Succession Law; (v) Registration of Corporate Acts, etc.

Except with regard to transfer of title through certain corporate acts, which may be directly recorded with the Real Estate Registry Office, Brazilian law requires that all transfers of title for real estate be performed through the execution and recording, by the parties, of a public deed.

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# British Virgin Islands



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are not permitted to own or lease local land directly without a Non-Belonger's Land Holding License issued pursuant to the Non-Belonger's Land Holding Regulation Act. (2) Local corporations owned or controlled by aliens or having alien directors cannot own or lease local land without a Non-Belonger's Land Holding License issued pursuant to the Non-Belonger's Land Holding Regulation Act. (3) Government permissions are sometimes, but not always, given for major projects in this regard.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All nationals (belongers) (being individuals) can own land outright. (2) Locally owned (e.g. no more than a third of the issued share capital is owned by unlicensed non-belonger) and controlled (e.g. none of the directors are unlicensed non-belongers) corporations do not require Government consent to own freehold and leasehold land in the British Virgin Islands. (3) Non-Belongers holding a Non-Belonger's Land Holding License can hold absolute title to land.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in the British Virgin Islands. (2) The land register does show

the extent of the land, ownership, mortgages and certain other important rights. (3) Title is government guaranteed. (4) Problems over title do occur. (5) Extra due diligence, e.g. into rights of occupation, is not always straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) In addition to normal legal fees depending on the scope of the work, stamp duty is imposed on transfer of real estate and the transfer of shares in a British Virgin Islands company owning real estate in the British Virgin Islands. The rate of stamp duty is 4% for belongers and 12% for non-belongers. (2) Land Tax of \$50.00 is paid annually for any land under a half of an acre. For any land above half an acre there is a standard charge of \$150.00, plus \$50.00 for each additional acre. (3) House Tax is also levied annually at the rate of 1.5% of the assessed annual rental value.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically. (3) There are no substantial unusual costs or fees involved in land mortgages. (4) Pursuant to section 7 of the Non-Belonger's Land Holding Regulation Act, any shares

or debentures of any company holding a Non-Belonger's Land Holding License which are acquired by an unlicensed non-belonger for valuable consideration on sale in the enforcement of any charge or lien held by a banker shall not thereafter be subject to the provisions of the Non-Belonger's Land Holding Regulation Act until such shares or debentures are held by a person other than a non-belonger, unless at the time of such sale a person other than a non-belonger shall have offered such banker a sum in cash sufficient to pay all principal, interest and cost unpaid and due upon such judgment and by reason of its enforcement. (5) Banks in the British Virgin Islands offer worldwide banking service. Mortgage finance of up to eighty per cent of the appraised value of a property or the purchase price, whichever is the lesser, will usually be available. Construction finance is also available. Mortgages are granted for terms of up to twenty years. Interest rates are generally 1 1/2% above New York Prime rate. Banks will consider financing the purchase of land.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant

becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) A property may only be rented, following approval by the Executive Council as part of the Alien Landholders License application, and the granting of a Trade Licence. Current British Virgin Islands government policy seems to be against granting Non British Virgin Islands Belongers approval for renting properties. Approvals are becoming increasingly rare and currently, the application for the rental use of a property is unlikely to be approved. (2) There are no exchange controls or restrictions on repatriations of profits and capital from land. (3) There are no withholding taxes on the interest on foreign loans. (4) A purchaser will be required to enter into a commitment to develop the land within a three year period or less. (5) A property cannot be resold until the development commitment has been fulfilled

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Developments and change of use of land are tightly regulated, including both business and residential developments. (2) A purchaser will be required to enter into a commitment to develop the land within a three year period or less. (3) A property cannot be resold until the development commitment has been fulfilled. One of the objectives of the licensing regulation is to prevent speculation on undeveloped property.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The Planning Department conducts impact assessments for development activities pursuant to the Physical Planning Regulations. (2)

Generally, the British Virgin Islands does not have comprehensive environmental laws and the rules governing the environment and liability for clean-ups in relation to land are sporadically enforced.

**General comment** The majority of land in the British Virgin Islands is owned in "fee simple". A purchaser will normally acquire absolute title, which is then recorded in the British Virgin Islands Governmental Land Registry. To purchase a property (as a Non British Virgin Islands Belonger) it must be advertised locally for four (4) consecutive weeks in a local paper prior to submission of the Licence Application to Government.

Property in the British Virgin Islands may also be held on long lease from the Crown or private individuals. But since the duration of such leases is 99 years, leaseholders enjoy all the benefits of an absolute title.

Purchase of a property in the British Virgin Islands does not in itself establish resident status. A Non-Belongers Land Holding License which will allow a purchaser to reside in the British Virgin Islands for a period of up to six (6) months. A certificate of residence, entitling the holder to land or embark in the British Virgin Islands for an indefinite period, may be granted to a purchaser who intends to reside permanently, year-round, in the British Virgin Islands.

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# Bulgaria



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals (AI) - citizens of EU or EEA member states and alien corporations (AC), established in such EU or EEA member states are entitled to acquire and own **urbanised lands** directly.

Other AI and AC are entitled to acquire and own urbanised land under the terms and conditions of international treaty effective for Bulgaria. AI are entitled to acquire such land through inheritance by virtue of the law, but they are obliged to transfer it within 3 years. Otherwise the restricted aliens could bypass the prohibition by establishing a Bulgarian company being the outright owner of such land.

No restrictions exist with a view to ownership to building (without the land beneath).

Regarding **agricultural lands** additional restrictions to ownership exist:

1. AI and AC may acquire agricultural land if they have resided/respectively have been established in Bulgaria for more than 5 years, or the shareholders in AC are such citizens/corporations being in Bulgaria for more than 5 years.
2. Agricultural lands may not be owned by companies, where the shareholders are directly or indirectly companies registered in jurisdictions with preferential tax regime; companies where the shareholders are AI or companies who/which are not permitted to own agricultural land directly; or joint stock companies with bearer shares.
3. Foreign countries are not permitted to own agricultural land.

An owner of the land is entitled to lease it to any third party without restrictions with a view to the tenant.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** In the general case all nationals (including locally incorporated companies) can own **urbanised land** outright. Nationals (including locally incorporated companies) are entitled to own **agricultural land** if they satisfy the criteria specified in p. 1 of Q1 above and are beyond the groups mentioned in p. 2 of Q1 above.

The land's owner can freely lease its land. The tenant is entitled to sublease land, unless the lease agreement provides otherwise. The law provides restrictions mainly to the term of the agreement – e.g. a lease agreement may be concluded for a term up to 10 years, unless it is a commercial deal. However if it comes to rent agreement for an agricultural land, it should be for at least 5 years. The owner has a right to renew, if the tenant agrees to such renewal. If a lease agreement is registered in the Property Register, it is binding upon the acquirer of the land until expiration of its term.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a Property register of title to land in the country. (2) The register shows the extent of the land, ownership, mortgages, injunctions, registered leases and certain other important rights, such as rights of way, right of use, registered claims

and registered court rulings. (3) The register is generally reliable regarding registrations made within last 15-20 years (depending on the location of the land). (4) Problems over title are rare. (5) Title due diligence is always recommended and whether it is straightforward depends on the particular case.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, any land transfer is subject to payment of fees and taxes *based on the price of the transaction*: (i) notary fees - capped to EUR 3,100 (VAT excluded); (ii) local tax in the range from 0,1% up to 3% - depending on the location of the land; and (iii) registration fee equal to 0,1%. (2) The costs for lease are due only if the parties would like to notarise the agreement and register it in the Property register (not mandatory). These costs are not substantial. (3) The taxes on the gains on a transfer of such land or leases are reasonable (10% flat tax).

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) Only the owner of land can mortgage it. It is established by signing of a notary deed between the land's owner and the creditor or in some specific cases upon request of the creditor. The agreement must identify the creditor, the debtor, the property's owner (if different from the debtor), the property, the secured debt, deadline for repayment, interest (if any). (2) The mortgage can secure all present and future debt, but the deed must specify the debt precisely. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, but has to follow a foreclosure procedure and a public auction. (5) (i) In private enforcement procedure mortgage ranks third (after enforcement costs and property tax); (ii) in case of insolvency the mortgage ranks prior to all other creditors. (5) There

are no substantial costs or fees involved in land mortgages (only notary fees and registration fee as specified above in Q4).

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises and the parties are free to agree on everything: (1) There are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease.

#### 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided, subject to advance notice giving the tenant an appropriate term to remedy the breach. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided with immediate notice.

#### 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) There are restrictions to the right of foreign investors to own land as discussed in Q1. (2) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (3) There are no special zones where taxes related to

incomes from lands are relaxed. (4) There are no exchange controls or restrictions on repatriations of profits and capital from land. (5) Generally, the withholding tax due on incomes derived from lease or disposal of land in Bulgaria is 10%. Same tax rate applies to incomes from the interest on foreign loans, save for some creditors from EU or EEA who are exempted from withholding tax. If there is a Double Tax Treaty between Bulgaria and other foreign country (more than 65 Treaties exist), lower or zero withholding tax may apply. Usually such tax exemptions are not applicable to incomes related to lands in Bulgaria.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. However the control exercised by the authorities is not so tight. (2) The one who caused the contamination (e.g. former owners/lessees) is liable to clean it up. The owner is liable to clean up if it shall not be possible to be proved who caused the contamination or the author of the contamination does not exist anymore (e.g. liquidated). (3) Depending on the circumstances directors of the company owning or leasing the land can be liable for contamination caused by the company. (4) Shareholders of the company owning or leasing the land cannot be liable for contamination caused by the company.

**General comment** The practice for land transactions is efficient though a title due diligence is highly recommended. Taxes on land and rents from land are not onerous.

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# Cameroon



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly. Local corporations owned or controlled by aliens or having alien directors can own or lease local land. Government permissions are commonly given for major projects and the like given for leases. Pursuant to Law 80/21 of 14 July 1980, any foreign national or foreign legal entity wishing to invest in Cameroon may own land subject to the approval of the Minister in charge of lands.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There is a register of title to land in most of the country, especially urban areas. The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. The state does not guarantee the accuracy of the register. Problems over title are rare.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** The owner of land can mortgage specified land. The mortgage secured must specify the debt precisely. The mortgage can be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale without a court order or public auction. On insolvency the mortgage does not rank prior to all unsecured creditors including taxes, employee benefits and insolvency costs – the mortgage ranks after these creditors. There are no substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can evict the tenant, if tenant has been on premises for at least two years.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are not tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are not strict, with relaxed liabilities for clean-up and penalties.

**General comment** The practice for land transactions is in the main quick and efficient because property rights are secured by the law courts.

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# Canada



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Local corporations owned or controlled by aliens or having alien directors can own or lease local land. Various provinces have enacted legislation that restricts the taking of interests in certain types of agricultural or rural land by purchase or lease by non-citizens of Canada or non-residents of the province in question.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Generally, all nationals (including locally incorporated companies) can own land outright. However, as an exception, lands on First Nations' reservations and lands in the territory of Nunavut can only be leased unless by a First Nations entity.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in most of the country, especially urban areas.

The procedure for closing purchase transactions varies widely in Canada, with certain provinces allowing for immediate registration of electronic copies of conveyance documents at the land registry office, while other provinces require that original documents be inspected by the land registry office and their eventual registration may take several weeks. In jurisdictions that require registration with a land

registry office, the use of title insurance to close transactions has become more commonplace, as it permits the release of closing funds at an agreed closing time, even if registration has not been achieved.

For developers who may not desire to purchase land immediately, it is possible to enter into options to purchase, rights of first refusal and similar arrangements with owners of land to obtain future rights to purchase the land. In all provinces except Quebec, such interests in land can typically be registered in land registry offices to protect the developer's interest against third parties. The registration of such options on title to a property may trigger land transfer taxes.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** While subject to some exceptions, there is a general requirement that all commercial real estate acquisitions attract a federal goods and services tax at a rate of 5% of the purchase price, which tax may be payable as part of a harmonised sales tax, discussed below, or paid separately in certain provinces. The transaction will typically also attract provincial value-added taxes which apply to most goods and services pursuant to specific provincial statutes. For example, in Ontario, harmonised sales tax is payable by a purchaser at the rate of 13% of the value of all tangible personal property purchased. For its part, Quebec imposes a sales tax at the rate of 9.975% of the purchase price of the property acquired, whether real or personal property. Lastly, British Columbia



also has a federal goods and services tax payable on some real property interests at a rate of 5% and, in addition, a provincial sales tax payable on most tangible personal property at a rate of 7%. Additional foreign nationals and foreign corporations must pay an additional 15% property transfer tax on residential property transfers in the Greater Vancouver Regional District. Such applicable taxes are typically payable by the purchaser in addition to the purchase price. However, mechanisms have developed that enable a purchaser registered for the applicable taxes to self-assess and remit the amount payable to the tax authority; as a result, such taxes are rarely collected by vendors. In Ontario, a land transfer tax is payable in most cases upon the transfer of ownership of real property interests. This land transfer tax is imposed at graduated rates, but for most commercial transactions it is slightly less than 1.5% of the total consideration for the transfer. However, effective 1 January 2017 the land transfer tax rate on the portion of the total consideration above \$400,000 for purchases of most types of commercial real property will increase to 2.0%. For real property situated within the boundaries of the City of Toronto, in addition to the Ontario land transfer tax, a municipal land transfer tax is also payable upon the transfer of ownership of real property interests in most cases. The municipal land transfer tax is also imposed at graduated rates, but for most commercial transactions it is slightly less than 1.5% of the total consideration for the transfer. Quebec also levies a graduated land transfer tax. No such sales taxes apply in Alberta, though there are nominal land registration charges (the base fees are CAD \$50 per transfer, plus CAD \$1 per CAD \$5,000 of value of the transferred lands). A property transfer tax is payable in British Columbia upon the registration of a transfer of land. The transfer tax is calculated at 1% of the first CAD \$200,000 of fair market value and 2% on the value above CAD \$200,000.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Most commonly, real estate specific loans are structured as a loan to the owner of the property, secured by a first-priority mortgage (or *hypothec* in Quebec) that creates a security interest in favour of

the lender, which is registered in the land registry office. Less commonly, second mortgages or a mezzanine loan structure may be used, with a pledge of the interests in the entity that owns the property.

Generally a registered mortgage ranks prior to most unsecured claims, with the exception of certain statutory claims such as for construction liens, and real property taxes.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** With the exception of Quebec, when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease. There is no model or required form of commercial lease in widespread use in Canada. However, in provinces where commercial leasing legislation has been enacted, certain minimum thresholds and requirements that tend to favour the tenant may be deemed to be included. Subject to these minimum requirements, parties are generally free to negotiate the terms of commercial leases. Nevertheless, most commercial landlords require that their standard form of lease be used to document a lease transaction, though significant tenants may be able to specify that their own preferred form of lease be used.

With the exception of Quebec, tenants do not have a statutory right to renew the term of a commercial lease. However, as a matter of practice, it is very common for tenants to negotiate a unilateral right to renew the term for one or two additional five-year terms, with rent for the renewal term calculated by reference to the greater of the rent in the last year of the initial term and comparable market rates. Most commercial leases contain a penalising "overholding" rent if the tenant remains in possession following expiry of the term. In Quebec, where the tenant continues to occupy the premises for more than 10 days after the expiry of the lease without opposition from the landlord, the lease is renewed tacitly on the same conditions for one year, or if the initial lease term was less than one year, then for the same term as the initial



lease. The renewed lease is also subject to renewal. This occupation right is typically waived in commercial leases and replaced with a penalising "overholding" rent, as is usual in other provinces.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Generally, a landlord can, subject to providing reasonable notice, terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Various provinces, including British Columbia, Alberta, Saskatchewan and Quebec, have enacted legislation that restricts the taking of interests in certain types of agricultural or rural land by purchase or lease by non-citizens of Canada or non-residents of the province in question. These restrictions are generally subject to exemptions relating to the purpose for which the land is obtained or the acquisition of a threshold maximum number of acres. Real estate purchase transactions may also be subject to approval under the federal *Competition Act* if the parties to, or the value of, the transaction meet certain dollar thresholds. Currently, such approvals must be sought if the parties, together with their affiliates, have either aggregate assets in Canada, or aggregate annual gross revenues from sales in, from or into Canada, in excess of CAD \$400m, and the assets being acquired have either a book value in excess of CAD \$86m, or the gross annual revenues from sales in or from Canada generated from the assets exceed CAD \$86m. In addition, each province has enacted family law legislation that may give a spouse rights to real estate property even when the property is not held in his or her name. Accordingly, when purchasing property from an individual, it is prudent for an investor to seek assistance on local legal requirements to ensure that spousal interests are appropriately addressed.

Non-Canadians who acquire control of an existing Canadian business or who wish to establish a new unrelated Canadian business are subject to the *Investment Canada Act*. Generally unless the investment involves culturally or otherwise sensitive assets or the investment is by a Non-Canadian from a Non-World Trade Organization Country, the investment will likely not be reviewable.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** All provinces and municipalities regulate the development, use and disposition of real property to some degree. Zoning and development controls restrict the type of uses and structures permitted on areas of lands, particularly in urban areas.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land may be liable to clean up contamination by former owners. Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

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# Cape Verde



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Foreign individuals and corporations are permitted to own or lease local land directly.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There is a register of title to land in most of the country, especially covering urban areas. The land register shows the extent of the land, ownership/ in rem rights, mortgages, and certain other important rights, such as long term leases, rights of way and pre-emption rights (if registered by the parties). The state guarantees the accuracy of the register is very reliable.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Title over the land is only transferred with the execution of a sale and purchase deed. The execution of said public deed and the corresponding

mandatory registration with the Real Estate Registry are subject to reasonable notary and registry fees. On the transfer of property, the single property tax, equivalent to 1.5% of the purchase price is due.

The transfer of lease of land follows a specific legal regime. A public deed is not mandatory and single property tax is not due.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** The owner of land can mortgage specified land. The mortgage must specify the debt precisely and can secure all present and future debt, provided such debt is specified and subject to a maximum secured amount. Whilst the debt can be in foreign currency the secured amount must be set in local currency. In the event of default the mortgagee cannot sell immediately by private sale without a court order. A mortgage of land must be registered with the Real Estate Registry Office. Mortgagees are preferential creditors, meaning that some are entitled to be paid first with the proceeds of the sale of the secured up to the amount secured by the mortgage.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** A new Urban Lease Law came into force on 5 February 2016. Pursuant to this new statute the

parties can freely regulate the duration of the leases for business purposes, as well as each party's rights of termination thereunder (without cause or at the end of the agreed term, by preventing the lease renewal). The parties can also agree on repair and maintenance works obligations.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Pursuant to the aforesaid new statute, landlords may only terminate the lease based on breach or default by tenant in the cases specified by law. In addition, such termination must be decided by court and landlords must file a specific claim to such end. This limitation however may be jeopardised if the parties have agreed on landlord's termination rights without cause and by means of given written pre-notice in the lease agreement (as landlords will tend to use such termination rights).

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The Investment Law lays down the applicable legal framework for all investments made in Cape Verde either by national or foreign investors, and aims at facilitating and expediting the implementation of investment projects in Cape Verde. A number of rights, guarantees and incentives are available for investments and foreign investors are granted a non-discrimination right towards domestic investors and also security and protection rights for their investment, namely protection of private property against acts of seizure, nationalisation or expropriation (which require public interest and entitle the investor to a fair compensation).

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Construction and /or changes to the use of land are tightly regulated, and official permits are

required for both business and residential developments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. Directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for real estate transactions is well defined and rather quick and efficient; however delays may occur due to territorial jurisdiction restriction of certain authorities (e.g real estate registry office, tax authorities).

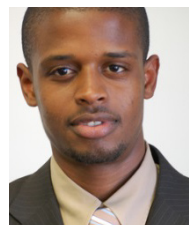
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# Cayman Islands



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations (that are registered in the Cayman Islands) are permitted to own or lease (subject to local licensing) local land directly. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease (subject to local licensing) local land. (3) Government permissions are commonly given for major projects.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All nationals (being individuals) can own land outright. (2) Certain locally incorporated companies can also own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) Every piece of property in the Cayman Islands is registered and has a unique block and parcel number. This registration system ensures that every property owner is recorded in the registry system and ownership title is absolute as the Cayman Islands government guarantees the right of ownership. The central land registry in the Cayman Islands, the Lands and Survey Department, like most government bodies in the Cayman Islands is a modern technologically sound and well managed entity which makes land transfers and access to information regarding parcels of land straight forward and expeditious.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) In addition to normal registration and legal fees depending on the scope of the work, stamp duty is generally imposed on transfer of real estate on the transfer of shares in a Cayman Islands company owning real estate in the Cayman Islands presently in the amount of 7.5%.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt in accordance with the law. (3) The mortgage can be in Cayman Islands Dollars or United States Dollars. (4) The mortgagee can sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) On insolvency the mortgage ranks prior to all unsecured creditors. (6) There is presently a 1% fee payable on mortgages of less than CI\$300,000 (approx. US\$365,000), and 1.5% on mortgages of CI\$300,000 (approx. US\$365,000) or higher. In addition there would be legal fees, registration fees and agent fees which are generally payable on the purchase of real estate, (7) Banks generally require down payments of 10%-35% of the value of the property, (8) Mortgages are available at banks and other financial institutions in the Cayman Islands, and (9) Interest rates may be

fixed or floating and are based on the United States Government Federal Reserve Rate (presently at 3.25%).

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** So long as the lease provides otherwise than as provided by certain provision of the law, the law does not restrict or control the terms of a lease of commercial premises to protect the tenant generally (except with respect to relief against forfeiture), e.g. (1) there are no/there are controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee can be (subject to the terms of the lease) released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) Subject to a tenant's ability to apply to the court for relief and if the lease so provides, a landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes. (2) Subject to a tenant's ability to apply to the court for relief and if the lease so provides, if the tenant becomes bankrupt, the landlord can terminate the lease of such land.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land. (2)

There are certain subsidies and a special zone where taxes are relaxed but this usually calls for special acts of government. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The Planning Department/Department of Environment may conduct an environmental impact assessment for certain developments. (2) Generally, the Cayman Islands do not have comprehensive environmental laws and the rules governing the environment and liability for clean-ups in relation to land (though there are a multitude of laws with some specifically relating to the environment (i.e. the National Conservation Law provides for the conservation of land and protection of certain flora and fauna, the Development and Planning Law provides for protection of mangroves and trees and woodland and the Dangerous Substances Handling and Storage Law deals with dangerous gases, liquids and materials and the handling, storage and transportation thereof as well as incidental and connected purposes)).

**General comment** Every piece of property in the Cayman Islands is registered and has a unique block and parcel number. This registration system ensures that every property owner is recorded in the registry system and ownership title is absolute as the Cayman Islands government guarantees the right of ownership. There are no foreign ownership restrictions on the ownership of real estate in the Cayman Islands by an individual for personal use. There are no annual property taxes or capital gains taxes on real estate and no inheritance taxes or death taxes in the Cayman Islands. There is however a one-time stamp duty fee

payable on the purchase of real estate of 7.5 per cent on the value of real estate at the time of the purchase. Real estate in the Cayman Islands may be privately sold, sold directly by a realtor (and not listed on the multiple listing system ("MLS") or otherwise listed on the MLS [www.cireba.com](http://www.cireba.com).

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# Chad



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Foreign persons and companies have the right to buy or lease directly local land with whoever they wish.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All the nationals of a country (including the companies established in the country) can have full ownership of land. They can sell, rent or mortgage their land without any official authorisation

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There are registers of land property deeds held by the Commissioner of the land registry. (2) The land registry indicates the surface of the land, the number of lots, the number of blocks, the area where the property is, the name of the owner, the mortgages, long-term leases and other noteworthy rights, such as rights of way and pre-emption rights. (3) The State guarantees the accuracy of the register; the register is very reliable. (4) Issues with property rights are rare. (5) The implementation of the principles of due diligence, for example with regard to occupation rights, is automatic.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Aside from the customary legal costs, which depend on the amount of work that is required, there are taxes on transfers or deeds, notary costs, or registration costs on land transfers, for commercial purposes or not, on land leases or the transfer of leases of the same kind.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The land owner may mortgage specific lands. (2) The mortgage may cover all current debts and future ones in general. (3) The mortgage cannot be issued in a foreign currency, but, while this cannot be done, it can be index-linked to a foreign currency. (4) In the event of default, the mortgagee cannot immediately make a private sale without an order by a tribunal, or in a public auction, if the contract has this provision. (5) There are freezes or other interferences within the framework of the mortgage if the owner begins a bankruptcy proceeding, for example, lease payments cannot be made to the mortgagee. (6) In the event of default, the mortgagee takes priority over all the unsecured debts aside from taxes, salaries and costs generated by insolvency and the mortgage which come after the aforementioned debts. (7) Land mortgages entail costs or expenses. (8) It is not possible for a lessee to mortgage their rent, because of the moveable nature conferred onto lease rights. Even

if the lease terms allow this, this operation cannot be performed.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law neither restricts nor regulates the lease terms for commercial infrastructure to protect the lessee. For example, (1) there is no control on lease payments, (2) the lease cannot validly rule out the owner's obligations regarding repairs, insurance, the safety of the premises or the reimbursement to the lessee in the event of improvements made at the end of the lease, (3) when a commercial lease expires, the owner cannot easily drive out the lessee, and the lessee has a protection, for example, the right to renew the lease, (4) the lease can legally rule out for the lessee the possibility to transfer their lease (except as part of the transfer of a business) or to sublease, and (5) a lessee is free from the obligations imposed by the lease when the latter is transferred.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) An owner cannot terminate a commercial lease with immediate effect if the lessee fails to pay the lease. (2) If the lessee defaults, the owner may terminate the land lease, if this is provided for.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** (1) The government must pay compensation in the event of compulsory purchase (reparcelling/expropriation) of lands as soon as possible and in cash. (2) There are no subsidies or free zones. (3) Checks or restrictions on exchanges are in

place with regard to the repatriation of profits and capitals originating from land assets. (4) There are no considerable withholding taxes on the interest from foreign loans.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** The development and the change in use of land assets are strictly regulated both with regard to commercial and residential developments.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) Environmental rules are strict and provide for hefty liabilities in terms of decontamination and fines. (2) A land owner or lessee is not liable for the decontamination that is made necessary by former owners/lessees. (3) Shareholders and company managers who own or rent land may be liable for pollution caused by the company.

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# Chile



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly. However, there are limitations to own or to be granted a lease, mortgage or other lien for nationals or corporations of neighbouring countries according to D.L. 1.939 of 1977. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land. (3) Government permissions are commonly given for major projects and the like involving leases.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All nationals (including locally incorporated companies) can own land outright. However, there are some indigenous lands rights which must be respected. (2) They can have leases and occupancy rights for an unlimited period of years, in accordance with the terms of the respective agreement. (3) The owner has a free right to renew the lease agreements, in accordance with its terms. (4) These occupancy rights can be sold or mortgaged without official approval, as long as the owner agrees to it. (5) In case of the transfer of a real estate, the new owner has to respect any lien attached therein only if such lien complies with certain formalities required by the law.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country, including rural areas. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights that have been registered by the parties, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register which is very reliable. (4) Problems over title are rare.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically. (3) The mortgage can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale

without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency the mortgage does not rank prior to all unsecured creditors including taxes, employee benefits and insolvency costs: the mortgage ranks after these creditors. (7) There are no substantial costs or fees involved in land mortgages. (8) It is not possible for a tenant to mortgage the lease, but it can pledge the rights of such agreement. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, since the parties can freely modify certain protections provided by law, by means of the respective lease agreement (provided that such provisions are under market conditions). Note: (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can evict the tenant, but the tenant has protection, such as a right to prior notice with some months of advance and defend it judicially, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant

becomes bankrupt, the landlord can terminate the lease of such land if so provided only in the event the bankrupted person/entity is in default of its obligation under the respective lease agreement.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Developments and change of use of land are tightly regulated, including both business and residential developments. (2) There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are standard, with relaxed liabilities for clean-up and penalties. (2) Generally, an owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Directors of the company owning or leasing the land can be liable for contamination caused by the company.

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# China



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** In the PRC, land is owned either by the State or by peasants' collectives. Individuals or entities can only have land use rights (similar to long term leases) over the state-owned or collective-owned land. Foreign individuals working or studying in China and the onshore branch of an offshore company can purchase properties for self-use purposes and thus obtain the land use rights of the land underlying such properties. Any foreign company or individual that intends to obtain land use rights in the PRC for purposes other than its self-use must establish a business presence in China in the form of a real estate foreign invested enterprise.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) cannot own land outright. They can only have land use rights for a limited period of years (the precise period of time is determined by taking into account the proposed use of the land, for example, residential and industrial). Subject to the way that the land use rights is obtained, there are three types of land use rights, namely, granted land use rights, allocated land use rights and leased land use rights. The tenor of the granted land use rights for residential land will be extended automatically upon expiration and the extension of other land use rights is still subject to future legislations. The land use rights

can be sold and mortgaged upon satisfying certain conditions.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** Title to land is registered with the land authorities at different administrative levels. The registration by the land authorities shows, among other things, the extent of the land, type of land use rights, owner of the land use rights and mortgages. The registration by the land authorities is reliable and title to land may be verified by visiting the land authorities and requesting the relevant records.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are a number of transfer or documentary taxes on transfers of land use rights, e.g. business tax, land appreciation tax, income tax, stamp duty and deed tax. Some of the above taxes are relatively substantial. Taking the income tax as an example - if a company incorporated in the PRC transfers the land use rights to a piece of land, the company should pay the enterprise income tax at the rate of 25% on profits.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The mortgage can secure all present and future debt but must specify a maximum amount. The mortgage can be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale without a court order, unless otherwise agreed by the mortgagor. There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. On insolvency the mortgaged property is excluded from insolvency estate, and thus ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. There are no substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) if the landlord wishes to sell the premise, the tenant has a pre-emptive right to buy the premise on the conditions of the proposed sale; (2) the lease cannot validly exclude any obligations of the landlord to repair defects in the leased premises and make the premises safe. When the leased premise endangers the safety or health of the tenant, the tenant may terminate the lease at any time; (3) on change in ownership of the leased premise, the original lease shall continue in the same form between the new landlord and the tenant; and (4) the landlord shall notify the tenant in advance if the landlord intends to terminate a lease with a non-fixed term.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant sub-lets the premise without obtaining the landlord's consent or breaches other terms of a lease agreement if it is so provided in such agreement. If the tenant becomes bankrupt, the landlord can terminate the lease agreement if it is so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Any foreign company or individual that intends to obtain properties in the PRC for purposes other than its self-use must establish a business presence in China in the form of a real estate foreign invested enterprise. A real estate foreign invested enterprise may not obtain any onshore or offshore financing before: (i) it has received the land use rights certificate; and (ii) the capital contribution injected to the project by the investors reaches at least 35% of the total investment of the project. Also, there are foreign exchange controls on repatriations of sale proceeds and rental proceeds by foreign investors.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Change of use of land is tightly regulated, including both commercial and residential land. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The basic principle is that the entities contaminating the land shall be held liable for clean-ups. However, there are no systematic legislations specifically regulating the contaminations and clean-ups in relation to land and the penalties under current legislations are quite light.



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# Colombia



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** There are no particular restrictions on acquisition of land by aliens other than the restriction established by Article 5 of Law 1415 of 1940, by means of which vacant land located on national coastlines or in the boundaries with neighbouring countries cannot be subject to transfer directly to foreign entities or individuals. Vacant land (*baldíos*) is properties owned by the Government that, according to the applicable legal regime in force at the time of the transferral (Law 34 of 1936; Law 135 of 1961 amended by Law 30 of 1988 or Law 160 of 1994), are subject to be transferred in favour of individuals, certain entities and corporations that comply with the requirements set by the corresponding law.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All Colombian nationals (including locally incorporated companies) can own land outright, and in general terms there are no restrictions that may limit them to leases or occupancy rights.

Nonetheless, in accordance with Law 160 of 1994, article 13 of Law 1776 of 2016 stipulates that all vacant land located in regions of rural, economic and social development, determined by the Government as such, shall only be subject to leases or any other type of agreement by means of which only occupancy rights are granted, in order to develop agricultural projects. In addition, the Government is only allowed to grant occupancy rights to small and medium producers and

the corresponding agreement shall be subject to the limitation set forth by the bill. It is important to note that this regulation may affect a large portion of land in Colombia, considering that the area of vacant land within the country is approximately 2 million hectares.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** There is a public register system by means of which all acts, transfers, leases formalised by public deed, encumbrances and/or liens regarding a real estate property must be recorded. The Public Registry Office is the governmental entity in charge of the issuing the certificate of conveyance and good standing of each property, in which the abovementioned acts are recorded, and its issuance is immediate and it costs approximately USD5. The certificate of conveyance and good standing of a property if full proof of title to land and it is deemed legal as it is considered an administrative decision of the state.

Even though the aforementioned registry system is quick and safe in big and mid-sized cities in Colombia, which means that the statement is true, in smaller towns there are some limitations so as to the registry system in relation with their accuracy and procedures.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Transfer of land is required to be formalised by public deed before a notary public and later registered before the Public Registration Office,

therefore aside from normal legal fees, the parties are obliged to pay notary and registration fees, as well as registration tax, which in total sum up to 1.9% of the transfer price, or the cadastral valuation of the land, whenever the transfer price is lower than the cadastral valuation. Some cities have additional taxes triggered by the transfer of land, which generally do not surpass the abovementioned percentage over the transfer price or cadastral valuation.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Colombian law grants the mortgagee of land several rights once the public deed that constitutes the mortgage is duly registered before the Public Registration Office. On insolvency, the mortgagee's rights as creditor are subordinated to other creditors including taxes, labour obligations and prior mortgages registered over the land and the property cannot be sold directly on default by private sale, but instead court order and public auction are required. Mortgages must be constituted by means of public deed; therefore the mortgagor must pay notary and registration fees, as well as registration tax, which sum up to 1.9% of the secured amount, notwithstanding the fact that mortgages can secure all present and future debt, and must be indexed to domestic currency. Other assets, including leases, shares and bank accounts can be subject to securities, which shall be constituted by means of private document registered before the movable asset registry (*registro de garantías mobiliarias*).

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Colombian Commercial Code establishes several dispositions regarding leases over commercial premises that are mandatory and cannot be excluded, such as (i) renovation right in favour of the tenant after two years with the same premise; (ii) minimum anticipation to terminate the lease of six month prior

to the termination date; (iii) sublease of 50% of the commercial premise; and (iv) preference right to lease in favour of the tenant when the premise is subject to reconstruction. Other than these terms, there are no controls on rents, and dispositions such as obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease can be excluded by the signatory parties.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Section 1602 of the Colombian Civil Code sets forth that all agreements executed under legal terms are deemed as law to its parties and therefore can only be annulled by causes established by law or by mutual consent of the parties. Nevertheless, both the law and the agreement can regulate the causes by means of which the corresponding agreement may be terminated. An example of the above is Section 973 of the Commercial Code, which stipulates that in order for a party to terminate an agreement (i) the breach of contract must cause severe damages to the party that is in compliance with their obligations; and (ii) the breach must be important enough to be capable of destroying by itself the trust of both parties in the agreement.

In line with the aforementioned, a landlord can claim the termination of a commercial lease on default by the tenant of the terms of the lease or the stipulations set forth by the law. Nonetheless, if the tenant refuses to accept the termination of the lease, the landlord must file a lawsuit in order for a judge to declare the termination of the lease, either by means of an arbitral award or by judicial ruling.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Foreign direct investors must register their investments before the Central Bank by means of a trade declaration (*declaración de cambio*). Pursuant to Decree 1068 of 2015 (modified by Decree 119 of 2017), foreign investors shall be treated equally vis-à-vis Colombian investors. This represents a guiding

principle set forth in Colombian foreign exchange regulations.

As a general rule, all expenses incurred in Colombia are deductible to the extent that they are necessary, proportional (per commercial criteria) and linked to an income producing activity. In the case of interest payments abroad, further requirements apply such as (i) complying with all foreign exchange rules; (ii) applying withholding taxes as required by law; (iii) not exceeding the maximum rate set by the Superintendence of Finance, and (iv) complying with transfer pricing rules, when applicable. As of 2013, an entity may deduct the interests from abroad debts up to three times the taxpayer's net worth determined at 31 December of preceding fiscal year (Section 118-1 of Colombian Tax Code).

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Urban licenses are required by Colombian law in order to develop urban and rural land. These licences are granted by the competent local authorities (*curadurías urbanas*) or the Mayor's Office, and are issued in a maximum of 45 business days which can be extended to additional 20 business days. The owner or tenant land shall comply with the permitted uses listed in the corresponding zoning regulation plan. The use of land cannot be modified except by public or social interest projects (i.e. infrastructure, hydroelectric power plants) or by an amendment of the legislation by means of which the zoning regulation plan was established.

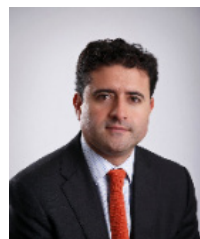
## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Environmental liability goes as far as 5,000 minimum monthly wages per day per contravention, as well as the suspension of the activity or development. In principle, the transgressor is the legal responsible for the environmental damage or infringement of any environmental regulation. Nonetheless, the current owner or lessee of land might be liable to clean-up contamination caused by infringement of former owners/lessees at the time the clean-up is demanded by the authorities. Liability for environmental infractions can be civil, administrative or criminal. While civil and administrative liability is lead against the company owning or leasing the land, criminal liability is lead against the company's directors and every person proven to be part of the felony.

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# Costa Rica



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Fee simple property (irrespective of zoning or special uses such as condominium, agrarian and other types of property) can be owned by aliens or alien corporations without restriction. However, the shore areas located in first 200 metres inland, measured from the median high-tide mark (known as the "maritime zone") cannot be owned by private parties in fee. With certain very limited exceptions (i.e. areas that obtained title subject to certain exceptions proceedings in the early 1970s), these areas are under the control of the government through the local municipalities. Private parties can however obtain concessions over these areas from the local municipalities, subject to certain limitations (zoning, size, environmental) one of which is that concessions may not be held by aliens unless they have obtained legal resident status for at least five years. Similarly, aliens that have not achieved the five-year residency requirement, cannot own in excess of 50% of the stock or interest in an entity holding a beachfront concession. Concessions are in practice similar to a long-term lease, where the concession holder has a right to use and develop the area granted under concession, typically for a 20-year term. Finally, there is a special area in the coast called the Papagayo Tourism Area located in the northern part of the country in the Gulf of Papagayo where a special legal regime is in place that does not restrict foreign ownership of concessions, and also allows for longer concession terms. Local corporations owned or controlled in majority by aliens cannot hold concessions within the maritime zone area (except if located within the Papagayo Tourism Area).

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals can own land outright, as long as such property is not located within the maritime zone area as explained above.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** Costa Rica has a centralised register of title to land. The land register shows the extent of the land, ownership, mortgages, recorded liens, registered leases (if registered by Lessor and Lessee) as well as certain other important rights, such as rights of way and easements. The register is very reliable. Problems over title are rare although they exist. However, title due-diligence is recommended, especially for properties located in rural areas in order to verify that there are no overlapping issues or other issues affecting title.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Transfer taxes, registration fees and notary fees are payable upon transfer of ownership of fee simple land (whether direct or indirect through the sale of stock), regardless of the purpose of the property. The combined total for these costs is approximately 3.51% of the amount of the highest of either a) the amount of the transaction; or b) the registered "tax" value for the transferred property.

There are registration fees payable for the registration of a lease agreement at the Public Register; however, these are not material and registration is not a requirement for the validity of the lease.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The mortgage can secure all present debt and must specify a maximum amount. (2) The mortgage can be in a foreign currency. (3) The mortgagee cannot sell the mortgaged property immediately upon default by private sale, a public auction (within a judicial collection procedure) shall take place first. Only in the event that no one bids for the property in such auction, the mortgagee is entitled to receive the property in lieu of payment. (4) There are no freezes in the mortgage if the owner enters bankruptcy proceedings (as long as the mortgage is in first degree). However, if the bankruptcy proceeding is filed before the public auction described above is scheduled by the judge, then said auction shall take place within the bankruptcy proceeding. In this scenario, please note that base price for the auction will not be the one agreed among the parties in the mortgage document (usually amounts due under the credit) but the value determined by an appraisal ordered by the bankruptcy judge. If the owner enters bankruptcy proceedings, the rents are not payable to the mortgagee; instead they will be paid directly to the insolvency estate. (5) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (6) There are registration costs fees involved in land mortgages calculated according to the amount of the mortgage. (7) It is not possible for a tenant to mortgage the lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The lease law is considered a law of "public order" which implies that rights afforded

under such law may not be validly waived. The law is very protective of tenants. The law does control the terms of a lease of commercial premises to protect the tenant, for example (1) there are controls on certain terms of the rental agreement as the law foresees certain minimum legal requirements for a valid lease agreement, (2) the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) a lessee is not released from its obligations under a lease when it assigns the lease, and (5) the minimum term of a lease is 3 years but, may be terminated before such term only by the tenant.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes following the eviction process established in the law. The law also foresees other termination causes. The landlord may only seek early termination of a lease for just cause under the terms of the lease law.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government is required to pay just compensation for any expropriation of land the procedures established in the law. Expropriation can only occur following due process and for causes of declared public interest.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and



residential developments. There are different rules for urban and agricultural land. A building permit granted by the local government is required prior to commencing work on any property.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental laws in general are strict in Costa Rica. With respect to clean-ups, the law establishes that an owner of land is jointly liable with respect to obligations to clean up contamination caused by former owners/lessees. Thus, it is recommended to perform a due diligence, in order to identify that the soil is not contaminated. Any owner must obtain a permit in order to clean up properties with forest areas or nearby forest or surrounding forest.

**General comment** A Real Estate transaction in Costa Rica is straightforward. It is important to perform at least a minimum due diligence, to verify the existing survey map for the property as well as any permit previously granted if the property has any buildings. In case the property is located in a rural zone, it is strongly recommended to perform a more detailed due diligence in order to verify water availability, forest areas and possible restrictions, overlapping issues or any other restriction there might be. If the property has constructions it is advisable to verify that the constructions permits are or were in place.

As a property owner, the person has the obligation to pay municipal taxes calculated at 0.25% of the declared properties value on an annual basis. Such municipal taxes must be paid on a quarterly basis, in March, June, September and December. Since the municipal government has access to public property records, Law N° 7509 establishes that the property value may be automatically adjusted whenever a mortgage on the property shows a higher property value than the value originally filed at the Municipality.

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# Croatia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Generally, aliens can acquire ownership of land in Croatia under the condition of reciprocity, unless provided otherwise by law, and providing that a prior approval has been given by the Ministry of Justice of Croatia when acquired via agreements (e.g. sale and purchase).

As an exception to the above rule, aliens are generally banned from acquiring ownership over certain excluded areas/types of land, such as agricultural land, forests, certain areas of protected nature, etc.

Aliens from EU member states can acquire ownership on land under the same conditions as Croatian nationals and legal entities, with the exception of land on excluded territories (e.g. agricultural land).

Aliens are permitted to lease local land directly.

show the extent of the land, ownership, mortgages, concessions, easements etc. as well as other facts or restrictions relevant for the transfer of land. Extra due diligence, e.g. into historical sequence of acquisitions, is not usually straightforward, but is recommended.

It is generally deemed that the land registry reflects the factual and legal status of land accurately and completely. Therefore, any person who relies in good faith on the information in the land registry while acquiring rights to the land is protected by the principle of public reliance allowing him to defend from third party challenges against its or its predecessor's title. However, such protection is not absolute and it is sometimes possible to challenge the ownership of such acquirer under certain circumstances in spite of his good faith. Additionally, the application of the above principle of public reliance is postponed until 1 January 2017 (might be further prolonged) for land which was still registered as social ownership on 1 January 1997.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** As a general rule, all nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights, as far as the land is eligible for private ownership.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There are registers of title to land in almost all of the country. The land register or cadastre

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, registration fees and reasonable taxes on any gains (income/profit tax), there is also real estate transfer tax (RETT) at fixed rate of 5% of value of the land. The lease of land might often also be subject to VAT. The transfer of land will be subject to either VAT or RETT, as applicable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure only a debt/claim which is monetary (including a future debt or debt in a foreign currency), or the value of which is estimated in money, and which is sufficiently determined (maximum amount, etc.). The land can be sold in enforcement proceedings (through a public auction or direct settlement). The mortgagee cannot possess the land, collect rent or other gains or use it in any manner. There might be interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. during the statutory hardening periods. On insolvency the mortgage ranks prior to all unsecured creditors including employee benefits and insolvency costs. Taxes in connection with the mortgaged land and costs of sale of the land have priority over the secured debt. It is not possible to mortgage the lease; only to assign rights or pledge receivables under the lease. These principles generally apply to most registered pledges over associated assets.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** There are certain mandatory conditions, such as written form, landlord's obligation to extraordinary repair works, handing over the premises in the agreed condition, etc. In the event of lease of premises owned by the state/local/regional government there are certain additional mandatory terms on payments, lease duration, etc.

When a lease of business premises expires, the landlord may easily evict the tenant only if it has an enforceable deed (e.g. solemnised lease agreement with enforceability clause) allowing instigation of enforcement for eviction against the tenant without prior litigation. Tenant enjoys protection of its peaceful possession of the land. The tenant normally

does not enjoy a right to a new lease. The lease can validly exclude the ability of the tenant to assign or sub-lease. A lessee is normally released from its future obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Any party to the lease can immediately terminate a business lease if the other party is in default. If the lease is concluded for an indefinite period, it cannot be terminated, other than due to default, before the expiry of the first year. The latter does not apply to the lease of premises owned by the state/local/regional government as it is regulated with special regulations.

If the tenant becomes bankrupt, the landlord' right to terminate the lease of such land is severely limited, even if so provided in the agreement.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land either in comparable land or in cash. There are special zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are withholding taxes on interest on foreign loans granted to domestic borrowers, with some exceptions regarding loans by foreign banks, etc. and regarding local implementation of the Interest and Royalty Directive.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are quite tightly regulated, including both business and residential developments. Such regulations provide for various permits which need to be obtained, but majority of these fall under public safety or

environmental restrictions. There are different rules for urban and agricultural land. Change of use for agricultural land into construction land is possible under certain conditions.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are quite strict with tight liabilities for clean-up and penalties. The polluter / operator company and its responsible persons (e.g. directors) can be liable for contamination caused by the company. All EU regulations apply accordingly to liability for clean-up, including the Polluter Pays Principle.

**General comment** The Croatian legal system on real estate and land registers is undergoing a process of modernisation and resolving historical-related issues which should make it even more investor-friendly in the future. Still, thorough real estate due diligence is advisable.

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# Cyprus



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are generally permitted to own or lease local land directly but certain limitations apply to non EU nationals or companies owned by non EU nationals.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** Whilst most of properties have a title deed, there is a number of new developments which have no title deeds and the buyer would need to be careful and conduct due diligence in order to safeguard him/herself. Laws have been put in place and this is to change in the next 3 years.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial

transfers or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. The taxes on the gains on a transfer of such land or leases are reasonable and a capital gain tax for the next two years is discounted by 50%.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt by specifying a maximum amount. The mortgage can be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale, without a court order or public auction but this is subject to change subject to specific provisos such as dwelling houses. There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee/insolvency estate. On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. There are reasonable costs and fees involved in land mortgages. It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments generally also apply to this mortgage of a lease if the lease is over a period (15 years) of time and subject to registration with the Land Registry. These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** When a lease of business premises expires, the landlord cannot easily evict the tenant.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes provided the landlord's termination rights on a default are not restricted. If the tenant becomes bankrupt, the landlord cannot automatically terminate the lease of such land unless and if such provision is provided in the lease agreement.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are no subsidies and special zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are no withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are not/are tightly regulated, including both business

and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is not liable to clean up contamination by former owners/lessees and as a general rule the polluter holds responsibility. Shareholders and directors of the company owning or leasing the land could be liable for contamination caused by the company.

**General comment** The practice for land transactions is becoming more efficient yet there is still considerable room for improvement, especially on the protection of landlords (say eviction of defaulting tenants).

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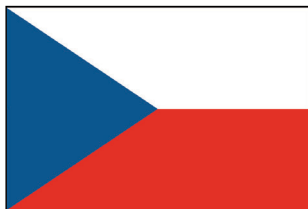
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# Czech Republic



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Since 2011 alien individuals and alien corporations are permitted to own or lease local land directly.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** - (1) There is a register of title to land for the whole country. (2) The land register shows the extent of the land, ownership, mortgages, registered leases (registration is optional), easements and certain other important rights in rem, such as rights to build and pre-emption rights. (3) The state does not guarantee the accuracy of the register. Good faith in the records in the register has limited protection. (4) Problems over title are quite common. Nonetheless, Czech law recognises acquisition of title to land by prescription, provided that certain conditions such as good faith and 10 years possession period are met.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** (1) Apart from normal legal fees depending on the scope of the work and minor registration fee, transfer of land is subject to 4% land transfer tax. As a result, majority real estate transfers are structured as share deals. (2) Registration of lease is voluntary and the registration fee is minor; no taxes are payable. (3) These tax conditions often make the investors choose a share transfer over an asset transfer structure of the transaction.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land (or a third person with the consent of the owner) can mortgage specified land. (2) The mortgage can secure all present and future debt, whereas in relation to future debts a maximum amount, time period in which the debts are to arise and types of debts must be specified. (3) The mortgage can secure debts denominated in a foreign currency. (4) Upon default the mortgagee can sell no earlier than 30 days after it has notified the owner of the mortgaged land of commencement of enforcement, by private sale, if so provided in the mortgage agreement, without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner (or the debtor whose debts have been secured by the mortgage) enters bankruptcy proceedings, e.g. the mortgage cannot be enforced in



any proceedings other than insolvency proceedings. (6) On insolvency the mortgage ranks prior to all unsecured creditors excluding, for instance, taxes, employee benefits and insolvency costs. (7) There are no substantial costs or fees involved in land mortgages. (8) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) In general, the law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (a) there are no controls on rents, if the rent is not provided in the lease agreement, then a standard market rent is to be paid, (b) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (c) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (d) the lease can validly exclude the ability of the tenant to assign or sub-lease. (2) A lessee is fully released from its obligations under a lease when it assigns the lease if so agreed in the assignment agreement.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes, if so provided in the lease agreement. (2) If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land (whether it has been agreed on or not) due to the tenant's breach of payment obligations or deterioration of its financial condition.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. Such incentives are subjected to fulfilment of numerous conditions. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to mitigate or eliminate.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is primarily not liable to clean up contamination by former owners/lessees, as the polluter pays principle applies. (3) Directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** In 2014 a recodification of civil law introduced significant changes to real estate law and brought new concepts together with uncertainty about their practical application.

Formerly unknown principle of "*superficies solo cedit*" (the surface yields to the ground) pursuant to which the owner of the land shall also be the owner of anything built on it, was introduced. Therefore, most of the buildings have merged with the land they were built on, however, in some cases such merger was not possible (e.g. when the building and the land had

different owners) and as a result there are buildings owned by a person different from the owner of the land.

Another new concept is the right to build. The beneficiary of this right is entitled to construct and use building on/under the land owned by a different person.

The transfer of the land and creation of any right in rem is effectuated by the registration in the Land Register. Due to the changes in law the registrations take significantly longer to process, i.e. up to one to three months, depending on the location of the land.

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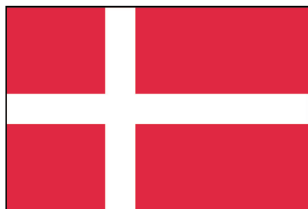


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# Denmark



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** The right to acquire real estate in Denmark is not based on nationality, but on residence.

All natural and legal persons who have a permanent address/registered office in Denmark or have had such a permanent address/registered office in Denmark for a period of five (5) years are entitled to acquire real estate in Denmark.

Any natural person who has no permanent address in Denmark and has not resided in Denmark for an aggregate period of five (5) years and, likewise, any legal person which does not have its registered office in Denmark and has not had its registered office in Denmark for an aggregate period of 5 (five) years may not purchase real estate in Denmark without the permission of the Danish Minister of Justice.

However, citizens of an EU or EEA Member State and companies established in accordance with the legislation of an EU or EEA Member State may purchase dwelling treated as a main residence and real estate which provides a basis for business in Denmark without the permission of the Minister of Justice even though they do not have a permanent address/registered office in Denmark or have had such permanent address/registered office in Denmark for a period of 5 (five) years. In other words companies lawfully incorporated in an EU or EEA Member State may purchase real estate if the purpose is to set up branches or agencies or to supply services in Denmark. It is worth noting that these rules which grant citizens and companies of an EU or an EEA Member State the right to purchase real estate without any permission or fulfilment of the residence requirement do not include the right to purchase land

which is zoned for or used as weekend cottages or recreation areas.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** The right to acquire real estate in Denmark is not based on nationality, but on residence.

All natural and legal persons who have a permanent address/registered office in Denmark or have had such a permanent address/registered office in Denmark for a period of five (5) years are entitled to acquire real estate in Denmark.

Any natural person who has no permanent address in Denmark and has not resided in Denmark for an aggregate period of five (5) years and, likewise, any legal person which does not have its registered office in Denmark and has not had its registered office in Denmark for an aggregate period of 5 (five) years may not purchase real estate in Denmark without the permission of the Danish Minister of Justice.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** In Denmark almost all properties are recorded in the form of maps, surveys and registrations in the Land Register under separate numbers (title numbers). However, one parcel of land may be given several title numbers and, also, several parcels of land may be registered together as one property in the Land Register.

In order to be protected against the assignor's creditors and bona fide assignees, all rights over land,

such as title or mortgages, must be registered in the Land Register administered by the central land registry situated in Hobro in northern Jutland. The stamp duty comprises a fixed part of DKK 1,660 and a variable part of 1.5 of the principal. The stamp duty is linked to the actual registration of the document.

A right over land is registered by digital application to the land registry filed by the holder of the registrable right, an attorney or other notifier. As from the filing of the digital application, the right is protected against subsequent rights holders. Conversely, an unregistered right is not protected against the owner's creditors and bona fide assignees, and such persons may therefore set aside an unregistered right by applying for registration of their rights.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** The stamp duty comprises a fixed part of DKK 1,660 and a variable part of 0.6% of the higher of the purchase price or the publicly assessed taxable cash value. The stamp duty is linked to the actual registration of the document.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** In order to be protected against the assignor's creditors and bona fide assignees, all rights over land, such as title or mortgages, must be registered in the Land Register administered by the central land registry situated in Hobro in northern Jutland.

The stamp duty comprises a fixed part of DKK 1,660 and a variable part of 1.5 of the principal. The stamp duty is linked to the actual registration of the document.

A right over land is registered by digital application to the land registry filed by the holder of the registrable

right, an attorney or other notifier. As from the filing of the digital application, the right is protected against subsequent rights holders. Conversely, an unregistered right is not protected against the owner's creditors and bona fide assignees, and such persons may therefore set aside an unregistered right by applying for registration of their rights. Considering the creditors, this applies even if they have knowledge of the unregistered right whereas other assignees are only entitled to set aside an unregistered right over the property, such as a mortgage, if they do not have knowledge of the unregistered right.

The registration of rights is of utmost importance, and consequently, almost all rights over properties in Denmark are registered in the land register. The Land Register and registered rights are only accessible via an electronic database.

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Danish business leases and commercial landlord/tenant law matters in general are governed by the Danish Business Lease Act (referred to as the "BLA"), which became effective on 1 January 2000.

Since the vast majority of the provisions of the BLA are non-mandatory and may therefore be derogated from by agreement, the BLA provides a high level of contractual freedom as to the terms and conditions on the determination of rent, rent review, maintenance obligations, right of assignment, subletting, etc.

However, the BLA contains some mandatory provisions that apply to all leases such as the landlord's right of termination and payment of damages and compensation to a business tenant enjoying security of tenure, i.e. a tenant who leases premises essential to the business carried out by him, typically but not only high street retail premises.

#### 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord cannot immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided as the landlord's termination rights on a default are restricted.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties for the polluter.

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# Dominica



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and alien corporations are not permitted to own or lease local land without payment of an alien land holding licence fee. In some circumstance an alien land holding licence is required. Government permissions are commonly given for major projects. [For the avoidance of confusion note that in some circumstances it may be possible simply to pay the licence fee without obtaining a licence.]

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** This statement is true where there is certificate of title to the land. There is a register of title to land but much of the land in Dominica is not registered on it. Where land is so registered, the register shows the extent of the land and all interests affecting the land. The state guarantees the accuracy of the register. Where land is not held by a certificate of title, proof of ownership is often difficult and sometimes contentious; therefore extra due diligence is required.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** The fees and taxes on the transfer of registered land are as follows:

Taxes 7.95%

Lawyer's fees 3%

Where the land is not registered, bringing it into the register may cost substantially more.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are not payable to the insolvency estate. (6) On insolvency the mortgage does rank prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided. Please note that termination may not automatically result in repossession of the premises. Court action may be necessary to achieve this.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are no subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Planning permission is required.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?



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# Dubai



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are not permitted to own freehold or take long leases of local land directly other than in specially designated areas. (2) Local corporations owned by aliens cannot own or lease local land other than in specially designated areas.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies owned or controlled by nationals) can own land outright and can hold leases for up to 99 years. The owner has a free right to renew such leases. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country. (2) The land register shows the extent of the land, ownership, mortgages and longer-term leases. (3) The state does not guarantee the accuracy of the register but once legally registered in accordance with the law, the register is reliable. (4) Once title to land is registered, problems over title are rare. (5) Extra due diligence is not usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are substantial registration fees on transfers of land or leases or the grant of leases of such land. (2) There are no taxes on the gains on a transfer of such land or leases.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage must specify the debt precisely, can secure future debt and must specify a maximum amount for registration purposes in local currency. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) If the owner enters bankruptcy proceedings, the general view is that the mortgagee can continue to enforce security however, this has not been tested in the courts. (6) On insolvency the mortgage ranks prior to all unsecured creditors however there are certain preferred creditors such as costs of enforcement and any governmental debt related to the mortgaged land. (7) There are no substantial costs or fees involved in land mortgages other than registration fees and notary fees. (8) It is possible for a tenant to mortgage the lease of greater than 10 years if permitted by the terms of the lease

and the above comments in (1) to (7) generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease to protect the tenant, e.g. (1) there are controls on rent increases, (2) however, the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of the premises expires, the landlord cannot easily evict the tenant and the tenant has a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee's obligations under a lease are transferred to the assignee when it assigns the lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) A landlord can immediately terminate a lease if the tenant does not pay the rent or breaches other terms of a lease of land used for any purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) There are no specific obligations in an environmental context relating to shareholders and directors of the company owning or leasing the land being liable for contamination caused by the company, however it is not as easy to establish the liability of shareholders and directors for actions of a company as in other jurisdictions.

**General comment** The practices for land transactions are developing and are in the main reasonably quick and efficient. Taxes on land and rents from land are not exceptionally onerous.

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# Ecuador



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Broadly, Ecuador has no real estate ownership restrictions for foreigners (companies, individuals or both). The ownership can be held by companies or individuals, Ecuadorians or foreigners, regardless of their residency or citizenship status or even by foreigners without having ever entered to Ecuador. However, there are restrictions to own, lease or exploit lands located adjacently to borders and seashores, as well as for requirements for non-domiciled foreign companies, which must obtain a Tax – ID previous to register the purchase.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies with registered shares held by individuals) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** (1) There are sectional registries across the country. (2) Proof of title access and handling are mostly clear, quick and safe. (3) The land registry records the extent of the land, ownership, mortgages, registered leases and certain other important rights, such as rights of way and pre-emption rights.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Besides regular legal fees, according to the commercial activity, there are no additional transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) Any owner may mortgage his land. (2) A mortgage can secure all present and future debt, but it must specify the debt amount. (3) A mortgage cannot be executed immediately after a default; it must take place based on a court order. (4) The legal procedure in order to execute the mortgage may take a few months, probably more than a year.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** (1) Tenant is entitled to get at least 2 (two)-year contract stability. (2) Tenant must be notified 90 (ninety) days in advance to leave the property prior the term ending. (3) Tenant could

remain on the land after a landlord change if not notified properly.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) Landlord can ask to the court terminate a business lease if the tenant is on default of two or more lease payments. (2) The legal procedure in order to terminate the agreement may take a few months.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** There are no disincentives to owning land in Ecuador as regards receiving a fair treatment as foreigner.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Each Municipal government is empowered to regulate land use, setting the categories of lands (urban, suburban, rural) and to issue permits to new urban developments or over certain activities in the areas under control of each municipality, or even creating areas of environmental protection. Before making the decision to acquire real estate for a project, it should be verified that same is located in an appropriate zone or, as the case may be, in an area that can be changed (residential, offices, industrial, etc.) by submitting an Action Plan to the Municipality.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The Republic of Ecuador 2008 Constitution is extremely protective to the environment. There are specific provisions for objective liability to those who cause environmental damage. Nevertheless, secondary legislation for proper enforcement is not as strong as the constitutional provisions. A new environmental code is expected to be enacted in the nearby future.

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# Egypt



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals can own land directly but subject to certain limits or specific exception by virtue of Prime Minister's decision. There is a restriction on the disposal of the real estate property acquired by alien individuals for a period of five years starting from the date of registration of title to the real estate property (law no. 230/1996 in relation to ownership of non-Egyptians for real estate property).

Alien corporations are not permitted to own or lease local land directly.

Locally incorporated companies owned or controlled by aliens or having alien directors can own or lease local land and real estate necessary for conducting or expanding their activities (law no. 72/2017 on investment guarantees and incentives) with the exception of certain areas including strategic regions (detailed in Presidential Decree no. 152/2001) and land adjacent to the borders (detailed in Prime Minister Decree no. 350/2007). The Sinai region has special conditions whereby the use of land can only be through fixed term usufruct agreements concluded subsequent to obtaining all necessary licences.

There is a general prohibition on the ownership of agricultural land by alien individuals and corporations (law no. 15/1963).

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright. Only Egyptian individuals can own land in the Sinai area after meeting certain qualifications.

Locally incorporated companies can only have usufruct rights over lands in the Sinai area upon meeting certain conditions and up to 50 years tenor. Such usufruct may not be renewed whereby its total period exceeds 75 years.

Any disposal of such usufruct right must be with the prior approval of Board of the Sinai Development Authority, Ministry of Defence, Ministry of Interior, General Authority for Free Zones and the General Intelligence Agency.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** The general rule under Egyptian law is that transfer of title in real estate remains a contractual obligation between the relevant parties and does not take effect as right in rem over the real estate property until such transfer is registered with the Notary Public. There is a register of title to land especially in urban areas. In practice, however, many of the real estate assets in Egypt are not registered, as historically the registration fees used to be expensive. In addition, registration may not be available in certain remote areas that are still under development and the process of land ownership registration is extremely

bureaucratic that can take between six months and one year in most straightforward cases.

The land register shows (i) rights in rem (including ownership, usufruct and easements); (ii) registered mortgages and securities; (iii) leases that exceed nine years and (iv) final judgments on any of the aforementioned.

Based on the above, land registers are not entirely reliable as buyers of real estate assets in many cases rely upon unregistered sale contracts and their uninterrupted or uncontested possession of the real estate. Extra due diligence should be made with respect to real estate ownership.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** There are no substantial costs for the transfer or lease of land for commercial purposes other than the normal legal and registration fees and reasonable taxes. Kindly note that we do not advise on tax, customs or

stamp duty. However, our understanding is that taxes on the transfer of land are valued at 2.5% of the total cost of the transfer of land, except in cases of inheritance and in-kind contribution of real estate property in the capital of a company.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of the land has to mortgage only specified land. The mortgage can secure all present and future debt but must specify the debt precisely or specify a maximum cap thereof.

In general, enforcing real estate mortgage is heavily regulated under the Egyptian Law. The sale must be through a court-ordered public auction. However, the parties can agree, only after payment is due or part thereof, for the real estate ownership to be transferred

to the mortgagee. Any such agreement at the time of creating the mortgage shall be null and void.

The mortgage can secure a debt in a foreign currency; however, it is a public policy rule that, a party subject to an enforcement order can discharge its obligation by paying the equivalent amount in Egyptian Pounds at the exchange rate applicable on the date of the enforcement order. Registration fees are calculated based on a formula factoring the secured principal debt.

On insolvency, the mortgage ranks prior to all unsecured creditors, but after creditors who have statutory liens (for example, tax liabilities, employee benefits and insolvency costs). On bankruptcy, the mortgagee has the right to initiate individual proceedings and enforce over the mortgaged assets. In case the mortgagee does not seek individual enforcement proceedings, the mortgagee will rank prior to all unsecured creditors in case the insolvency estate sells the mortgaged assets. The same applies to rents.

The usufruct right over real estate property can be mortgaged in the same way and subject to the above rules. Leases, however, cannot be mortgaged separately and may only be mortgaged as part of a commercial enterprise as a whole line of business.

The above generally applies to associated assets, however, pledge of shares and bank accounts are subject to special rules for their perfection.

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The terms of a lease (whether for commercial or personal use) are not restricted and the parties can agree to their own terms. The lease can exclude or restrict any obligations on either party (including any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease or the ability of the tenant to assign or sub-lease), except for

- (i) liability of either party for fraudulent or illegal acts;



- (ii) the landlord's guarantee of latent defects; and
- (iii) the tenant's right to terminate the lease to relocate for work purposes.

Upon expiry of the lease of business premises, the tenant has no right to a new lease unless otherwise agreed in the contract.

The general rule is that the lessee is released from its obligations under a lease when it assigns it, but not if it sublets the leased premises, unless otherwise agreed in the contract.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** If the lease provides that it can be automatically terminated without notice or legal procedures upon default (including the tenant's insolvency), the landlord can freely and immediately terminate the lease. Otherwise, the landlord will have to recourse to court to order the contract termination and the judge will assess the default and will have discretionary power as to whether to accept or reject such claim.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Egyptian law can generally be considered as investor-friendly. The government has to pay compensation for a compulsory purchase of land in cash prior to the purchasing order. Moreover, there is a general prohibition on the nationalization of companies. (Article 4 law 72/2017)

According to the new investment law no. 72/2017, corporations are now subject to income tax deduction to be deducted from the project profit. The said deduction ranges from 30% to 50% of the project investment cost depending on the location of investment. The tax incentive is capped at a maximum of 80% of paid capital and can be deducted from income tax over a period of seven years from incorporation.

Egypt has public free zones exempted from taxes.

There are no exchange controls on the repatriation of profits, provided it is done through banks licensed in Egypt. The Central Bank of Egypt is currently exercising more scrutiny to offshore transfer of funds to ensure that such transfers are for bona fide purpose. This scrutiny results in delay of the transfer of funds outside Egypt.

Kindly note that we do not advise on tax, customs or stamp duty. However, our understanding is that the applicable stamp duty is 0.2% of the utilised facility calculated and paid on quarterly basis based on the highest outstanding balance during each quarter period. This tax is payable by the borrower and the bank (0.1% each). However, in practice, banks usually apply the principle of tax gross-up and the borrower pays the whole financing stamp duty.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** An official permission is required to change the use of land except with approval of the High Council of Planning and Urban Development upon a suggestion by the relevant Minister (law no. 119/2008 regulating building activities). Prior to the construction of any building, a building licence must be obtained from the relevant municipal body. The previous regulations apply to both business and residential areas including new urban communities.

There is a general prohibition for buildings on agricultural land. Moreover, the law prohibits non-cultivation of an agricultural land for a year or committing an act or omission that adversely affects its fertility.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The Environmental Law number 4/1994 is strict with tight liabilities for clean-ups and penalties whereby sanctions for environmental liability in relation to land include fines and imprisonment. The Environmental Law mandates the prior approval of an environmental impact assessment for projects.



Moreover, the owner or manager of an establishment is responsible for its clean-up on the relocation of the project or the termination of its activities. The person responsible for the actual management of the company (whether it is a shareholder or director) shall be liable for contamination caused by the company.

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# El Salvador



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly, provided that their local legislation grants the same right to Salvadoran individuals in their respective countries.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. However, no individual can own over 245 acres (Hectáreas) of rustic land.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The titles of lands shall be registered before the Salvadoran Registry of Properties (Registro de la Propiedad Raiz e Hipotecas), which is a national entity with coverage for all the territory of El Salvador. The registration procedures last between 5 to 15 business days, if the properties do not have any legal impediment (i.e. prior property rights non resolved). Once that a title of land is registered before the Registry of Property, such title will be opposable before any third party.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** In addition to the costs of land transfers detailed above, it is important to take into consideration the Municipal taxes that could apply according to the jurisdiction where the properties are located and the activities for which the real estate is used. Also, tax legislation may be amended during a long term lease, affecting the taxes paid by such agreement.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The mortgagee cannot execute by itself its rights under a mortgage, it is always necessary for a judicial/arbitral intervention in order to execute its rights. In this procedure, the mortgagee shall prove that the mortgagor is in default of the obligations secured by the mortgage, so that it can be executed.

Also, please be advised that pursuant to Salvadoran legislation, the priority of payment is established as follows:

1. Maintenance payments and social benefits;
2. Secured obligations (e.g. mortgage /pledge);
3. Unsecured obligations.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law establishes only general dispositions and limitations for lease agreements, being principally ruled by the will of the parties.

In relation to the terms of the leases, the Constitution of the Republic of El Salvador prohibits the entailments; however, this term is not defined by the legislation. Therefore, in case of dispute, the competent judicial court will determine if a term constitutes an entailment or not. In the practice, the terms of the leases do not exceed 30 years.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** No comment.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** No comment.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** There are several permissions that are needed in order to build in the real estates, including environmental and construction permissions.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** Our legislation establishes administrative, civil and criminal sanctions due to breaches to the environmental law.

**General comment** The practice for land transactions are mainly quick and efficient. All transactions must be done by public deed before a Notary Public and then registered at the Register of Property to validate the right against third parties. Regarding the costs, a fee of \$ 0.63 per each hundred of the total value of the property that appears in the title is cancelled through a payment order provided by the Property Registry, and the tariff of 3% on the excess of \$ 28,571.43, is paid directly to the Ministry of Treasury as Transfer of Real Estate Tax.

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# England



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land. (3) In relation to certain residential lettings, landlords and their letting agents are under statutory obligations to check the immigration status of the person or persons to whom they let. (4) There is a consultation on possible new laws which would require the creation of an “overseas entities beneficial ownership register”. It is proposed that overseas aliens which own or want to own UK property will be required to keep a register of their ultimate beneficial owners. Failure to comply with the requirements would prevent the alien entity from being able to buy or sell UK property.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright or lease land for any period. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in the country and most land is now registered. (2) The land register shows the extent of the land, ownership,

mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register. The register is very reliable. (4) Problems over title are rare. (5) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) As well as normal legal fees depending on the scope of the work, there are transfer taxes (SDLT) payable by the buyer of up to 5% of the purchase price. On the grant of a new lease SDLT is payable at up to 5% of the premium payable and up to 2% of the net present value of the total rent over the life of the lease. (2) Acquisition of freehold and existing leasehold property and the grant of a new lease (and rental payments under a lease) are usually exempt supplies for the purposes of VAT. However, VAT at a rate of 20% may be chargeable if the seller has “opted to tax” the real estate (which is common in the case of commercial property). Where the acquisition is of tenanted investment real estate, the buyer will not be charged VAT if the acquisition qualifies as a “transfer of a new business as a going concern”. (3) On the sale of property UK investors are liable to capital gains tax or corporation tax on chargeable gains in respect of the gain in value at rate of up to 28%. (4) Although there are registration fees they are not significant.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically. (3) The mortgage can be in a foreign currency. (4) The mortgagee can sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters into certain bankruptcy proceedings (administration or liquidation). These freezes prevent action being taken to enforce the mortgage without leave of the court or the consent of the administrator or liquidator. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are no substantial costs or fees involved in land mortgages although legal and registration fees will usually be incurred. (8) It is possible for a tenant to mortgage a lease if permitted by the terms of the lease and the above comments in (1) to (7) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) The law does not restrict or control the terms of a lease of commercial premises to protect the tenant except to a very limited extent. (2) There are no controls on rents. (3) There are no implied obligations on the landlord of a business lease to repair, insure or make the premises safe but if a lease gives a landlord a right to enter to carry out repairs they may be under a statutory duty to make sure those who might reasonably be affected by defects are reasonably safe from personal injury or damage to property. (4) There are certain statutory obligations obliging landlords to compensate a tenant for improvements made by the tenant but, for various

reasons, compensation can rarely be claimed. (5) There is a statutory right for a business tenant to claim a new lease at a market rent for a maximum term of 15 years on the expiry of a lease but that right can be validly excluded by following a simple procedure. (6) The lease can validly exclude or restrict the ability of the tenant to assign or sub-lease. (7) A lessee is generally released from its obligations under a lease when it assigns the lease although the lease can provide that the tenant must guarantee that the assignee pays the rent and performs the lease obligations.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Business leases will generally include a provision entitling the landlord to terminate for non payment of rent, breach of covenant and, usually, for insolvency. However, the tenant has a statutory right to apply to the court to prevent termination. The court will commonly grant a stay of termination provided the tenant remedies the default.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are some subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are withholding taxes on the interest on foreign loans which are difficult to avoid. There are also potential withholding taxes on rents payable to overseas investors although it is possible to seek clearance to pay without deduction of tax.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

### **Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) A company which buys a site at which there is historical contamination is potentially liable for clean up, even if it was not responsible for causing the contamination. Under England's Contaminated Land Regime, any legal persons who either "caused or knowingly permitted" the presence of substances in, on or under land which either cause or threaten to cause significant harm or water pollution can be held liable for clean up. It is sufficient for liability purposes, for a person who has the power to prevent a pollutant being or remaining there, to have knowledge that substances were at the site and to do nothing about it. In certain limited circumstances an owner or occupier can also be liable for contamination he neither caused nor knowingly permitted to be there. The definition of "knowledge" includes the concept of "constructive knowledge", which means a court would presume knowledge of the contamination, if, in the circumstances, a reasonable person would be expected to have the knowledge. (2) It is possible for the directors of the subsidiary to be made liable for a criminal violation of particular environmental laws. This requires the company to be found liable first and then, if the regulator can show that the offence was committed with the consent, connivance or neglect of the directors, they too may be found liable. Also, England has a relatively new system of civil and administrative penalties, by which a company may be required to take action such as paying a fixed or variable monetary penalty for environmental breaches. However, directors themselves are not liable under these provisions.

### **Any general comment?**

There is a long established and efficient system for dealing with ownership and leasing of land in England. The body of land law is certain, stable and commercially orientated. There is a transparent registered ownership system and investor friendly

leases are the norm. Transactions can be conducted with reasonable speed and considerable certainty.

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# Eritrea



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Individual and corporations, whether domestic or alien, are not permitted to own land. Land is exclusively owned by the State. This principle is the hallmark of the land reform legislation enacted in 1994. Aliens (individuals who do not have Eritrean citizenship or entities which are not incorporated in Eritrea) may only obtain usufruct, lease, or other legally authorised right to land by special permission of the President of the State of Eritrea.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** As outlined under comment no. 1, private land ownership is not recognised at all. Hence, citizens have a usufruct right over land. Citizens' rights are limited to sale, transfer by succession, lease or mortgage of the house they have built upon the land. Moreover, the Government has a right power to expropriate land.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** As all land is state owned, there is no proof of title over land. Individuals and companies are only issued with a certificate of allotment.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Land cannot be transferred. Hence, there are no relevant material costs.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** Land cannot be mortgaged.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Principally, essential issues like lease duration and rent are determined by the contractual agreement between the parties. However, such agreements are mandatorily registered with the Land Administrative Body (now a department at the Ministry of Land, Water and Environment) and the department has the power to check the agreements if they contradict the letter and spirit of the Proclamation. On top of that, several legislations had been issued by the Government to strictly regulate lease of houses.



## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** N/A

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** Foreign direct investment in land is not possible as the state owns the land exclusively.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** The Government has supreme authority to formulate land use policy. This authority covers over all rights and powers over land, including the authority to determine the classification of land and its general and special usage, as well as to limit the size and area of land to be distributed to holders of all types of right to land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The Land proclamation is silent on the issue. However, the Transitional Civil Code and specific proclamation like the mining proclamation and other have got strict compliance, liability and penalty rules.

**General comment** In commenting on the above questions provided, we mainly reviewed the existing land law in Eritrea mainly Proclamation No 58/1994 – A Proclamation to reform the system of land tenure in Eritrea, to determine the manner of expropriating land and purposes of development and national reconstructions and to determine the powers and duties of the Land Commission.

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# Estonia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land. (3) Government permissions are rarely required. There are certain restrictions for acquiring agricultural and forestry land in excess of 10 hectares which applies to all EEA legal persons (i.e. including Estonian legal persons), stricter restrictions apply for non-EEA legal persons and natural persons. Also restrictions apply to non-EEA aliens to acquire land in certain border areas and islands. In practice, the restrictions are rarely an issue.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. The limitations referred to in Q1 concern only acquisition and ownership. There are no limits to leasing land. Again, in practice this is rarely an issue.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a public title book where title to land has been registered covering most of the country. The register does not contain some land belonging to the state and there are some rare cases where entry to the register has been blocked by some

litigation or similar issue. The register of title to land covers most of the country, especially urban areas. (2) The land register shows the size of the land, ownership, mortgages, leases if entered to the register and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register. (4) Problems over title are rare. (5) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from relatively small notary's fee and state duty which depend on the value of the transaction, there are no substantial transfer or other similar taxes on transfers of land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specific land, i.e. specific registered immovables. (2) The mortgage can secure all present and future debt generically, but must specify a maximum amount. (3) The mortgage cannot be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. It is usually agreed that the mortgagee may initiate enforcement proceedings that would

result in public auction without a court order. (5) There are delays in the enforcement process if the owner enters bankruptcy proceedings. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. Only the mortgage enforcement costs rank higher than the secured creditor. (7) There are costs involved in setting up land mortgages, but these are not substantial. The enforcement costs can be relatively high.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises places the parties to quite equal positions and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant as it requires a court order although tenants of commercial premises do not have the right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not automatically released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides or the tenant does not give security to the landlord within a reasonable term?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are various subsidies available to all, but no special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. Permission of municipality is always needed when changing the intended use of land. Permission of development depends on the object and the scale of the development, the location of the intended development and the regulation given by the local municipality. The requirements for the development of land are regulated on the levels of the state and local government?**

**Comment** Developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are relatively strict and straightforward?**

**Comment** (1) The environmental rules are relatively strict, but in practical enforcement is usually more relaxed. Penalties for failure to comply are also relatively light. Both, legal and natural persons can be liable for environmental damage. There are three types of responsibility: (i) administrative, whereby the respective rules are enforced by the administrative body. The administrative body could conduct the necessary proceedings by itself and charge the cost from the responsible persons thereafter; (ii) civil liability, whereby the enforcement of the rules could be enforced by everyone; and (iii) criminal liability, whereby the respective rules are enforced by the law enforcement agencies. (2) An owner or lessee of land

is not liable to clean up contamination by former owners/lessees if the owner/lessee can prove that it was not the polluter and did not cause the situation to become worse. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company. We have no information or belief whether this basis for liability has been enforced in practice.

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# Finland



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are largely permitted to own or lease local land directly. A permission from the provincial government of Åland is required for real properties located in Åland (Act on the provincial self-administration (71/1991)). (2) Otherwise local corporations owned or controlled by aliens or having alien directors can freely own or lease local land. (3) Aforementioned permissions are rare, if the applicant has not lived or operated in Åland for many years.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright, aforementioned restrictions notwithstanding. They can have leases and occupancy rights for an unlimited period. The owner has a free right to renew. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a nationwide register of title to land. (2) The land register shows the extent of the land, information regarding ownership, mortgages and special rights, incl. leases, other usufruct, and rights of way. (3) These registers enjoy public credibility. (4) Problems over title are rare. (5) Extra due diligence,

e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees and reasonable registration fees, there is a four per cent transfer tax regarding all transfers of land or parcel of land as well as transfers of such lease or other usufruct that is subject to registration obligation. (2) Taxes on the gains on a transfer of such land are dependent on the purchase price/received compensation. Some specified transfers of real estate, e.g. transfers to public/governmental entities or in relation to nature conservation area, are subject to more favourable tax treatment.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) Titleholder who last applied registration of his title may mortgage the real estate (Code of Real Estate (540/1995, Chapter 16:3). (2) General mortgages (FI: *yleispanntaus*) can secure all present and future debt. (3) A mortgage can be in a foreign currency. (4) A mortgagee cannot sell immediately on a default by private sale without a court order and an application to the bailiff to liquidate the property (Enforcement Code (705/2007), Chapters 4-5). (5) If a titleholder enters into

bankruptcy, the right to dispose over its assets transfers to bankruptcy estate. The rents and other proceeds of the mortgage accruing during the bankruptcy benefit the mortgagee and are disbursed after settling the costs of enforcement (Bankruptcy Act, Chapter 17:6). (6) In an insolvency, the mortgage ranks prior to unsecured creditors, including taxes and employee receivables, the aforementioned enforcement costs not included. (7) There are no substantial costs or fees involved in land mortgages. (8) A lease and another fixed-term usufruct on someone else's land may be mortgaged if such right is registered, is transferrable to a third party without hearing the titleholder and if the area contains the usufructuary's building or facility or if it is agreed that one may be built. (Code of Real Estate, Chapter 19:1). The above comments in (1) to (7) generally apply to the mortgage of lease or usufruct. (9) These principles do not generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does somewhat restrict and control the terms of a lease of commercial premises to protect the tenant, e.g. (1) There are no controls on rents, but unreasonable terms may be found void or be adjusted (Act on Lease of Commercial Premises (482/1995), Section 5, Tenancy Act (258/1966), Section 4). (2) A lease agreement can validly exclude any obligations of the landlord to repair, insure, or compensate the tenant for improvements on expiry of the lease. If the leased land has been transferred and the leasehold is no longer binding, the new owner must compensate the tenant for improvements (Tenancy Act), Section 15). (3) When a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right for a new lease. (4) The lease can validly exclude the right of the tenant to assign or sub-lease. In certain cases a court may grant tenant a right to cancel the lease agreement (Tenancy Act Section 20c). (5) The tenant is not released from its obligations under a

lease when it assigns the lease (Act on Lease of Commercial Premises, Section 17).

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can, with immediate effect, terminate a business lease if the tenant does not pay

the rent, or if the tenant materially breaches other lease terms. Such cancellation requires that the default of the tenant is considered to be of more than minor relevance to the landlord (Act on Lease of Commercial Premises, Section 48) (2) If the tenant becomes bankrupt, the landlord cannot terminate the lease of such premise in case the tenant/the bankruptcy estate pays the rents.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) Redemptions of real property for public needs are subject to legal requirements and require the payment of full compensation (2) There are some special zones where real estate taxes are relaxed e.g. conservation areas. (3) In the ordinary course of business, there are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. Construction of a building requires a permit (Land Use and Building Act, Section 125). For urban built-up land, a local detailed zoning plan usually applies, imposing stricter restrictions than for sparsely inhabited (e.g. agricultural) land, which is

often regulated by a local master or a regional zoning plan. Deviations from the applicable zoning plan are subject to a municipal decision.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with relatively tight liabilities for clean-up and penalties. (2) An owner or lessee of land may be held liable to clean up contamination by former owners/lessees (Environmental Protection Act (527/2014)). (3) Directors of the company owning or leasing the land cannot be directly liable to a third-party for contamination caused by the company. Liability towards the company is possible if directors have acted negligently causing damage to company.

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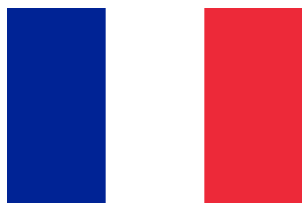


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# France



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Subject to the restriction in Q2 below applying to nationals, alien individuals and alien corporations are permitted to own or lease local land directly.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright save for state (or other public body) owned lands which are used to service a general public interest (typically schools, public hospitals, airports, train stations, police stations, etc.).

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights.

## 4. COST OF LAND TRANSFERS

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Sales of land will commonly give rise to transfer tax and notary fees of approximately 7% of the land's purchase price.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Security over real estate assets in France is taken by way of a real property mortgage (*hypothèque*) or by way of a legal charge (*privilège de prêteur de deniers*). In all instances security over real estate assets must be taken by way of a notarial deed drafted in French. Notarial and registration fees (up to 1.5% of the secured amount) apply. The mortgaged property must be specified in detail. The mortgage must be registered in the local land registry located in the same area as the relevant property for validity against creditors and third parties. Priority ranks from day of the registration. The mortgage can secure one or several debts, present or future to the extent determinable and intended to be secured. In addition, the rechargeable mortgage permits the same security to secure several present or future debts, either successively or simultaneously. A maturity date and maximum amount must be stated (generally in euros) otherwise the notarial deed is null and void. However, in relation to a legal charge, this charge is limited to the amount of the loan made to the borrower. Therefore, any further obligations (e.g. obligation of the guarantor) will need to be secured by a new second ranking security. There are a number of formal pre-requisite steps required for the enforcement of a mortgage (including under French law and like other security documents the fact that the secured

obligations must be due and payable and a summons to pay has to be delivered to the relevant security provider). The foreclosure procedure may take up to twelve to thirty-six months (subject to any bankruptcy proceedings affecting the mortgagor). In insolvency proceedings, the beneficiary of a mortgage will be paid after satisfaction of the preferential claims being mainly employees wages, legal expenses incurred in respect of insolvency proceedings and loans and claims arising from the continuation of contracts where the other contracting party has agreed to a deferred payment.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** The landlord's right to terminate a lease of commercial premises is subject to a tenant's right of relief of at least one month where it rectifies the breach. If the tenant becomes insolvent, any action to forfeit the lease would be suspended until the court appointed administrator officially elects to continue the lease or not.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Real estate transactions do not require governmental clearance save in respect of assets that are considered "facilities of vital importance" as the unavailability of those assets could significantly adversely affect defence or economic potential, security or national survival capacity (for instance certain Seveso classified facilities, oil and gas tanks, etc.).

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are highly regulated, including for both business and residential developments, by a complex set of planning and enforcement tools for land use for instance: local planning documents, heritage laws or spatial plans such as regional spatial and sustainable plans and ecological consistency plans. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Environmental rules are strict, with material clean-up liabilities and penalties. An owner or lessee of land may be liable to clean up contamination by former owners/lessees. Shareholders of a company owning or leasing the land can be liable for contamination caused by the company, in specific situations such as the company becoming insolvent or a shareholder acting as a *de facto* manager.

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# Gabon



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** For State lands on which no title exists, Gabonese nationals may develop and get a title on land for free when they develop the land. Once the title exists, there is no restriction on acquisition or ownership by aliens.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** Usually safe, but may take time.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Registration duties on land are between 6% to 8% of the value, in addition to the land title registry fees and notary fees.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Controls on terms of leases of land – The law relating to business leases of commercial premises is protective of lessees after 2 years of occupation by granting them an automatic right for renewal and the law restrict or control the terms of leases of such land.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** Commercial leases are regulated by Ohada Uniform Act on General commercial law which provides for a right of renewal of commercial lessee, save in certain conditions.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** A construction permit is usually required in urban areas.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment**

**General comment** The state is reforming land tide regulations as well as town planning.

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# Gambia



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** As to owned lands, see Q2. There is no restriction in the acquisition of leasehold lands by aliens in the main. Aliens cannot acquire the same length of a lease as a Gambian. Gambians can acquire a 99 year lease whilst aliens who purchase land that is not leased and wish to acquire a lease can only acquire a 21 year lease. Aliens cannot acquire land that is within a certain stated distance from the high water mark and which is over a particular size.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright only where such titles are available. They can usually only have leases and occupancy rights for a limited period of 99 years unless estates in fee simple are available. The owner has a free right to renew the lease on expiration. These occupancy rights cannot be sold or mortgaged without official approval. Government permissions are usually given if land rent has been paid and the capital gains tax has been paid though the process of obtaining the permission is long and cumbersome for everyone.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land for the lease lands. (2) There is no land register for ownership but the register of leases does show the

extent of the land, ownership, mortgages but not certain other important rights, such as rights of way and pre-emption rights. (3) Problems over title are common especially for non-leased land but less so for leased land since it is much easier to conduct searches of these.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are sometimes substantial transfer taxes on transfers of land used for business purposes or leases of such land but not for the grant of leases of such land. (2) The taxes on the transfer of such land or leases can be substantial. This is because capital gains tax is payable irrespective of whether there is a gain from a transaction. It is charged for companies at the rate of 10% of the selling price or 25% of the gain whichever is the greater.

## 5. Mortgages

### **Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can usually mortgage specified land. (2) The mortgage can secure all present and future debt generically but must specify a maximum amount so that the requisite stamp duty can be charged on the mortgage. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale

without a court order. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, the priority of payments is determined by legislation, taxes have priority. (6) On insolvency the mortgage ranks prior to all unsecured creditors but not including taxes, employee benefits and insolvency costs: the mortgage ranks after these creditors. (7) There are substantial costs or fees involved in land mortgages. Stamp duty on mortgages is 1.5%. Debentures are charged at a higher rate. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does restrict and control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are controls on rents, but (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided but a court could give relief from forfeiture in an appropriate case. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly. (2) There are subsidies and special zones where taxes are relaxed. (3) There are usually no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for land transactions is not in the main quick and efficient because there can be a lot of Government regulation. Applications are processed slowly and slow down business. The obtaining of approvals require considerable reform. Taxes on land from land can be onerous because capital gains tax does not apply only to gains.



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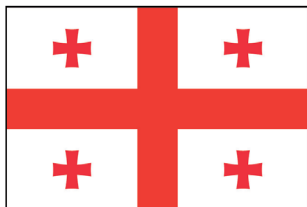
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# Georgia



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** There are no restrictions for foreigners owning non-agricultural land and any buildings. Similarly currently there is no restriction for ownership of agricultural land, although a number of foreigners are reporting issues with title transfers and refusal of the land registry registering the title conveyance. Until 31 December 2014 a moratorium on ownership of agricultural land by foreigners (rather than moratorium on transfers) introduced in 2012 was in force and while it was declared unconstitutional after its introduction there was still an issue with registrations, which continues to this date despite the lapse of the moratorium (albeit to a lesser extent).

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** Subject to the discussion above.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** Proof of title is available electronically through a centralised data base.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business

purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Land transfer fees are rather minimal, especially when an expedited procedure is not requested – a normal title transfer registration takes 4 business days although it can be expedited by payment of an official fee; again, even increased fees are rather minimal.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** Although some amendments have been introduced regulating interest fee caps and further amendments mandating only judicial foreclosures are being discussed (including judicial ordered evictions), generally the mortgage regulations are creditor friendly.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Generally the law regulating commercial leases are rather lax, with a lot left for the determination of the parties.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** N/A

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** Subject to comment to question 1 above.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Change of land designation from agricultural to non-agricultural requires what is comparatively speaking a lengthy process.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** While the rules are generally strict their enforcement is mostly relaxed, if at all although recently some legal actions on this front can be seen coupled with high popular interest in a certain aspect of this matter.

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# Germany



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens.

**Comment** Alien individuals and alien corporations are generally permitted to own or lease local land directly. For each asset deal transaction, a statutory pre-emption right is, however, triggered. Additional restrictions could apply based on the single case.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights.

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe.

**Comment** There is a register of title in which all ownership rights and rights *in rem* have to be registered. Based on the applicable *bona fide* principle, all entries in the German land register are presumed to be correct. The land register shows the extent of the land, ownership, mortgages and other encumbrances *in rem*, such as rights of way and pre-emption rights. Problems over title are rare. Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains.

**Comment** Apart from normal legal fees depending on the scope of the work, there are transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes. The real estate transfer taxes vary from Federal State to Federal State.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor.

**Comment** The owner of land can mortgage specified land. Whether or not the relevant collateral can secure all present and future debt generically or must specify the debt precisely depends on whether a land charge (non-accessory or abstract collateral) or a mortgage (accessory, i.e. depending on the claim secured) is registered. Certain additional restrictions apply (e.g. a statutory release claim in case the collateral exceeds the secured claim in an undue manner). Land charges regularly bear interest and ancillary amounts. The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. Generally, there are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are/are not payable to the mortgagee/insolvency estate. On insolvency the mortgage ranks prior to all unsecured creditors (excluding taxes).

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default).

**Comment** Long-term lease agreements are subject to a written form requirement under German law. In case of non-compliance, a lease could be terminated upon observing the statutory notice periods for indefinite leases. Restrictions apply for leases based on general terms and conditions. Indexation is limited (no upwards only and only permissible for leases with a fixed term exceeding 10 years). Although more strict for residential leases, the law does also restrict or control the terms of a lease of commercial premises to protect the tenant to a certain extent.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides.**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other material terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, however, the landlord cannot terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land.**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly. Subsidies apply in single cases. Foreign investment control rules can apply.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions.**

**Comment**

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed.**

**Comment** The environmental rules are strict, with rather tight liabilities for clean-up and penalties. An owner or lessee of land can be held liable to clean up contamination by former owners/lessees (deep pocket approach).

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# Ghana



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Foreign individuals and corporations are permitted to own or lease local land directly. (2) Local corporations (whether or not they are owned or controlled by foreigners or having foreign directors) and foreign individuals cannot own or lease local land for a period exceeding 50 years at a time. (3) Government permissions/consents are required for lands owned by the Government or Stools.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All individual nationals can own land outright (with the exception of Stool lands). Locally incorporated companies are limited to 50 year term leases at a time. A lease is renewable subject to agreement between the lessee and lessor. Interest in these lands can be sold or mortgaged subject to necessary approvals and consents. Government permissions are required where the land is Government land or Stool land.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in every region of the country. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and other important rights, such as rights of way. (3) The register is expected to be conclusive evidence of ownership of title to land,

however there have been a few instances of double registrations etc. (4) Problems over title are common. (5) Extra due diligence, e.g. into rights of occupation, is typically not straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, or registration fees on transfers of land there are taxes (stamp duty) payable on most transfers. (2) The taxes on the gains on a transfer of such land are significant.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The holder of an interest in land can mortgage his interest in the land. (2) The mortgage cannot secure all present and future debt generically but must specify the debt precisely. (3) The value of land to be mortgaged can be in a foreign currency. (4) The mortgagee can sell on a default by private sale, without a court order or public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency, the mortgage ranks prior to all unsecured creditors including employee benefits however taxes, and insolvency costs rank prior to unsecured creditors. (7) There are substantial costs or fees (stamp duty of a percentage of the secured amount) involved in land

mortgages in respect of credit facilities. (8) It is possible for a lessee to mortgage his interest in the lease if permitted by the terms of the lease, and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law restricts the terms of a lease of commercial premises for foreigners or corporations and generally protects the lessee. Note (1) there are no controls on rent/consideration payable under a lease, (2) the lease cannot validly exclude any obligations of the landlord to insure, or make the premises safe, however the lease can validly exclude obligation of the landlord to compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the lessee. The lessee may have a right to renew subject to renewal provisions in the lease agreement or the approval of the Landlord, (4) the lease can validly exclude the ability of the lessee to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the lessee if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the lessee does not pay the rent/consideration or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the lessee becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to promptly pay fair and adequate compensation for a compulsory acquisition of land. (2) Taxes are relaxed for industries in free zones and specific locations outside the capital city. (3) There are free transfers or repatriations of profits and capital from land subject to Bank of Ghana restrictions. (4) There are withholding taxes on interest payments.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees if it does not take steps to ensure the former owner clean up prior to their exit. (3) Directors of the company owning or leasing the land may be liable for contamination caused by the company.

**General comment** The practice for land transactions is generally efficient, however registration of transfer of land is usually associated with a lot of delays. The process for registration require and is undergoing considerable reform under the World Bank funded Land Administration Project. Taxes on land and rents from land are not exceptionally onerous.



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# Gibraltar



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** This is subject to immigration laws and the eligibility of individuals to purchase Government subsidised housing which requires such individuals to have first rented (or owned property which they will sell simultaneously with such purchase) in the private sector for a minimum of 3 years.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Subject to the Comments made under Q1 and the fact that most land in Gibraltar is leasehold land (typically under 150 year lease) as opposed to freehold.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The Land Registry in Gibraltar provides registered evidence of ownership in respect of Gibraltar property, both freehold and leasehold. The Land Registry is accessible to all users.

Whilst it will be quick to deduce title, the title itself cannot be guaranteed so this cannot be classified as being 'safe.' All leasehold land originates from a demise by The Crown (acting upon instructions and directions from the Chief Minister of Gibraltar pursuant to s.75 (1) of the Gibraltar Constitution) so this can be construed as 'safe' title. However, grants of freehold land in Gibraltar are not conveyed under

'such instructions or directions' so such grants cannot be treated as 'safe.'

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Aside from stamp duty, registration charges and legal fees, S.69 of the Landlord and Tenant Act 1985 (which deals with assignments of business tenancies) provides that (a) the tenant may not assign his interest under the tenancy without the prior written consent of the landlord (b) the consent of the landlord to the assignment shall not be unreasonably withheld and (c) the landlord may as a condition of consenting to an assignment charge a premium not exceeding the equivalent of 2 years' rent at the annual rental payable immediately before the date of the assignment.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Suitable mortgagee protection provisions would form part of the mortgage instrument generally. The mortgage would rank as a legal charge and have priority over unsecured creditors in an insolvency provided, if the mortgagor is a company, that particulars of the mortgage have been filed at the Register of Companies within the prescribed time.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Part IV of the Landlord and Tenant Act 1985 offers the tenant (under various definitions) substantial statutory protection and therefore it would be incorrect to say that the law relating to business leases of commercial premises is very protective of landlords.

In the event that a tenant makes an application to the Supreme Court of Gibraltar for the renewal of an existing business tenancy, the Court will take into consideration the existing terms of the tenancy when determining the terms of a new tenancy. The Court will only deny a tenant a new tenancy in circumstances where the landlord requires the premises for his own use or for the purposes of developing the same (but subject to certain safeguards afforded to the tenant in respect to relocation considerations).

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** Irrespective of the terms of the lease, in the event that a landlord wishes to terminate a lease of commercial premises on default by the tenant it has to (a) issue a forfeiture notice pursuant to section 14 of Conveyancing and Law of Property Act 1881 and (b) in the likely event that peaceful re-entry cannot be obtained (which may lead to a breach of the Crimes Act 2011) a court order for re-entry will need to be granted by the Supreme Court of Gibraltar. This is a worst case example.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** Subject to the necessary due diligence and KYC procedures which are enforceable by the EU

Third Money Laundering Directives and Proceeds of Crime Act 2015.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Any development of land which includes building on land or the change of use of land also requires planning permission and building control approval pursuant to, inter alia, the Town Planning Act 1999, Town planning (General Procedures) Regulations 2001 and Building Rules 2007.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The rules governing the environment and liability for clean-ups are enforceable by the Environmental Agency pursuant to, inter alia, the Environment Act 2005 and the Public Health Act 1950. The Development and Planning Commission which determines all planning and building applications have the jurisdiction to implement any necessary environmental related restrictions or conditions when granting any planning permits and/or building approval.

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# Greece



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly, apart from areas characterised by the law as "borderland", for which special State's permission is required (EU-citizens/companies seated in the EU and EFTA-citizens/companies seated in the EFTA are excluded from such exemption). (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land subject to the above restriction.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. They can have leases and occupancy rights for an unlimited period of years. These occupancy rights can be transferred or subject to security without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in the country. (2) The land register shows the extent of the land, ownership, the predecessors of the owner, mortgages, seizures, third party claims, longer-term leases, and certain other important rights, such as rights of way. (3) Greece is currently in an on-going transition from the Land Registry System (supporting

searches with the person as the "key") to a Cadastre System (with the property as the "key"). Contrary to the not very reliable Land Registry System, the Cadastre System provides absolute safety and creates a presumption of accuracy. (4) Problems over title are common. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are substantial taxes and fees on transfers of land used for business purposes. (2) The taxes on the gains on a transfer of such land or leases are substantial.

Transfer against consideration:

- Real estate transfer tax (RETT): 3% by the purchaser on the highest amount between the tax value of the land and the contract sale price. An additional 3% municipal tax is calculated on the amount of RETT.
- Income tax on gain: Payable by the seller. If an individual not acting in the context of a business, the rate is 15% (temporarily suspended until 31-12-2017). If an individual acting in the context of a business or an entity, the gain is considered as business income, taxed at the standard income tax rates.
- Notarial fees: on an ad valorem basis.

- Land registration costs: on an ad valorem basis (between 0.775% and 0.875%), depending on the location of the real estate.

#### Rental:

- Stamp duty: 3.6% on the rent.
- Income tax on rental income: If the landlord is an individual 15% for the first €12,000, 35% for the next €23,000 and 45% thereafter. If an entity, taxed at the standard corporate income tax rates.
- Notarial and land registration costs: in case a long term lease is registered with the land registry.
- Specific provisions may apply in respect of the lease of an estate from a leasing company.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can in principle mortgage specified land. (2) The mortgage can secure present and future debt, as well, but the debt must be precisely identified. (3) The mortgage can secure a debt expressed in foreign currency, since no foreign currency restrictions exist. (4) The mortgagee can only sell after a court order in a public auction. No court order required for bank debt. (5) In case of owner's bankruptcy, the mortgagee cannot impose enforcement measures on property related to the owner's business for a period of 10 months (maximum). (6) On bankruptcy claims of mortgagee rank prior to any other creditor in at least 65% of the liquidation proceeds. The balance is allocated to unsecured and/or generally privileged claims (taxes, employees etc.), if any. (7) There are substantial costs or fees involved in land mortgages, unless for debts from bond loans. (8) It is not possible for a tenant to mortgage the lease. (9) If the mortgaged property is covered by insurance, the mortgage extends to the insurance compensation.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control**

**the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant but the tenant has a right to a new lease, (4) only following a mutual agreement with the landlord, the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent, becomes bankrupt or breaches other terms of a lease of land used for commercial purposes if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land within 18 months from the interim determination of the compensation by the courts and in cash. (2) Currently, there are no subsidies and special zones where taxes are relaxed. (3) Due to capital controls there are restrictions on repatriations of profits and capital from land. (4) There is a 15% withholding tax on the interest on foreign loans, when the borrower resides in Greece or maintains in Greece a permanent establishment (subject to any DTC). No Greek withholding tax applies when the lender is a Greek or foreign bank. (5) The Greek State provides a five-year (renewable) residency permit to aliens, citizens of third countries (*i.e.* non-EU citizens) (and their family members), who acquire directly or through an entity, immovable property in Greece, or lease holiday accommodation in holiday complexes for at least 10

years or conclude a timesharing contract (minimum value of the property or of the lease contracts €250,000).

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Developments and change of use of land are relatively tightly regulated, including both business and residential developments. (2) There are different rules for urban and agricultural land. (3) More relaxed requirements are provided by the Law 3894/2010 on strategic investments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities with a view to preventing and remedying environmental damages. (2) An owner or lessee of land may be indirectly liable to clean up contamination by former owners/lessees. (3) Directors of the company owning or leasing the land can be liable for contamination caused by the company. (4) Law 3894/2010 provides for more relaxed requirements with respect to strategic investments.

**General comment** There are also notable taxes on the holding of land:

- "ENFIA" applies on the holding of real estate situated in Greece. Municipal duties and levies may additionally apply.
- Special Real Estate Tax (SRET): 15% on the tax value of the real estate in case the owner is an entity, subject to exemptions e.g. for listed entities, disclosure of ultimate beneficial owner etc.

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# Grenada



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own land subject to the grant of an Alien's Licence. An unlicensed alien can hold land on an annual tenancy for the purpose of residence, trade, business. Alien's Licences are commonly given to individuals or corporations to own land whether for major projects or otherwise and likewise the same is given for leases.

## 2. Absolute ownership

### **All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright and are not limited to leases and occupancy rights. The exception is property owned by the Government under the Crown Lands Act which is transferred by way of long term leases ranging from 33 to 99 years. These leases may include an option to renew.

Any assignment of a lease of Crown lands or any mortgage of leased Crown lands requires the licence and consent of the Government of Grenada.

## 3. Proof of title

### **Proof of title to land is quick and safe?**

#### **Comment**

(1) Grenada's conveyancing system is a common law system known as unregistered conveyancing. All instruments affecting land are to be registered at the Deeds and Land Registry.

(2) Proof of title is obtained through searches conducted at the Deeds and Land Registry for at least 60 years preceding the last disposition.

(3) The Deeds and Land Registry contains, inter alia, deeds which do not always evidence accurately the extent, identity and area of the land. Records of ownership, mortgages, leases, licences, easements, rights of the Crown, and other important rights associated with landownership are available at the Registry.

(4) The State does not guarantee the accuracy of the register.

(5) Problems over title to property do arise from time to time.

(6) Extra due diligence, may be required, which includes, physical inspection of the property; reestablishment of the boundaries; a resurvey being conducted or a new plan being drawn, in addition to other enquiries about rights of occupation by the party in possession.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from legal fees, there are property transfer taxes, stamp duties, notarisation fees (if applicable) and nominal fees for registration of deeds on transfers of land used for business purposes or leases of such land.

(2) Property transfer taxes are substantial for Aliens and are payable both on the purchase and sale of land

by an Alien. Property transfer taxes are also payable on leases for a term of ten years and above.

(3) There is no capital gains tax.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

### Comment

(1) It is permissible to mortgage both freehold and leasehold land which must be stamped to cover a specified maximum amount.

(2) The mortgage can be stated in a foreign currency.

(3) Under the terms of the mortgage and the relevant power of sale provisions in the Conveyancing and Law of Property Act, the mortgagee can sell the land with or without demand upon a default, by private sale or public auction. It is the general practice that a mortgagor is served with notice prior to the mortgagee exercising its rights under the power of sale.

(4) On insolvency the mortgage ranks prior to all unsecured creditors. The collection and application of assets to discharge the liabilities by the liquidator are subject to the control of the court. Payment of costs, charges and expenses incurred in the winding up are paid in priority to all other claims.

(5) Apart from legal fees, there is stamp duty, notarisation fees (if applicable), and nominal fees for registration of mortgages at the Deeds and Land Registry, and if applicable, for registration of same at the Corporate Affairs and Intellectual Property Office.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Under the Rent Restriction Act there are restrictions on increase in rent and recovery of possession. However, the Rent Assessment Board established to exercise the powers and perform the duties imposed by the Act has never been constituted, thereby rendering the Act ineffective.

In practice, the obligations and rights of the landlord and the tenant are governed by common law and the provisions of the lease as agreed by the parties. Such obligations of either landlord or tenant may include, but are not limited to, the right to repair, insure, right to sub-let or assign, option to renew, and re-entry of possession by the landlord upon default in payment of rent by the tenant.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Generally, a landlord may be entitled to immediately terminate a business lease in accordance with its terms, eg., if the tenant fails to pay the rent within a specified time period or breaches certain covenants stipulated in the lease. The taking of possession of the premises by the Landlord after such termination may be prolonged if the tenant chooses to seek recourse in a court of law.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) Under the Land Acquisition Act and the Constitution, the Government is obligated to promptly pay compensation upon any compulsory acquisition of land. Compensation is assessed and awarded by a special board.

(2) Lands are classified in certain categories according to use which may result in benefits such as an exemption from tax to reduced or lower rates of tax.

(3) Concessions or incentives for investment may be granted to a foreign direct investor upon application. These concessions and incentives may range from a specially reduced rate of property transfer tax to repatriation of profits free of withholding taxes.

(4) There are no exchange control restrictions.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land including both business and residential developments are regulated under the Physical Planning and Development and Control Act. Written permission must be obtained from the Planning and Development Authority to commence or carry out development of any land in Grenada. Additionally, the Authority has the power to require an Environmental Impact Assessment to be carried out in respect of applications for permission to develop the land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Environmental rules in relation to land are governed generally by the Waste Management Act, which stipulates strict penalties for the illegal and unauthorised discarding of waste in contravention of the Act, and prescribes penalties of both monetary fines and imprisonment.

The current legislation does not include provisions on clean-up liability by owners or former owners.

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# Guatemala



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** In general, foreigners can own land in Guatemala. However, there are Constitutional restrictions on foreign ownership (individuals and corporations which owners are foreigners) along a strip 15 kms. (approximately 10 miles) wide along the country's borders. Certain exceptions apply.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** (1) There is a register of title to land in most of the country, especially urban areas. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state does not guarantee the accuracy of the register although it is generally reliable. However, title theft is known to occur and judicial remedy is required. (4) Problems over title are common in rural areas. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward in rural areas. (6) A national cadastral register is slowly being implemented.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases can be material to land transfers.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically, and can secure future debt as long as the amount can be determined. (3) The mortgage can be in a foreign currency and can also be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, as it requires judicial proceedings that include a court order to assign the property to the creditor upon finalisation of a public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, as this type of security is excluded from the insolvency estate. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are no

substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease, but only if the agreement allows for any such assignment.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. However, eviction can be cumbersome and require judicial proceedings which can carry on for quite some time. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided in the lease agreement.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land

promptly and in cash. (2) There are no subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material (10%) withholding taxes on the interest on foreign loans and the exceptions to the rule require a favourable opinion from the tax authority, which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Save for the urban land within the Guatemala City municipality, which is highly regulated in relation to all other municipalities, developments and change of use of land are not tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land and rules also vary from municipality to municipality.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land can be liable to clean up contamination by lessees. (3) Shareholders of the company owning or leasing the land cannot be liable for contamination caused by the company, but a company's directors can be liable if they are found to have been negligent or to have wilfully participated.

**General comment** Generally, land use regulation is relaxed and open although legislation being considered could change how this is regulated. Title theft had become a real problem and the Property Registry and authorities had not taken effective measures until it became a public outcry. Although not completely eradicated it has become less prevalent.

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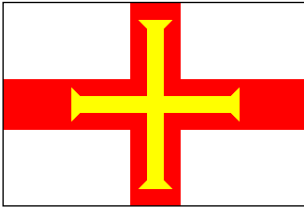


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# Guernsey



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is no register of title to freehold land in Guernsey, merely a repository of contracts passed before the Royal Court of Guernsey. There is no state guarantee of title and title must be checked by the individual conveyancing firm on each purchase which can be time-consuming depending on the individual property.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** In addition to normal legal fees, the only other substantial cost incurred by a purchaser of land is document duty payable to the States of Guernsey in

accordance with a prescribed scale (2% up to £250,000; plus 3.25% for the next £150,000; plus 3.5% for the next £350,000; plus 3.75% on the next £250,000 and plus 4% for the remainder). Document duty is also payable at the rate of 0.5% on the amount a lender registers as a charge against land. Guernsey has no capital gains tax.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Lending against freehold land in Guernsey is secured by way of a legal charge (also known as a bond) which can be specific to an individual property or act as a charge against all property owned by the borrower at that time. It must specify the amount secured. It is not considered good security against after-acquired property.

The mortgagee cannot sell immediately on a default by private sale without a court order. The process for taking possession of property in such situations can take some 6 months. The mortgagee is entitled to retain the whole of the proceeds of sale of a property which has been 'repossessed'.

The fees involved in a mortgage of real property include document duty payable on the sum secured at 0.5% plus a registration fee of approximately £200.

A tenant cannot change a lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control**



**the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of business leases of commercial premises and a tenant has no automatic right to a new lease on the expiry of the lease term. A tenant is not statutorily released from his obligations under a lease when it assigns the lease. A landlord must however seek a Court order to evict a tenant for breach of the terms of a lease or for failure to vacate at the end of a term.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a lease in the event of default by a tenant subject to the terms of the lease agreement but will require a Court order to effect eviction of the tenant from the premises.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** A tenant is obliged to withhold tax from rent paid to the non-resident landlords unless prior arrangements have been made with the Guernsey Director of Income Tax.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and changes of use are tightly regulated including both commercial and residential developments, in accordance with local Planning laws.

Additional controls apply in the case of older buildings of special interest.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict with owners of land potentially being liable to clean up contamination by former owners/tenants. There are strict statutory requirements relating to water pollution as well as ground and soil contamination.

**General comment** Guernsey has strict controls on rights to occupy most residential property and development of land which can restrict foreign investment. Conveyancing of freehold property takes place at a special sitting of the Royal Court of Guernsey each Tuesday and Thursday morning. Taxes on land and rental income are, however, not exceptionally onerous.

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# Honduras



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are not permitted to own or lease local land in certain restricted areas of the territory (shores, islands and international borders) with some exceptions. (2) Local corporations owned or controlled by aliens or having alien directors cannot own or lease local land in the restricted areas, with some exceptions.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright in land fit to be of "private property". Leases or mere occupancy rights would be applicable if the land is either of national or municipal nature, and would require government approval for its occupancy or use.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) Evidence of ownership over land in Honduras requires that the title be registered in the Property Registry of the jurisdiction of the land. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register, however the register is not very reliable. (4) Problems over title are common. (5) Careful due diligence of land rights and ownership is essential prior to the purchase of any land in Honduras.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Legal fees for the transfer of land can be substantial in Honduras as all transfer of land requires to be executed in a public deed authorised by Public Notaries. There are substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for any purpose or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically or specifically and can secure future debt. A maximum amount in relation to the value of the land should be specified. (3) The mortgage can be in a foreign currency but, indexed to the rate of FX of a certain date. (4) The mortgagee cannot sell immediately on a default by private sale without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings as there are preferred debts to be paid before those credits secured by mortgages, e.g. labour contingencies and taxes. (6) On insolvency the mortgage ranks prior to all unsecured creditors except for taxes, employee benefits and insolvency costs. The mortgage ranks

after these creditors. (7) There are substantial costs or fees involved in land mortgages (same as land transfer). (8) It would be possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily expel the tenant from the leased property as a court order is required for eviction; this court order is subject to court times, (4) the law does **not** permit assignment or sub-letting without approval of the landlord, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord cannot immediately terminate a business lease if the tenant does not pay the rent: the law requires that late payments are of at least 2 months and 8 days rent; breaches other terms of a lease of land used for commercial purposes if so provided can be a cause of termination of the lease, however a court eviction notice is required prior to expelling the tenant. (2) If the tenant becomes bankrupt, the landlord cannot unilaterally terminate the lease of such land if so provided, court intervention is always required for the eviction of a tenant if the tenant does not leave the premises voluntarily.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) There are special zones where taxes are relaxed. (2) There are no exchange controls or restrictions on repatriations of profits and capital from land. (3) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated, including both business and residential developments. Construction and environmental permits are required for all construction or developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are standard, with liabilities for clean-up and penalties. (2) An owner of land is liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for land transactions is not generally quick and efficient because they require a very conscientious due diligence of the title in the property registries; expense in the costs of land transfer can be significant. The public property registry requires considerable reform on its regulations and greater transparency in its operation.

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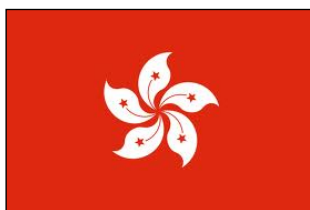
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# Hong Kong



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) All land in Hong Kong belongs to the government (with the Anglican Cathedral being the only freehold property in Hong Kong). Land owners are only granted Government Leases in the land by the Hong Kong Government. (2) Alien individuals and alien corporations are permitted to lease local land directly. (3) Local corporations owned or controlled by aliens or having alien directors can lease local land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) cannot own land outright since all land in Hong Kong belongs to the government (with the only exception being the Anglican Cathedral). They can only have leases and occupancy rights for a limited period.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in Hong Kong. (2) Hong Kong has a deed registration system and all instruments creating or disposing of interests in land must be registered with the Land Registry. (3) Registration affects the priority of the instruments only and does not provide proof of ownership in land. (4) Extra due diligence must be conducted to show continuous right to possession for

at least 15 years by checking the original title deeds in order to prove title.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are stamp duty and broker fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) There is no capital gains tax in Hong Kong. (3) Estate duty was abolished in Hong Kong.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically. (3) The mortgage can be in a foreign currency but, if not, can be indexed to a foreign currency. (4) The mortgagee can sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency, secured creditors are entitled to enforce their security insofar as the asset is covered by a fixed charge. However, assets covered by a floating charge will rank behind preferential creditors such as employees, statutory tax debts, etc. (7) There are no

substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (7) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided/the landlord's termination rights on a default are restricted. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are no subsidies and

special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There is no withholding tax in Hong Kong.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) A lessee of land is liable to clean up contamination by former lessees. (3) Shareholders and directors of the company owning or leasing the land cannot/can be liable for contamination caused by the company.

**General comment** Land ownership in Hong Kong is generally friendly to foreign investments with minimal restrictions.

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# Iceland



## 1. Alien ownership

### **Q. There are no considerable restrictions on the ownership or leasing of land by aliens?**

**Comment** Act no. 19/1966 on the Right of Ownership and Use of Real Property includes considerable restrictions on the ownership and leasing of real property by aliens in Iceland. The principle of the act is that foreigners need permission from the Minister of the Interior to acquire ownership or use of real property if certain Icelandic presence is not in place. However, there are exemptions from the principle concerning certain lease agreements (maximum lease of 3 years or termination possible with less than one year notice) and when the foreigners in question enjoy rights in Iceland due to being from a country within the EEA or EFTA, Denmark or the Faroe Islands.

Relevant legislation and regulation in Icelandic and English as applicable:

<http://www.althingi.is/lagas/144b/1966019.html> /

<http://www.reglugerd.is/reglugerdir/allar/nr/702-2002>

English translation (not fully updated): /

<http://eng.innanrikisraduneyti.is/laws-and-regulations/english/property/nr/699> /

<http://eng.innanrikisraduneyti.is/laws-and-regulations/english/property/nr/698>

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Icelandic citizens and people domiciled in Iceland can own land outright. Locally incorporated

companies can also own land if certain Icelandic presence is in place. Depending on the legal form of the company a certain ratio of the managers and/or owners may have to be Icelandic Citizens or have been domiciled in Iceland for at least five continuous years for the company to be able to own land.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** Þjóðskrá Íslands (Registers Iceland) registers a range of information on real properties in Iceland, The Property Registry Database. The registry includes all fundamental information on real properties, including title and interests. The registration of title and interests for real properties is initially handled by local district commissioners according to Act no. 39/1978 on Registration.

Abovementioned registration makes proof of title to land relatively quick and safe. However, please note that accurate information on the size and boundaries of land in rural areas is rarely available. Few boundaries have been properly defined by setting coordinates. Therefore, the best information on property boundaries is often found in old descriptions made around the time Act no. 41/1919 on Property Boundaries was passed.

In short, when it comes to the urban areas both the registration of ownership and size of plots is rigorous. However, in the rural areas feuds on property boundaries can and do easily arise as the old boundary descriptions can easily be interpreted in different ways.

Relevant links:

<http://www.skra.is/english/property-register/>

<http://www.althingi.is/lagas/144b/1978039.html>

<http://www.althingi.is/lagas/144b/1919041.html>



#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Examples of material costs: 1) Registration fee, according to Act no. 88/1991 on The Treasury's Supplementary Income, 2) Stamp tax, according to Act no. 138/2013 on Stamp Tax, and 3) Income tax, according to Act no. 90/2003 on Income Tax.

Relevant links:

<http://www.althingi.is/lagas/nuna/1991088.html#g8m1> /

<http://www.althingi.is/lagas/nuna/2013138.html> /

<http://www.althingi.is/lagas/145b/2003090>.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** In Iceland there is a specialised act on mortgages, Act no. 75/1997 on Mortgages. According to the act, the ownership of real properties, particular rights over real properties and holdings in real properties can be mortgaged. For such mortgage to be legally protected it must be registered in accordance with Act no. 39/1978 on Registration. Legal protection is only possible if the amount of the mortgage claim is duly specified or a maximum amount of the claim is specified in the document establishing the mortgage.

The mortgage claim can be in ISK or foreign currency. Certain indexation is permitted. Please note that it is not allowed to link loans in ISK to exchange rates of foreign currency.

According to Act no. 90/1991 on Forced Sales, a mortgagee can request a forced sale of the mortgaged property if the mortgage was duly registered and the contract expressly states that the mortgagee can request a forced sale without foregoing adjudication, settlement or attachment if the claim is not paid.

According to Act no. 21/1991 on Bankruptcy Proceedings the bankrupt estate can take over the

bankrupt's rights and obligations according to a mutual contract. Therefore, the bankruptcy does not have to interfere with such contracts. On bankruptcy mortgage claims generally rank number two. However, if certain conditions are met mortgage claims rank number three. Please note that claims against the bankrupt estate are divided into six ranks. Claims rarely fall within the first rank.

According to Act no. 36/1994 on Rent the principle is that a tenant may not assign the lease or sublease without the landlord's consent. The act is non-obligatory when it comes to commercial premises. Therefore, it only applies if the contracting parties have not agreed on something else. As assignment is generally subject to the landlord's consent, mortgaging is as well.

Relevant links:

<http://www.althingi.is/lagas/144b/1997075.html>,

<http://www.althingi.is/lagas/145b/1994036.html>,

<http://www.althingi.is/lagas/nuna/1991090.html>,

<http://www.althingi.is/lagas/nuna/1991021.html>

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Act no. 36/1994 on Rent is non-obligatory when it comes to leasing of commercial premises. Therefore, the ground rules found in the act only apply if the contracting parties do not agree on other terms. The reason for this arrangement is that the contracting parties to business leases are generally considered more equal than the contracting parties to housing leases. Because of this tenants have certain leverage when entering negotiations. On the other hand this also means strong landlords can push their terms on weaker tenants. However landlords must always respect the general rules of contract law. Please note that in Act no. 7/1936 on Contracts there is a provision that allows the courts to annul unfair contracts.

Relevant links:

<http://www.althingi.is/lagas/nuna/1936007.html>

## 7. Termination of leases

### Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** See Q6 on the nature of Act no. 36/1994 on Rent when it comes to leasing of commercial premises.

According to general rules of Icelandic law of obligations a substantial non-performance by the debtor is needed for the creditor to be able to terminate the contract between them. Therefore, termination cannot be based on any non-performance, it must be substantial.

Contracting parties can agree on terms that enhance the creditor's authorisation to terminate so that substantial non-performance is not required. However, the Icelandic courts may annul such terms if they are considered unfair to the debtor. Also such terms will be interpreted in favour of the debtor if they are not clear enough.

Act no. 36/1994 Rent includes rules on termination. Whether a lease of commercial premises reflects those rules or not one can't say that the landlord can "freely" terminate on default by the tenant. There are some general rules that must be considered.

As for termination which is not based on a default by the tenant, it must be considered whether the lease in question is made either for a definite period of time or for an indefinite period. A lease made for a definite period may generally not be dissolved by termination during the agreed rental period. The notice period for termination of a lease that is for an indefinite period however varies from 1 month to one year, based on the nature of the leased premises. For commercial premises, the general notice is six months for the first 5 years of the rental period, 9 months for the next 5 years and then 1 year after 10 years of the rental period.

According to Act no. 80/2004 on Tenancy of Farms specialised rules apply to the right of use of agricultural land. The act does not apply to leases of other sorts of land or real properties unless the contracting parties agree on such terms. Provision 37 of the act applies to termination of tenancies on default. According to the provision certain non-performances require an appraisal by specialists if the

landlord wants to terminate based on them. The specialists in question are appointed by the Minister of Industries and Innovation. Also the landlord must generally regard certain formal requirements when terminating, i.e. six months' notice, written announcement and argumentation. The contracting parties can agree on other notice. A substantial non-performance is always required. Based on the parliamentary bill an appraisal by the municipal government is always required.

Relevant links:

<http://www.althingi.is/lagas/144b/2004080.html>

## 8. Foreign direct investment

### Q. The law is friendly to foreign direct investors in land?

**Comment** See Q1 on restrictions on the ownership and leasing of land by aliens. Foreign direct investment in land is possible in spite of those restrictions. Investors must keep in mind that there are currency restrictions in force in Iceland.

The government cannot subject a property owner to a compulsory purchase of his land unless conditions found in the Constitution of Iceland are met. The government has to pay compensation for compulsory purchase of land promptly and in cash according to Act no. 11/1973 on the Administration of Compulsory Purchase and the Constitution of Iceland.

In July 2015 the Icelandic Parliament passed Act no. 41/2015 on Incentives for New Investment in Iceland which will expire in July 2020. According to the act concessions can be granted to investors if certain detailed conditions are met. One of the conditions concerns necessity, the granting of concessions must be a prerequisite for the investment project to be realised. Concessions are only granted to local companies and Icelandic branches or agencies of companies situated within the EEA.

One of the main objectives of the act is to boost regional development and the economies of regions outside Reykjavik. Regional aid can be provided in different forms, including tax credit (includes real property tax) and sale/lease of land at a price below the market price, and it must not exceed certain limits, both in terms of amounts and time. Please note that

all state aid is subject to scrutiny as Iceland is a contracting party to the EEA Agreement.

When granting concessions, the Minister of Industries and Innovation can simultaneously exempt the company in question from the conditions on Icelandic presence if it is a limited company (see Q1 and Q2).

Relevant links:

<http://www.althingi.is/lagas/nuna/1973011.html>

<http://www.althingi.is/lagas/144b/1944033.html>

<http://www.althingi.is/lagas/144b/2015041.html>

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Development and change of use of land are tightly regulated, including both business and residential developments.

According to Act no. 160/2010 on Structures an official building permit is generally required to build on land. Some major projects, that do not require a building permit, require a special construction permit. Buildings and other structures also need to comply with official plans for the use of land set forth within the framework of Act no. 123/2010 on Land-Use Planning.

Changing the use of land is tightly regulated according to Act no. 123/2010. To change the use of land a property owner needs to send a special request to the municipal government.

Also Act no. 81/2004 on Farms includes specialised rules on how to change the use of agricultural land.

Relevant links:

<http://www.althingi.is/lagas/nuna/2010160.html>

<http://www.althingi.is/lagas/nuna/2010123.html>

<http://www.althingi.is/lagas/144b/2004081.html>

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** According to Act no. 55/2012 on Environmental Liability all natural and legal persons responsible for specific industries (operators) are subject to strict rules on environmental liability. Operators are obliged to carry out certain research, perform precautionary measures and improvements and they must cover these costs themselves. Also they must cover certain costs incurred by the authorities. The authorities can request operators to provide insurance. If operators neglect their duties, they can be punished with fines or imprisonment. The act does not limit the right to damages under general rules of tort law. Please note that the act implemented directive 2004/35/EC into Icelandic law.

Relevant links:

<http://www.althingi.is/lagas/nuna/2012055.html>

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# India



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** (1) Except in certain limited circumstances, alien individuals cannot lease or own immovable property. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease immovable property. (3) Except while operating in India via a branch or liaison office, alien corporations cannot directly lease or own immovable property.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright. There are however certain lands in respect of which there may be ownership restrictions eg: agricultural land.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** (1) There are area specific land registries across the country. Inspections of land records shows the extent of the land, ownership and long term leases (and in some cases other important rights e.g. mortgages) and matters such as right of way, customary usage / occupancy rights and pre-emption rights may be revealed by such inspection. (2) The state does not guarantee the accuracy of the land records maintained by it. (3) Problems over title are common. (4) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** (1) Apart from stamp duty and registration fees (which is based on the ad valorem value of land and varies from state to state) and normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on transfer of such land or leases are substantial (but can to an extent be mitigated by appropriate tax planning). (3) Assignment of leased land to a sub-lessee may in certain cases require prior consent of the original lessor and payment of transfer charges/ premium to the original lessor.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt. (3) The mortgage cannot be in a foreign currency but can be indexed to a foreign currency. (4) Only in certain limited circumstances (depending on the nature of the mortgagee e.g. in case of a bank), can the mortgagee immediately sell on default by private sale, if so provided, without a court order or public auction. (5) On insolvency the

mortgage ranks prior to all unsecured creditors but will be subject to statutory payments including taxes, employee benefits and insolvency costs and the mortgage will rank after these creditors. (6) Apart from payment of stamp duty, there are no substantial costs or fees involved in registering land mortgages. (7) It is possible for a lessee to mortgage the lease under law, if there are no prohibitions and also if permitted by the terms of the lease and the above comments in (1) to (7) generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) If the lease is not a protected tenancy (i.e. the tenant is able to derive the benefit of applicable rent control legislations), the law does not restrict or control the terms of a lease of commercial premises to protect the tenant (including any controls on rents). (2) The lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. (3) When a lease of business premises expires, the landlord can easily evict the tenant by following the due process of law. (4) The lease can validly exclude the ability of the tenant to assign or sub-lease, and if permitted a lessee is released from its obligations under a lease when it assigns the lease, subject to the conditions of assignment.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) Where land is held by an alien (or an alien controlled local corporation), the government has to pay compensation for a compulsory acquisition of such land as per applicable law. In this respect there is no distinction between entities controlled by residents and alien controlled local corporation. (2) There may be demarcated areas (including special economic zones) where development / industrial activity can avail fiscal benefits. (3) An alien controlled local corporation can hold immovable properties for the purposes of the conduct of its business in India (e.g. acquire industrial land for conducting manufacturing activities, acquire a residential unit for the purpose of housing an employee, acquire commercial office space for its own use). (4) Subject to certain conditions, FDI is permitted in built-up and under-construction commercial properties. (5) Subject to certain conditions, FDI is permitted in under-construction residential projects. (6) While there is some conditionality on FDI in Indian real estate projects, there is no restriction on repatriation of profits and capital from real estate. (7) Appropriate debt equity ratios can be utilised by an alien controlled local corporation while undertaking real estate construction-development activities in India, although there are certain restrictions on raising foreign currency borrowings for this purpose.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) Directors of the company owning or leasing the land can be liable for contamination caused by the company.

#### General comment

(1) There is no centralised registry for land transaction records in India. Land records are not fully computerised and physical searches of records is unavoidable. As such, there are no title insurance products in India.

(2) Land fragmentation is common, requiring a purchaser to negotiate with numerous sellers (e.g. multiple family members) for the same land parcel.

(3) Land laws differ greatly from State to State.

(4) There may not necessarily be a "single-window clearance" i.e. approvals from various governmental authorities can potentially be required for the same parcel of land (again, this is dependent on the State where the land is situated).

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# Indonesia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own local land to a limited extent. Alien corporations' land rights are limited for a certain period of time in the form of the following land titles: (i) right to cultivate (*bak guna usaha*), (ii) right to build (*bak guna bangunan*), and (iii) right to use (*bak pakai*), whereas alien individuals are only allowed to purchase certain rights to use land titles. Both alien individuals and alien corporations are generally permitted to enter into short- or long-term leases of land and/or buildings directly.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Only Indonesian nationals and entities can own land outright. Alien individuals and corporations are restricted to have absolute ownership over lands. They can only have occupancy rights for a limited period of years, subject to different types of right (See Q1). The owner has a right to renew such rights of the land. Despite the form of ownership, the land may not be sold or mortgaged without going through registration process with the local land office of the National Land Agency.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is no register of title to land in most parts of the country, both for certificated land

and state land. Additionally, there are uncertificated lands (e.g. land owned by traditional community), which are land that have not been registered yet with the government. (2) The land register shows the extent of the land, ownership and mortgages; leases and certain other important rights, such as rights of way and pre-emption rights, do not need to be registered and therefore would not show on the land register. (3) The land register does not guarantee the absolute accuracy of the factual register. (4) Problems over title are common. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of work, there are no substantial notarisation fees or registration fees on transfers of land used for business purposes. If, however, the land is located in an upmarket residence, depending on the applicable rate upon transfer, a 20% sales tax may be levied in addition to VAT and capital gain tax. Legal fees may become substantial to conduct due diligence if ownership of the land is unclear/not registered and/or overlaps with natural resources concession of other individuals or corporations. While there is no registration required for any leases or grant of leases of a plot of land, there may be notarisation fees if the parties required the leases to be notarised. A 10% withholding tax on rental income may also be levied on the gross receipts from the rental fees.



## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) Mortgage over land is considered perfect when it has been recorded by the government on the land register. (2) Mortgage can secure all present and future debt generically. (3) Mortgage may be valued in any foreign currency to the extent that the secured obligations are in foreign currency. (4) Mortgagee cannot sell immediately on a default by private sale without a court order or public auction. (5) There is no freeze or other interference to a mortgage if the owner enters bankruptcy proceedings, e.g. the land proceeds are not payable to the insolvency estate. (6) On insolvency, after taxes, employee benefits and insolvency costs the mortgage ranks prior to all unsecured creditors. (7) There may be substantial costs or fees involved in land mortgages depending on the litigation process to obtain the court order. (8) It is not possible for a tenant to mortgage the lease (however, an assignment of lease contract may be arranged to the extent permissible under the lease agreement). (9) Unless there is specific encumbrances agreed on the associated assets such as insurances, shares of the owner (if it is a corporation) and bank account for rents, these principles would not generally apply to them.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released

from its obligations under a lease when it assigns the lease (subject to the terms and conditions of the lease).

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land in cash subject to certain procedures set out in the regulations. (2) There are no exchange controls or restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. Different rules apply for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is only liable to clean up contamination caused by activities carried out by such owner or lessee. (3) Shareholders and directors of the

company owning or leasing the land can be liable for contamination caused by the company.

**General comment** All land in Indonesia is either certificated or uncertificated. Certificated land has been mapped and recorded with the local office of the National Land Agency (*Badan Pertanahan Nasional*), a government body that manages the issuance of land titles as well as managing the land registration system, whereas uncertificated land is subject to unwritten customary land law (*hukum tanah adat*) applicable in the particular location.

Customary land titles are being phased out especially in urban areas, but are still the predominant basis of land rights in rural areas throughout Indonesia. By contrast, all modern commercial and residential properties in major cities such as Jakarta are built on certificated land.

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# Iran



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Foreign entities are not generally authorised to purchase land or property. Foreign individuals also face extreme restrictions as to owning land or property as they need to obtain specific authorisations from the Council of Ministers. Such authorisation has rarely been issued. (2) Lease of property or land by foreigners are generally permitted. However, registration of the lease with the pertinent authorities including the Registrar's Office is restricted. (3) Local entities are permitted to own or lease land and property whether or not they have foreign shareholding / directorship in part or in total. (4) Ownership of land and property by local entities having foreign shareholding (even partly) in free zones is not authorised.

## 2. Absolute Ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All nationals (including locally incorporated companies) are authorised to purchase and own land and property. (2) All nationals (including locally incorporated companies) are authorised to lease land and property (3) Ownership of land and property by local entities having foreign shareholding (even partly) in free zones is not authorised (4) Once a property or land is owned this will also include the right to occupy. (5) Occupancy rights exist either by way of statutory provisions (e.g. marital status) or contractually. (6) Occupancy rights cannot be sold or

mortgaged but can be assigned if agreed by all involved parties.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a national centralised system of registration of title of land and property with the Registrar's Office, which is mandatorily applied. (2) The land register shows the extent of the land, ownership, mortgages, and other important rights. (3) The state guarantees the accuracy of the register and it is reliable to the extent that there is no conflicting transfer of ownership transaction (please see next item). (4) Problems over title are possible mainly due to the fact that it is legally accepted for people to transfer the ownership of property through ordinary deeds. Therefore, unless a dispute arises which results in the validation of the transfer by the court and its subsequent registration with the Registrar's Office, such transfer could undermine the accuracy of the system.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal, notarisation and registration fees depending on the scope of the work or value of the property and land, there are no substantial fees on transfers or lease of land and property used for business purposes. (2) The concept of key money / goodwill however exists and should be paid to the tenant on a lease of commercial and

business property depending on the arrangements of the landlord and the tenant or the nature of the business operation in the property. (3) There is no tax on gains on a transfer of land or leases.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage cannot secure all debts generically and must specify the debt and its amount precisely and cannot secure future debt unless the underlying cause of the debt exists. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, and must obtain a writ of execution and auction the property to retrieve the debt. (5) There are freezes in the mortgage if the owner enters bankruptcy. (6) On insolvency the mortgage ranks prior to all unsecured creditors. (7) There are no substantial costs or fees involved in land mortgages, save for ordinary legal and registration fees. (8) It is not possible for a tenant to mortgage the lease because mortgage of rights and credits are not authorised under the Law.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) There are two main statutes dealing with Landlord – Tenant Relations. One enacted in 1977 and the other one in 1997. The former, governing commercial leases concluded from 1977 to 1997 (and those prolonged afterwards), is very protective of tenants and the latter, which governs both commercial and residential leases concluded after 1997, is neutral in terms of protection of either party. For the current purpose, the 1997 statute, which applies to a greater number of properties is discussed. (2) There are no controls on rent. (3) The lease can arguably exclude any obligations of the landlord to repair the property. (4) When a lease expires, the

landlord can easily evict the tenant. (5) The lease can validly exclude the ability of the tenant to assign or sub-lease. (6) A lessee is released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord cannot arguably terminate the lease, unless such termination is foreseen in the lease.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The foreign investor cannot directly own land (given the prohibition of ownership of land by foreigners) but can do so through establishing a 100% owned local entity. (2) There are no laws in place that allow the government's compulsory purchase of land without compensation. (3) There are subsidies and special zones where taxes are relaxed. (4) There are no exchange controls or restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are highly regulated, including both business and residential developments. There are different rules for land located in urban and rural areas (e.g. agricultural land). Change of use of agricultural land located outside the urban areas, is highly restricted. The development of land requires permission to be obtained from the pertinent authorities (e.g. municipalities in urban areas).

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are not strict, with relaxed liabilities for clean-up and penalties. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) Shareholders of the company cannot be liable for contamination caused by the company given the existence of the principle of corporate veil. (4) The directors might be found liable for contamination if a criminal liability is imposed on the company.

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# Iraq



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Foreign individuals and foreign corporations are not permitted to own local land directly. (2) Under certain circumstances local corporations owned or controlled by foreigner or having foreign directors can own local land. (3) Foreign individuals and foreign corporations are permitted to own local land directly if they obtain an investment licence for a specific housing development project; however, they must sell the plots as soon as they complete the development and may only keep the commercial plots. Foreign individuals and foreign corporations are permitted to lease local land directly.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) Although there are registers of title throughout most of the country, these are not very accurate because of the many wars and destruction. (2) Generally, the land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state does not guarantee the accuracy of the register and it is not very reliable. (4) Problems over title are common due to

expulsions of families based on religious sects and relocations ("Arabisation") throughout the country during the Saddam regime. (5) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt and must specify the debt precisely. (3) The mortgage cannot be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency



costs. (7) There are no substantial costs or fees involved in land mortgages. (8) It is not possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Generally, the law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude certain obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government does not have to pay compensation for a compulsory purchase of land

promptly and in cash. (2) There are subsidies for using land for specific purposes upon an investor obtaining an investment licence, and there are special free zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Developments and change of use of land are tightly regulated, including both business and residential developments. (2) There are different rules for urban and agricultural land. (3) There are several layers of official permits required to obtain before developing land, even if the investor obtains an investment licence to develop a project.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) Although the environmental rules are strict in principle, the government rarely implements it or enforces it. (2) An owner or lessee of land may be liable to clean up contamination by former owners/lessees under certain circumstances. (3) Shareholders and directors of the company owning or leasing the land cannot be liable for contamination caused by the company. (4) The Government is planning to implement and enforce its environmental rules this year in efforts to obtain badly needed revenue as a result of the oil price drops and the war against ISIL.

**General comment** The practice for land transactions is generally risky and onerous because of the different layers of permits required to obtain, unclear title records in the land registries due to forced relocations. Taxes on land and rents from land are not exceptionally onerous.



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# Ireland



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly. Local corporations owned or controlled by aliens or having alien directors can own or lease local land, although there is a general requirement for local corporations controlled by aliens to have at least one Irish-resident director.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There are two systems of registration of title.

The Registry of Deeds provides for the registration of documents only and is not proof of title but does give priority to the registered deed. Titles of this nature can be complex and take time to investigate as ownership, mortgages, leases and other rights affecting the property will generally be registered on foot of a number of different documents. This is the older system and is most frequently encountered in urban areas.

The Land Registry operates the registration of title system and titles registered in the Land Registry carry

a state guarantee that they are valid, although the Land Registry does not guarantee the conclusiveness of the boundaries shown on its plans. The Land Registry folio for a title shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way.

Since 2011 a purchaser (for value) of a Registry of Deeds title relating to property located anywhere in the Republic of Ireland must register that title in the Land Registry.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** In addition to normal legal and registration fees, stamp duty at the rate of 2% of the market value of the property applies to the sale of commercial property and falls to be discharged by the purchaser. Capital gains tax at a current rate of 33% will arise for the seller. The sale of property may also be subject to value added tax (VAT) at a rate of 13.5% with the seller responsible for the collection and payment of the VAT paid by the purchaser. However, the VAT rules are complex and frequently the sale of commercial property can be effected without a charge to VAT arising.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. Since 2009 security over land must be created by way of legal charge. The charge can secure all present and future debt generically. The charge can secure obligations in a foreign currency. The chargee can sell on a default in the circumstances provided for in the charge, generally following either the appointment of a receiver or after having obtained a court order for possession. There is no requirement for a public auction although the lender or the receiver (if appointed) has a duty to obtain the best price available for the asset. There are generally no freezes or other interferences in the charge if the owner enters insolvency. However, if a corporate chargor enters examinership (broadly speaking the Irish equivalent of the administration process in England and Wales) this imposes a moratorium which effectively prevents the chargee from enforcing its security without the consent of the court for the period of the examinership (maximum 100 days). On insolvency, assuming the charge has been registered appropriately, it will rank prior to all unsecured creditors (including taxes, employee benefits and insolvency costs) other than any super-preferential debts which would consist of examiner's fees and unpaid taxes in respect of employees. There are no substantial costs or fees involved in charges created over land, other than standard legal and registration fees. It is possible for a tenant to charge the lease if permitted by the terms of the lease and the foregoing comments generally also apply to such a charge. These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not generally restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. there are no controls on rents and the lease can validly exclude any obligations of the landlord to repair and insure.

However, the law does intervene in certain cases e.g. a lease of commercial premises cannot contain provision for upwards-only rent review; the lease

cannot validly exclude the ability of the tenant to alienate, alter the user or carry out improvements; and a tenant is entitled to compensation for improvements on expiry of the lease.

When a lease of business premises expires, the tenant has a statutory right to a new tenancy where it (or its predecessors in title) has been in occupation for five or more years, with the terms of that tenancy to be set by the courts in default of agreement.

Generally a lessee is released from its obligations under a lease when it assigns the lease with the consent of the landlord.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord cannot immediately terminate a business lease if the tenant breaches terms of a lease of commercial premises. Business leases generally provide for a right of re-entry for the landlord, however before the landlord can terminate it must first serve a notice on the tenant specifying the nature of the breach and allowing the tenant a reasonable period of time to remedy the breach.

The exception to this general requirement is where the breach is the non-payment of rent – the landlord is not required to serve notice prior to terminating the lease in such circumstances. However, as forfeiture (the landlord's right to terminate) is an equitable remedy, the Irish courts tend to lean against it and most prudent landlords would serve a demand for rent prior to exercising their termination rights. It may also be open to a tenant to apply to court for relief against forfeiture in which case the tenancy may be reinstated if the tenant's claim is successful.

Most leases contain a provision entitling the landlord to terminate the lease in the event of the tenant's insolvency.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Ireland has a favourable corporate tax regime and an extensive and expanding double tax

treaty network (agreements signed with 72 countries of which 68 are in effect). There are broad exemptions from withholding tax on payments of interest to foreign lenders. There are no exchange controls or restrictions on repatriations of profits and capital from land. Compulsory purchase of land is not commonly used in the Irish context outside of major infrastructure projects. Where these powers are used, the government has to pay compensation for a compulsory purchase of land however the system for agreement and payment of compensation can take some time.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated including both business and residential developments. Permission must be obtained from the local authority for almost all development and is typically granted only for proposals that are consistent with the local authority's five-yearly Development Plan.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict with tight liabilities for clean-up and penalties, and the Irish

law is driven by (and is largely consistent with) European Union environmental law. There is no dedicated contaminated land legislation in Ireland. An owner or lessee of land is not generally liable to clean up contamination by former owners/lessees, except where the contamination constitutes "waste". Senior management of the company, including directors and shareholders actively engaged in the company's day-to-day management (but not shareholders at arms' length) owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for land transactions is in the main quick and efficient. Irish real estate law and practice is generally derived from and very similar to the equivalent law and practice in England and Wales, save for in relation to environmental matters which are generally governed by overriding European law.

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# Israel



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Land in Israel is divided into approx. 7% privately-owned and 93% in the public domain ("State-owned"); that is, either property of the state, the Jewish National Fund (JNF) or the Development Authority.

The Israel Land Authority ("ILA") is the government agency responsible for managing this land. Ownership of State-owned land acquired from the ILA usually means leasing rights for 49 or 98 years. (2) The State-owned properties are subject to a prohibition against selling land or leasing for a long term (exceeding 25 years) to aliens, unless the ILA specifically approves the transaction, which may apply in certain cases. This restriction applies also to local corporations owned or controlled by aliens. (3) Typically, there are no restrictions in respect of the sale or lease of privately-owned properties, unless such property had been formerly allocated by the ILA to the respective property owner subject to the prohibition against selling the property to an alien. (4) With respect to short term leases, it is easier for aliens to lease State-owned properties.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) With respect to privately-owned land, all nationals (including locally incorporated companies) can own land outright without any restrictions. (2) In respect of State-owned land, there cannot be outright ownership. Nationals (including locally incorporated companies held by nationals) can lease or occupy land from the ILA subject to certain conditions dictated by the ILA.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) With respect to privately-owned land, the title to properties is registered in the Israeli Land Registry and the title of such property is considered to be conclusive evidence of ownership (other than in cases where title to the land has not yet been settled); in terms of time periods to effect transfer, registration can take from one to three months. (2) In respect of State-owned land, the rights of occupancy to properties are typically registered in the ILA Registry and these rights are considered to be prima facie proof; in terms of time periods to effect transfer, registration can take from two to six months.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Typically, when selling business land whether privately-owned or subject to a long lease with the ILA, costs include capital gain taxes (varies from 25% to 48%), enhancement taxes (if applicable), legal fees (usually varies from 0.5% to 1.5% of the selling price), real estate agent commissions (usually varies from 1% to 2% of the selling price) payable by the seller (in some cases the ILA may levy additional taxes); (2) The purchaser is liable for paying a purchase tax which varies from 8% to 10% of the purchase price; (3) With respect to short term leases, typically there are no material costs, other than, legal fees and real estate agent commissions, if applicable.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** In general, the provisions of a lease agreement are contractually negotiated and are not prescriptive.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** The law is friendly to foreign direct investors with respect to privately owned land. However, with respect to State-owned land, the law is more restrictive.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Structural additions and change of use of land are tightly regulated, including both business and residential developments.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

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# Italy



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** No general restriction as a matter of law. Certain difficulties arise in respect of nationals of countries which do not allow Italian nationals to own land (reciprocity issues). Certain practical formalities required to comply with registration (eg notarial documents, tax declarations).

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in the entire country which shows all relevant information. It is safe and up generally to date. Legal status and title registered on the register cannot normally be challenged, hence it is very safe (if not in register rights over or in respect to land cannot be enforceable). However searches may take some time as title is confirmed by notaries (only). Easements and encumbrances are (all) registered, which can make searches time-consuming.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Tax cost varies depending on the circumstances. VAT may become due and registration tax is at 4%. Notarial fees can also be substantial.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The mortgage must specify the debt precisely and cannot secure future debt. It has to be registered for a maximum amount. The mortgagee cannot sell on a default by private sale. Court order and public auction (run by the Court or an authorised officer) is required. Very prolonged timeframe for realisation of the mortgage and satisfaction of the secured creditors through Court driven procedure (up to several years).

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law traditionally does restrict and control substantially all terms of a lease of commercial premises to protect the tenant (minimum duration of 6 years with automatic renovation for 6 years, special



termination rights for the tenant, pre-emption rights in case of a sale, goodwill indemnity at expiration of the lease, restrictions on step-ups). A recent reform introduced a "liberalisation" in respect business premises where the annual rent is higher than euro 250,000. These are now able to include more flexible terms, as agreed between the parties.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Specific termination rights should be included in the lease as the general principle of contracts law would otherwise require an assessment of the significance of the default having regard to the interests of the landlord.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Government's obligation to pay compensation for a compulsory purchase of land is unaffected by the investor being national or foreign (process is however slow and often penalising for private owners). There are no subsidies and special zones where taxes are relaxed. There are no restrictions on repatriations of profits and capital from land (however high tax rates apply on gains and income produced in Italy). There are material withholding taxes on interest on foreign loans which are difficult to avoid, unless loans are made out of another EU country, in which case some exemptions from WHT apply.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and

residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties (including criminal liability). As a general principle an owner or lessee of land is not liable to clean up contamination by former owners/lessees, however if cost of clean-up is borne by public entities the relevant liability attaches to the land (and affects the new owner). New owner shall in any case ensure that pollution does not continue / is not worsened etc. Directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** Real estate environment is heavily regulated. Appropriate and very specialised civil, public and tax law advice is required to navigate through it. Land transactions can be time-consuming (extensive diligence is normally required).

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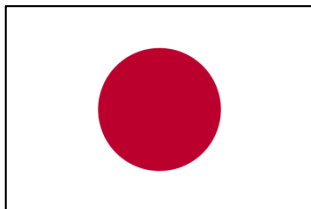
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# Japan



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly. Local corporations owned or controlled by aliens or having alien directors can also own or lease local land.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. The occupancy right can generally be sold or mortgaged without office approval.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in most of the country, especially urban areas. The land register shows, among others, the extent of the land, ownership and mortgages. The register to the land registry serves as perfection.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** The taxes on the gains on a transfer of such land can be substantial. Other than that there usually is no material cost in transferring land or a lease of land.

## 5. Mortgages

### **Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present debt. The mortgage can also secure future debt, but it must specify a maximum amount. The maximum amount shall be stated in the local currency (ie JPY), even if the mortgage is in a foreign currency.

The mortgagee cannot sell the land immediately on a default by private sale without a court order or public auction. On insolvency the mortgage ranks prior to general unsecured creditors. There are no substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

### **Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. there are no controls on rents, the lease can validly exclude the ability of the tenant to assign or sub-lease, and a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord cannot usually immediately terminate a business lease even if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes. Basically a formal demand needs to be given before actually terminating the lease.

A landlord cannot terminate the lease in case the tenant goes into bankruptcy, even if so provided in the lease agreement. The landlord may, however, terminate the lease for not paying the rent.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land in cash or by providing the alternative land. There are subsidies and special zones where taxes are relaxed.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are to some extent regulated, including both business and residential developments by, for example, Building Standard Act and Agricultural Land Act of Japan. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. Basically, one who has actually contaminated the land is liable to clean up contamination. Shareholders and directors of the company owning or leasing the land cannot

directly be liable for contamination caused by the company.

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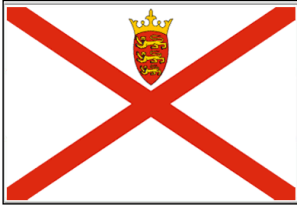
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# Jersey



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** All properties are subject to a status designation allowing their occupation by qualified or, in a few cases, non-qualified individuals.

All purchases or long-leases of land by individuals require those individuals to hold a registration card showing their appropriate housing qualification and all purchases or long leases by companies must first receive a written consent from the Population Office of the States of Jersey.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Nationals can only own land outright if they hold appropriate residential qualifications (they must be Entitled or Licensed or married to a spouse so qualified).

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is no register of title to freehold land in Jersey, merely a repository of contracts passed before the Royal Court of Jersey. There is no state guarantee of title and title must be checked by the individual conveyancing firm on each purchase which can be time-consuming depending on the individual property.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** In addition to normal legal fees, the only other substantial cost incurred by a purchaser of land or one taking a long lease of land, is stamp duty payable to the States of Jersey in accordance with a prescribed scale. Stamp duty is also payable on any sum borrowed from a lender taking security on that land. Value added tax (known as GST in Jersey) is payable on commercial property transfers subject to the rules surrounding a transfer of an individual property as a going concern on an individual property. Jersey has no system of capital gains tax.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Lending against freehold land in Jersey is secured by way of a judicial hypothec which can be specific to an individual property or act as a charge against all property owned by the borrower at that time. It must specify the debt secured and cannot be secured against future-acquired property. On insolvency the hypothec ranks in priority to most unsecured creditors except insolvency costs. In order to realise the property asset the creditor must force the debtor into a form of insolvency. There is no power of sale of freehold property for a mortgagee.

The fees involved in a mortgage of immovable property include stamp duty payable on the sum secured at 0.5% + a registration fee of £80 (subject to relief in certain circumstances).

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law requires all leases of property of a term in excess of 9 years to be passed in a contract before the Royal Court of Jersey. However the law does not restrict or control the terms of business leases of commercial premises and a tenant has no right to a new lease on the expiry of the lease term. A tenant is not statutorily released from his obligations under a lease when it assigns the lease. A landlord must however seek a Court order to evict a tenant for breach of the terms of a lease or for failure to vacate at the end of a term.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a lease for a term of 9 years or less in the event of default by a tenant subject to the terms of the lease agreement but will require a Court order to effect eviction of the tenant from the premises. A lease for a term of more than 9 years requires a Court order to effect its cancellation and/or order eviction of the tenant if appropriate.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** All Jersey property is subject to housing qualification restrictions which limit the ability of foreign investors to purchase immovable property albeit it is open to them to purchase shares in a property holding company which carry an entitlement

to occupation of an apartment for investment purposes.

The States of Jersey must pay compensation for compulsory purchase of land based broadly on its open market value.

There are withholding taxes on the income from leased properties earned by a non-resident.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and changes of use are tightly regulated including both commercial and residential developments, in accordance with Planning laws. The Island Plan zones different areas of the Island to which different rules and presumptions apply.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict with owners of land liable to clean up contamination by former owners/tenants. Occupiers of land will not have liability unless they caused or contributed to the contamination. There are strict statutory requirements relating to water pollution as well as ground and soil contamination.

**General comment** Jersey has strict controls on housing and development of land which regulate foreign investment. Freehold property transactions take place at a special Court session of the Royal Court of Jersey each Friday afternoon and charges to be secured on freehold property are also registered on a Friday afternoon before the Jersey Royal Court. Taxes on land and rental income are, however, not onerous.

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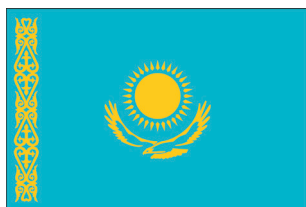
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# Kazakhstan



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly, except for certain cases (for example, it is not permitted for aliens to own land plots for agricultural purposes and forest planting or the land plots located in frontier zone).

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in Kazakhstan. The land register shows the extent of the land, identifying characteristics, ownership, mortgages, longer-term leases and encumbrances. However, information from the register is not public and may be provided only to owners and their representatives, state authorities and advocates.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business**

**purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** As regards the transfer of land under the right of ownership, apart from normal legal fees depending on the scope of work, there are no very substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. However, transfer of land granted by the state under the right to lease is possible, if the right to lease has been bought out from the state (according to legislation, with respect to land held on the right to lease, a lessee must pay not only the lease payments, but also the purchase price for such land). The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debts, provided that the amount of future debt has been determined in advance. If one of the parties is a foreign company or an individual, the mortgage may be expressed in a foreign currency; if not, it may be expressed in the national currency only. On insolvency the mortgage ranks second priority (after paying insolvency costs and making payments to first priority creditors, specifically: alimony payments, employee benefits, personal injury payments). There are no substantial costs or fees involved in land mortgages. It is possible for a tenant to mortgage the right to lease, if permitted by the terms and conditions



of the lease, and the above comments generally also apply to such mortgage of the lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has a right to a new lease, if such right is stipulated by the lease agreement, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are subsidies and special zones where taxes are relaxed. There are no material withholding

taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are not tightly regulated, except normal public safety and environmental requirements and restrictions.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are fairly strict, with certain liabilities for clean-up and penalties. An owner or lessee of land is not liable to clean up contamination by former owners/lessees. Directors of the company owning or leasing the land can be liable for contamination caused by the company.

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# Kenya



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Pursuant to the Constitution of Kenya 2010 (**Constitution**) and the Land Act (Act No. 6 of 2012) (**Land Act**), alien individuals and corporations not wholly owned by Kenyan citizens cannot hold a freehold interest in land.

a) In addition, pursuant to the Constitution and the Land Act, alien individuals and corporations not wholly owned by Kenyan citizens can only hold a leasehold interest in land for a maximum of 99 years.

b) The provisions of the Land Control Act (Cap 302) (**Land Control Act**) prohibit alien individuals and corporations that are not wholly owned by Kenyan citizens from directly acquiring any interest in agricultural land whether by way of acquisition, lease or charge.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All individuals who are Kenyan citizens can own land outright.

a) The Constitution, the Land Act and the Land Control Act all create a distinction between locally incorporated companies and companies that are wholly owned by Kenyan citizens. Companies that are wholly owned by citizens have no restrictions on land ownership.

b) Locally incorporated companies that are not wholly owned by Kenyan citizens can only acquire 99 year

leasehold interest in land and are restricted from directly acquiring any interest in agricultural land.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment**

a) The Land Registration Act (Act No. 3 of 2012) (**Land Registration Act**) provides that a title issued by the registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:

i) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

ii) where title has been acquired illegally, unprocedurally or through a corrupt scheme.

b) The records at the various registries are in a parlous state and there has been abuse of original documents (including forgeries and multiple title allocations).

Extra due diligence, e.g. into validity of title, authenticity of title documents and rights of occupation, is highly recommended.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment**

a) In addition to legal fees, registration fees and taxes on gains (i.e. capital gains tax payable in respect of certain properties at the rate of 5% on the gain), the following costs are also applicable:

i) Pursuant to the Stamp Duty Act (Cap 480), stamp duty is payable at the rate of 2% of the purchase price on agricultural properties and 4% of the purchase price for any other property that is not agricultural.

ii) Pursuant to the Value Added Tax Act (Act No. 35 of 2013), VAT is payable at the rate of 16% of the purchase price on the transfer of commercial buildings.

**5. Mortgages**

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment**

a) The Land Act does not provide for mortgages only charges.

b) The charge can be in a foreign currency.

c) Pursuant to the Land Act, the chargee can sell the property without a court order after the expiration of the notice period required to be issued under the law.

d) The provisions of the Insolvency Act 2015 (**Insolvency Act**) provide that certain insolvency proceedings, for example, a statutory moratorium in corporate insolvency freeze the rights of creditors. Thus, a creditor who holds a fixed charge over land of the insolvent obligor cannot enforce the charge during the continuance of the moratorium without the consent of an administrator or the Court.

e) On insolvency a fixed charge ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. The chargee may sell off the property and realise the proceeds thereof if there is no winding up order issued by the court. If there is such an order, disposal of such secured property will have to be upon an application being made to court and the court granting its consent. It is important to note that an administrator appointed by court may make an application to court to be granted authority to dispose of property secured by a fixed charge and the court can grant such authority e.g. if it believes such disposal

will benefit the company in administration. However the security relating to the fixed charge will be paid in priority.

f) Pursuant to the Consumer Protection Act (Act No. 46 of 2012), the borrower can pre-pay the whole or part of the loan amount without any penalty from the chargee.

**6. Controls on terms of leases of land**

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment**

a) The Land Act provides for certain implied provisions in leases however, parties can opt to contract out of the said implied terms.

b) However pursuant to the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301) (**Landlord and Tenant Act**), where a commercial lease is not reduced in writing or where the term is for a term of less than 5 years then the commercial lease is deemed to be a controlled tenancy. There are a number of protections for the controlled tenant such as rent controls.

c) When a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease by law.

d) Pursuant to the Land Act, a lessee is released from its obligations under a lease when it assigns the lease to a third party but is still liable for any of its obligations prior to the assignment.

**7. Termination of leases**

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment**

a) Termination of leases is regulated by statute and contract. Under the Land Act, a landlord must serve a statutory minimum of thirty (30) days to terminate a lease and must state the grounds upon which the termination notice is served. The tenant is required to

remedy the default within the notice period failure to which the landlord can proceed to forfeit the lease.

b) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if the lease so provides.

c) However, controlled tenancies under the Landlord and Tenant Act require a court order to forfeit the lease.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

### Comment

a) Pursuant to the Constitution and the Land Act, the government is required to pay compensation for compulsory acquisition of land. The landowner has the choice of the compensation being in cash or land in lieu of cash payment.

b) There are subsidies and special zones where taxes are relaxed under the Special Economic Zones Act (Act No. 16 of 2015).

c) There is no formal exchange control regime in force in Kenya after the repeal of the Exchange Control Act (Cap.113) in 1995. However, there are certain limited conditions and procedural requirements that apply in connection with foreign currency dealings that should be noted. However pursuant to the Central Bank Circular No. 12 of 1996 commercial banks are required to monitor foreign currency transactions with a view of establishing that the transactions are bona fide.

d) Pursuant to the Constitution and the Land Act foreigners cannot hold a freehold interest in land but can only hold a leasehold interest for a maximum of 99 years.

e) The Land Act further provides that on the expiry of the 99 year leasehold interest, the land will revert back to the government and the government is required to offer pre-emptive rights to the immediate owner in respect of the allocation of the land provided that the pre-emptive rights will not apply if the land owner is a foreigner. There is however a proposed Land Laws Amendment Bill 2012 that seeks to amend this position by providing that all land owners may apply

for a renewal of lease on expiry of their leasehold interest.

f) The Land Control Act prohibits foreigners from directly acquiring any interest in agricultural land whether by way of acquisition, lease or charge.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

### Comment

a) Developments and change of use of land are tightly regulated, including both business and residential developments by the Physical Planning Act (Cap 286, Laws of Kenya) (PPA). The process is the same for both urban and agricultural land.

b) Under the PPA approvals for development or change of user must be issued by the relevant county government, the physical planning department, the survey department and the National Land Commission.

c) Additional approvals may also be required from various entities depending on the user restrictions and development conditions on the title deed in respect to the land.

d) Practically it can be a very difficult and lengthy to effect a change of use due to the lengthy bureaucratic process.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

### Comment

a) The environmental rules contained in the Environmental Management and Coordination Act (Act No. 8 of 1999) (EMCA) are strict and provide for liabilities for clean-up and possibility of custodial fines and/or penalties.

b) The laws protecting the environment are fairly comprehensive, but lack of funding for protection of the environment, corruption and apathy pose huge potential risks to the environment.

- c) An owner or lessee of land may be served with an environmental restoration order but they would have the right of appeal to the Environmental Tribunal in the event that they did not cause the environmental degradation.
- d) EMCA is silent on whether or not shareholders and directors of a company owning or leasing the land can be liable for contamination caused by the company.

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# Korea



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly (subject to governmental approval or report with the government in exceptional circumstances).

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a court register of title to land in the country. The land register shows the extent of the land, ownership and mortgages. The register is very reliable and problems over title are rare.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no very substantial taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt generically but must specify a maximum amount. The mortgage can be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale without a court order or public auction. On insolvency the mortgage ranks prior to all unsecured creditors except for certain taxes, employee benefits and insolvency costs.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does restrict or control the terms of a lease of commercial premises to protect the tenant. The lease cannot validly exclude any obligations of the landlord to repair structural parts. When a lease of business premises expires, the landlord cannot easily evict the tenant without the court's decision. The tenant has certain protections, such as a right to renew a lease term up to 5 years from the initial lease commencement date in a commercial building lease and a right to seek



compensation for goodwill created on its leased premises.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Generally, a landlord can freely terminate a lease of commercial premises on default by the tenant. However, there are some protections for tenant by the law. For example, the tenant must have been in arrears with an amount equivalent to 3 months or more of rent for the landlord to be able to terminate a commercial lease agreement due to a non-payment of rent.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are special zones where taxes are relaxed for foreign investors.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is liable to clean up contamination by former owners/lessees except for certain circumstances.

**General comment** The practice for land transactions are in the main quick and efficient. Taxes on land and rents from land are not exceptionally onerous and tax efficient vehicles are also available. Land transactions are open to foreigners and there are no exceptionally onerous requirements to foreign investment.

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# Kuwait



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are not permitted to own local land but can lease it. As used here the term "Alien" means persons who are not nationals of any of the member states of the Gulf Cooperation Council. As an exception to the general prohibition with special permission Arab nationals may buy residential plots of a limited size.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies which are wholly owned by nationals) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The land register shows the extent of the land, ownership, mortgages. The state guarantees the accuracy of the register. Problems over title are rare.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Transfers of land are subject to a government fee of 0.5% of the value. There are no statutory charges on the grounds of leases. There is no capital gain tax applicable to the transfers of land.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt but must specify the debt precisely. The mortgage can be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale; the sale would be made through the court by public auction. If the owner becomes bankrupt then it is possible to set aside the mortgage if it was entered into with any set period prior to the bankruptcy, which period may not exceed two years. On bankruptcy the mortgage ranks prior to all unsecured creditors but after all amounts owed to the State, amounts owed to employees for a period of six months, as well as the costs. There are no substantial costs or fees involved in land mortgages; there is a nominal stamp duty payable calculated on the number of pages of the document.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the

tenant, e.g. there are no controls on rents; the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. When a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease. The lease can validly exclude the ability of the tenant to assign or sub-lease. A lessee is not released from its obligations under a lease when it assigns the lease in order to achieve this the lease would need to be novated not assigned.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a business lease in accordance with its provisions regarding the giving of notice and termination if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Foreigners may not purchase land here; please refer to our answer to Q1 above. As used here the term "Foreigners" means persons who are not nationals of any of the member states of the Gulf Cooperation Council.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** All building permits and matters regarding the change of use of land must be obtained from the relevant department of the Kuwait Municipality. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are very strict; penalties vary depending on the act and range between imprisonment (from three years to life), fines (from KWD10,000 to KWD1,000,000 about US\$35,000 to US\$3,500,000), and even death in the case of dumping nuclear waste. The owner is responsible for the damage resulting from pollution, even if he did not commit any mistake; however the owner would be entitled to claim against the person or persons responsible for the damage. The chairman of the company owning or leasing the land would be liable for contamination caused by the company.

Please note that new Executive Regulations to the Law are pending and that there is no indication of when they might be issued nor what, if any, changes they might introduce.

**General comment** Generally speaking the cost of land here is high; a 400 m<sup>2</sup> plot in one of the better residential areas here might cost in the region of US\$3.5 Million.

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# Latvia



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** There are material restrictions to purchase forest and agricultural lands, as well as in territories of sea protective zone. Additional restrictions apply to the buyers outside of the EU – special application must be submitted to the local municipality in order to receive a permission to purchase land.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** The land register shows the main data of the real estate, ownership, mortgages, long-term leases and other rights and encumbrances pertaining to the real estate. All data in the land register have public credibility and can be accessed electronically in exchange of reasonable fee.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** In addition to ordinary costs the title transfer tax in the amount of 2% of the deal value is applicable.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can evict the tenant (in case of dispute – through the court) and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** A landlord can terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. But in case of dispute (e.g. tenant does not voluntarily leave the leased real estate) the eviction can be done only on the basis of the court ruling.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** There are different rules for urban and agricultural land. Territorial plans of the local municipality set the mandatory limits for the permitted use (i.e. density, intensity, number of floors, commercial or residential etc.).

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules provide for two types of regulation, depending on the status of the real estate, i.e. is it listed in the register of the polluted properties or not. If it is registered as a polluted property, then the principle 'owner pays' is applicable (upon any intended development), whereas in all other cases the principle 'polluter pays' is applicable.

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# Lebanon



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Pursuant to the provisions of the Decree Law No.11614 (Decree Law No. 11614 of 04/01/69, as amended by Law no. 296 dated 05/04/2001) on the Acquisition of Real Estate Rights in Lebanon by Foreigners (the "Decree") a non-Lebanese person may not acquire (or rent for a period exceeding 10 years) real estate rights in excess of 3,000 m<sup>2</sup> in Lebanon without a specific authorisation from the Council of Ministers that is issued by Decree.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright. It should be noted that the restrictions mentioned under Q1 above apply to a locally incorporated company that are not totally owned by Lebanese.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There is a Land Register covering most of the country especially in urban area. The records of the Land Register show the extent of the land, ownership, mortgages, longer-term leases and other servitudes. These records serve as proof of ownership and status of the land and could be consulted by anyone wishing to inquire about this land.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Transferring a land or leasing it involves *inter alia* notary fees, stamp duties and transfer taxes. The transfer cost amounts to approximately 5.8% of the price included in the purchase agreement and that are generally paid by the buyer. The taxes on the gains resulting from a transfer of land are reasonable.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** A mortgage (that could be in a foreign currency) would give its holder the right to pursue the property and whoever owns it, and gives a right of priority over other ordinary or subsequent creditors. In case of bankruptcy, mortgaged creditors rank before unsecured creditors but after certain employees' pre-filing claims for wages and the post-filing court expenses that were needed to foreclose these securities. The mortgagee cannot sell immediately on a default by private sale, without a court order and public auction. The mortgage would involve for its registration at the Land Register the payment of stamp duties and other fees amounting approximately to 1.5% of the value of the mortgage.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Pursuant to Law No.159/92 rental agreements entered after 1992 are submitted to the principle of contractual freedom with the exception that in case the duration of the new rental agreement is less than 3 years, the duration can be automatically extended by law at the discretion of the tenant to cover 3 years at the same conditions.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease entered into after 1992 if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Except for the restriction mentioned under Q1 above, Lebanese law is generally friendly to foreign direct investors in land. Article 15 of the Lebanese Constitution, and article 1 of the law regarding land expropriation clearly stipulate that property is under the protection of the law and that no one may be deprived of his property except "for the public utility" and calls for fair and adequate compensation without making any discrimination between Lebanese and foreigners but the compensation process is slow. There are no exchange controls or restrictions on repatriations of profits and capital from land. It is worth indicating that a foreign

direct investor and depending on the nature of its project (e.g., agro-industrial, tourism) might benefit from tax exemptions if it fulfils the conditions imposed by the Investment Development Authority of Lebanon (IDAL).

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Constructions require building permits that are granted after verification of the application by *inter alia* the Urbanism Bureau and the concerned municipality.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Environment regulations are relatively recent and incomplete. Law No.444 of July 29, 2002 that has established the general principles and framework for the protection of the environment was not followed by all the implementation decrees needed for its proper application.

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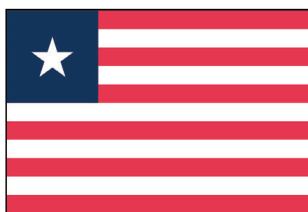
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# Liberia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Article 22 of the Liberian Constitution declares "that only Liberian citizens shall have the right to own real property within Liberia". Section (c) of Article 22 of the Liberian Constitution also provides that "Non-citizen missionary, educational and other benevolent institutions shall have the right to own" real property "as long as that property is used for the purpose for which acquired; property no longer so used shall escheat to the Republic.

Accordingly, alien individuals and alien corporations are not permitted to own land, although they may lease land. The term of leases is regulated. A lease is generally required to have a certain term of not more than twenty (20) years and an optional term of not more than twenty (20) years, but the certain term and the optional term may each be up to 50 years depending on the investment the lessee agrees to make on the land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** While all Liberian citizens (nationals) have absolute right to own land, it is doubtful whether every Liberian corporation has similar right. Given the Constitutional language that "only Liberian citizens" have the right to own land, the general consensus is that a locally incorporated corporation that is in any respect partially owned (by shareholdings) by a non-Liberian citizen is not eligible to own land. Otherwise, the Constitutional restriction to Liberian citizens is

easily defeated or may be defeated by any non-Liberian citizen incorporating a Liberian corporation and then acquiring land through the locally incorporated entity.

Land ownership in Liberia includes the right to sell, mortgage, devise and to exclude others from the land, subject of course to the state regulatory power, including the power to condemn private land for public purpose or use upon payment of prompt and just compensation.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is no register of title to land in most of the country, especially rural areas. Further, the land registry is not very reliable, and there are many problems of multiple sale and registration of the same parcel of land without the land registry discovering these by its own procedures or processes.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no very substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.



## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land, and the mortgage can secure all present and future debt generically. The Mortgage can be in a foreign currency, but is generally stated in United States Dollars or Liberian Dollars as these two currencies are all legal tender in Liberia.

It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments generally also apply to this mortgage of a lease. These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does restrict or control the terms of a lease of commercial premises to protect the landlord, but there are no controls on rents. The lease can validly exclude the ability of the tenant to assign or sub-lease, and a lessee is not released from its obligations under a lease when it assigns the lease unless the assignment is by novation.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. It is a key rule of Liberian common law that in order to terminate for failure to pay rent the lease agreement must expressly state so otherwise only an action of debt will lie for any unpaid rent.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Given that non-citizens have no right to own land, there is hardly any known significant foreign direct investment in land directly. However, the point should be made that the Government is obliged by the Constitution to pay compensation for any compulsory purchase or taking of land promptly and in cash. There are also no exchange controls or restrictions on repatriations of profits and capital from Liberia in respect of any investment, be it in land or any other project.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are not/are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** An owner or lessee of land is not generally liable to clean up contamination by former owners/lessees.

**General comment** The restriction of land ownership to only Liberian citizens hinders investment in land in Liberia, and there is hardly any significant real estate/property development by international firms in Liberia.

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# Libya



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are not permitted to own or have Usufruct rights directly. (2) Local corporations owned by aliens cannot own or have Usufruct rights. (3) However, Maltese, Egyptian and Tunisian nationals are allowed to own land/ properties in Libya. Also alien individuals and alien corporations who are investing under the Investment Law or Tourism Law can own land/ properties on a Usufruct basis.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (excluding the above mentioned in Q1) can own land outright. They can have leases and occupancy rights for a limited or unlimited period.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country, especially urban areas. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state does not guarantee the accuracy of the register. (4) Problems over title are common. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no very substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable. (3) 1% of the value of the property to be paid to the valuation committee. (4) 3% of the total value of the property to be paid to the tax department.

## 5. Mortgages

**Q. Mortgage of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage cannot secure all present and future debt it must specify the debt but precisely. (3) The mortgage cannot be in a foreign currency but can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee. (6) On insolvency the mortgage ranks prior to all unsecured creditors excluding taxes, employee benefits and insolvency costs. (7) There are substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does/does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for land transactions are based on a Civil Law System since the 1950s. Throughout the following years several illiberal laws and regulations were imposed and adversely affected the practice until lately from 2003 when such illiberal laws and regulations are being more and more abolished in order for the practice back to normalcy. However it remains inefficient and requires considerable reform.

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# Lithuania



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Foreign legal entities and natural persons may acquire title to land if they comply with European and Transatlantic criteria, i.e., if they are nationals of (1) European Union member states; (2) OECD and NATO member states; (3) states party to the EEA. If European and Transatlantic criteria are not met, the foreign entities are not entitled to acquire land, inland and forest as owners; they are entitled to use and possess such real estate on other grounds. There are no restrictions for leasing of land by aliens.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Under the Lithuanian Constitution, the Lithuanian state is the exclusive owner of the subsoil, internal waters, forests, parks, roads, historical, archaeological and cultural objects of national significance. In other cases Lithuanian citizens and legal persons registered in Lithuania may acquire title to land and forest unrestrictedly except for acquisition of agricultural land in which case the total area of agricultural land possessed by either a natural or a legal person and persons related to them is limited to 500 ha.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The land register shows the main data of the real estate, ownership, mortgages, long-term leases

and other rights and encumbrances pertaining to the real estate. All data in the land register has public credibility and can be accessed electronically in exchange of reasonable fee.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** There are no other material costs in transferring land or a lease of land.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** A contractual mortgage requires only the approval of a notary. Foreclosure of a mortgage is carried out by applying to a notary for an enforcement record. There is a possibility to foreclosure on a mortgage by transferring the title to the mortgaged immovable property to the creditor. Moreover, it is also possible to mortgage a property to be acquired or constructed in the future.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. there are no controls on rents. However the maximum term of a lease cannot exceed one hundred years. The lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. A tenant who has duly performed obligations under a lease agreement has a right of first refusal to renew the lease agreement on its expiry.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a business lease if a tenant does not pay the rent or breaches other material terms of a lease of commercial premises if so provided. If the tenant becomes bankrupt, the landlord can terminate the lease of such commercial premises if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Investments in land (including agricultural, forestry and inland waters) for foreign citizens or legal persons, if the European and Transatlantic Integration criteria, stipulated in Constitutional Law, are met, are not more restricted than for Lithuanian citizens or legal persons.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** There are different rules for urban and agricultural land. Territorial planning documents and other local municipality documents set the mandatory limits for the permitted use (i.e. density, intensity, number of floors, commercial or residential etc.).

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties.

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# Luxembourg



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There are registers of title to land (mortgage registers) in the entire country. The land and mortgage registers show the extent of the land, ownership, mortgages, longer-term leases (more than nine years) and certain other important rights, such as rights of way and pre-emption rights. Problems over title are rare.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal and registration fees (transfer: 10% transfer fee for Luxembourg-city and 7% for the rest of the country; lease: 0.6%

registration duties to be calculated on the basis of the rents due during the entire lease term or EUR12 if the lease is subject to VAT), there are no substantial transfer or documentary taxes or notarisation fees (up to approx. EUR 3,100) on transfers of land used for business purposes or leases of such land or the grant of leases of such land. The taxes on the gains on a transfer of such land or leases can be substantial.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt, but must specify the debt (e.g. all amounts due and to become due in the future under a specific loan). The mortgage can be in a foreign currency. If so provided in the mortgage deed, the mortgagee can sell immediately on a default by private sale, without a court order or public auction. Provided that the mortgage has not been granted (or, as the case may be, registered) during the suspect period (up to six months prior to the decision to open the bankruptcy) and, as applicable, an additional period of ten days before the commencement of such period, there are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings (assuming that Luxembourg insolvency law applies). On insolvency the mortgage ranks prior to all unsecured creditors, but not prior to taxes, employee benefits and insolvency costs. There are, in principle, no substantial costs or fees involved in land mortgages (duties of 0.29% of the principal amount).



## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. there are no controls on rents, the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has a few protections, such as a right to extend the lease by two periods of maximum six months each and the right for preferential renewal of a new lease, the lease can validly exclude the ability of the tenant to assign or sub-lease, with a few restrictions, and a lessee is not released from its obligations under a lease when it assigns the lease, unless otherwise provided.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are subsidies and special zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are no material withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, with tight liabilities for clean-up. The polluter is liable to clean up contamination. Under certain circumstances, the owner may be held liable. Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

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# Macau



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** There are no restrictions for alien individuals and alien corporations on the ownership or leasing of land in Macau.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** According to Macau law, the Macau land can be (i) freehold (a very small portion of the total) (ii) granted by Government lease (which happens in most cases) or (iii) granted by temporary administrative authorisations (approximately 3% of the total land mass).

It is possible that any national (including incorporated companies) own land outright but it is a very rare situation as freehold lands are very limited.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** It is mandatory by law to register any transfer of ownership in the Real Estate Registry. Therefore, the certificate issued by the Real Estate Registry is the document that evidences the ownership of the relevant real estate. The land register shows the details of the land, ownership and encumbrances.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** In general, the transfer of land, which involves the execution of a sale and purchase deed, is subject to the payment of (i) stamp duty, (ii) notary fees (iii) registration fees and (iv) legal fees.

The lease of land, which involves the execution of a concession agreement, is subject to payment of (i) stamp duty, (ii) land premium, (iii) registration fees and (iv) legal fees.

There is no taxation in capital gains.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** A registered mortgage is the most protective security over a land or property.

A mortgage is a guarantee that secures (i) the borrowed amount, (ii) related interests and (iii) related expenses.

In terms of priority, the mortgage will have priority over all unsecured credits as well as secured credits created after the registration of the mortgage in favour of the creditor.

There are also other priorities foreseen in law, namely for the Macau government in what respects outstanding taxes.

The enforcement of a mortgage is made through executory proceedings filed with the Macau courts.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Please refer to Q1 above in relation to the type of lands existing under Macau law.

The land leases (either commercial or residential) are initially granted for a maximum period of 25 years, during that term the land must be developed in accordance with the concession agreement. Once the land is fully developed, the land lease will automatically renew for additional periods of 10 years until 2049.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** The landlord may terminate a lease of commercial premises upon breach, by the tenant, of contractual or certain imperative provisions of the Macau Civil Code.

For such purpose, the landlord shall have to issue a termination letter to the tenant and if the tenant disagrees with the grounds for termination and remains in the premises, the landlord must file Court proceedings.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Macau law can be considered as very friendly in what respects foreign direct land investments.

In fact, there are no restrictions whatsoever in relation to land acquisition by foreign investors and since the last 15 years Macau has attracted several foreign land investors, such as real estate funds based in Europe, Asian real estate conglomerates and joint ventures between foreign companies.

The Macau land law regime associated with the real estate profits have been very appealing to foreign investors.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Construction works and change of land usage is subject to the prior approval and licensing from the relevant public authority. These approvals and licences may be time consuming.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Although environmental law imposes certain obligations and penalties (in case of breach) to the owner or lessor of the land, the control is somewhat relaxed.

**General comment** Although the Macau SAR land regime is very specific as the land can be (i) freehold land, (ii) granted by lease by the Macau Government or (iii) by other type of temporary administrative authorisations, the practice for land transactions are quick and efficient.

The transfer of ownership of real estate property is made before a local notary by means of a notary deed of sale and purchase. This sale and purchase deed is then registered with the land registry which will show the name of the registered owner of the land.

If all the documents are in order, the execution of the sale and purchase deed as well as the completion of the registration with the Land Registry may take approximately 10 working days.

In respect of land development, the full completion of the development is more time consuming as it requires several licences and authorisations from the relevant public authorities.

In relation to taxes on land and rents from land, we may say that these are not exceptionally onerous.

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# Macedonia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Foreign individuals and entities from EU/OECD countries can without limitations:

- 1) own housing and business premises;
- 2) own and lease constructional land.

Non EU/OECD alien individuals and entities can enjoy these rights only in case Macedonian individuals and entities can reciprocally enjoy such rights in their respective states. Agricultural land cannot be owned by alien individuals or corporations, but only leased on a long term basis (under the condition of reciprocity and upon approval from the Minister of Justice). Local corporations owned or controlled by aliens or having alien directors can own or lease local land.

Government permissions are given for sale, use, lease, exchange and possession rights of a constructional land of public interest owned by the Republic of Macedonia.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. They can have leases and occupancy rights for a limited period of 99 years for construction land and 15-70 years for state-owned agricultural land (depending on the intended purpose of the land). The owner and the lessee/holder of possession has free right to renew. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in most of the country, especially urban areas. The land register shows the extent of the land, ownership, mortgages, leases and certain other important rights, such as rights of use and agreed pre-emption rights. The accuracy of the register is reliable. Problems over title are rare. Rights of occupation (such as lease, concession), are usually recorded in the register.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from regular legal fees depending on the scope of the work, there are transfer taxes, notarisation fees as well as registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor.**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt but must specify a maximum amount. The

amount of the debt can be expressed in foreign currency. The mortgage can be realised only by an authorised person (notary public, enforcement agent etc.) *via* direct sell, public auction etc. There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the insolvency estate. On insolvency the mortgage ranks prior to all unsecured creditors apart from employee benefits and salaries and insolvency costs. There are some legal, notarisation and registration costs involved in land mortgages. It is possible for a tenant to pledge the rights from lease if permitted by the terms of the lease. The regulation and practice with respect to mortgage of leases is scarce to non-existent.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does somewhat restrict the terms of a lease of commercial premises to protect the tenant. Note: (i) there are no controls on rents, (ii) the lease cannot validly exclude any obligations of the landlord to repair or compensate the tenant for improvements on expiry of the lease, (iii) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (iv) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (v) a lessee is not released from its obligations under a lease when it subleases the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a business lease if the tenant does not pay the rent after providing the tenant only upon providing a 15 days' notice period (in case the tenant pays the rent within such notice period the landlord cannot terminate). If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are subsidies and special technological industrial development zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are material withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for constructional and agricultural land. A company/individual is required to obtain permits for construction of an object as well as for change of use of land on top of the normal public safety and environmental restrictions and requirements.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is not liable to clean up contamination by former owners/lessees. Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

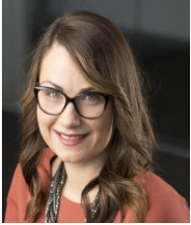


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# Malawi



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and corporation are allowed to own or lease local land subject to certain restrictions. Under the Land Act private land cannot be sold to a non-citizen unless the intention to sell is published in a newspaper in daily circulation in Malawi not less than 21 days before the date of the sale. This is to give an opportunity to a Malawi citizen to make an offer to purchase the land at a price that is not lower than the published place. If no citizen has made an offer, or has been able to purchase the land, it may be sold to a non-citizen.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** (1) There are land registries in the three regions of Malawi. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register (on application by a person in a prescribed form) by issuing a certificate of official search setting forth particulars of the subsisting entries in the register. (4) Problems over title are common. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically (3) The mortgage can be in a foreign currency but, if not, can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) On insolvency the mortgage ranks prior to all unsecured creditors. (6) There are no substantial costs or fees involved in land mortgages. (7) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (7) generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are controls on rents, (2) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay compensation for a compulsory purchase of land. (2) There are no subsidies and special zones where taxes are relaxed. (3) There are exchange controls or

restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** In respect of registered land, developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land cannot be liable for contamination caused by the company. It is the company itself in its legal capacity that would be liable for contamination/pollution.

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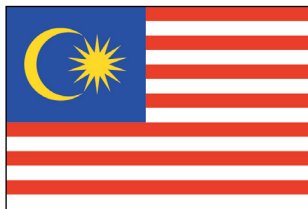
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# Malaysia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Subject to certain exceptions, approval from the relevant state authority (depending on the state in which the land is situated) and/or the Economic Planning Unit, Prime Minister's Department will be required in respect of the ownership or leasing of land by aliens.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Some categories of lands, such as Malay Reserve lands and native lands located in the states of Sarawak and Sabah are reserved in favour of certain class or group of people and nationals who are not members of the said class may not own such lands. Additionally, land titles are divided into freehold and leasehold. Freehold titles confer absolute permanent ownership, whereas leasehold titles confer leasehold interests of typically 99 years. Such leasehold interests are subject to renewal, but are typically renewed with the payment of a premium.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** Malaysia adopts the Torrens system of title registration and ownership of lands is evidenced by issue documents of title issued by the relevant land registry. However, not all interests over land are subject to registration, e.g. licences, easements and tenancies below certain tenure are often not registered.

Under the National Land Code 1965, a registered interest is generally "indefeasible" (subject to certain exceptions, notably fraud), however, recent Federal Court decisions in Malaysia have diluted this position slightly. Problems over title are relatively uncommon but have been known to occur.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfers or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. However, stamp duty payable for land transfers and registration fees in certain states are calculated based on the value of the land involved.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** It is uncommon for mortgages to be used as a form of security interest over lands in Malaysia. Security over lands is usually created by registering a charge or lien with the relevant land registry pursuant to the relevant land codes, depending on the location of the land in question. The registered charge is the most common form of security over land with title in Malaysia. The charge over certain lands is subject to consent from the relevant state authority. The charge

can secure all present and future debt generically. On insolvency, the charge ranks prior to all unsecured creditors (except to those preferred by law, e.g. taxes and employee benefits). It is possible for a tenant to charge the lease if permitted by the terms of the lease. The chargee can sell on default, but is obliged to obtain an order for sale from either the High Court or the land administrator. These principles generally apply to associated assets such as insurances, shares and a bank account for rents (save that no state authority consent would be required for security over these associated assets).

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can evict the tenant subject to a forfeiture notice being given and a reasonable time has been given to remedy the said forfeiture, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided and a reasonable time has been given to remedy the default or breach.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** There are special zones where taxes are relaxed. There are exchange controls but no restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Planning permission is required for any land development. The category of land use is usually stated on the issue documents of title of the land, and any change in the category of land use requires the approval from the relevant government agencies.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. Under the Environmental law legislation in Malaysia, costs and expenses incurred in relation to remedial measures taken by the authority may be recovered from the person responsible for the environmental pollution. An owner or lessee of land is liable to clean up contamination by former owners/lessees. A director, chief executive officer, manager or other similar officer of the company owning or leasing the land can be liable for contamination caused by the company unless one of the defences under the relevant legislation applies (e.g. such contamination was made without his/her consent).

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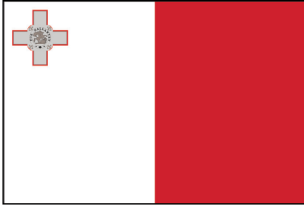
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# Malta



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Malta upholds the four EU fundamental freedoms – EU citizens enjoy the same rights when purchasing, acquiring or leasing property.

(2) The acquisition of land in Malta by EU citizens who are not residents of Malta (as defined in the IPA) is subject to the necessity of a permit, as stated in the Immovable Property (Acquisition by Non-Residents) Act, Chapter 246 of the laws of Malta (the "IPA").

(3) A non-resident person may not acquire immovable property in any manner whatsoever - this prohibition may be disregarded if the acquisition by the non-resident falls within specific exemptions provided in the IPA.

(4) The Minister (as defined in the IPA) may grant a permit to a non-resident person to acquire an immovable property specifically indicated in the permit if in the opinion of the Minister it is in the public interest or it is otherwise appropriate to grant such permit (in certain cases, the Minister is duty bound to grant this permit).

(5) A commercial partnership established in and operating from any EU Member State may freely acquire immovable property that is necessary for the fulfilment of the purpose for which it has been setup, and at least 75% of its share capital is held by a person or persons being a resident of Malta (as defined in the IPA).

(6) Non- EU foreign-controlled companies are deemed to be non-residents in terms of the IPA.

(7) There are also some other rules in relation to the acquisition of immovable property by EU nationals.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) The Civil Code, Chapter 16 of the laws of Malta (the "Code") provides that 'Ownership is the right of enjoying and disposing of things in the most absolute manner, provided no use thereof is made which is prohibited by law.'

(2) Individuals and legal persons are entitled to own land absolutely, subject to real rights such as usufructs or easements which may exist or have been constituted over the land. The Maltese Constitution also has provisions in place which protect the individual from the loss of property without compensation.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) A parallel system of registration is in place - major land interests are registered in both the Public Registry as well as the Land Registry.

(2) The Public Registry is a personal registry which keeps records of acts of civil status (such as acts of birth, marriage and death) as well as personal title on land, and the Land Registry divides land in Malta into compulsory registration areas, declaratory areas, voluntary registration areas and special designated areas.



(3) If an immovable property is located in a compulsory/declaratory registration area, every contract conveying the ownership of or constituting any real right over such property must be registered in the Land Registry including:

- contracts of sale;
- partitions;
- inventories drawn by trustees;
- judgments affecting the ownership or real rights over the property; and
- redemption of ground-rents and hypothecs.

(4) The future should see a migration of the registration system to one based solely on the Land Registry, but there is no definite timeline in place for this.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** The taxes on the gains on a transfer of land can be quite substantial:

##### (1) Income Taxes on transfer of property

- As a general rule, taxes on property transfers are assessed as a percentage of the transfer value of the property being transferred. "Transfer value" is the higher of the market value of that property and the consideration paid for the acquisition of that property.
- The two general rates of property taxes are: 8% and 10% (the latter applies in case where the property being transferred had been acquired by transferor before 1 January 2004). Different tax rates on the transfer value of the property apply in other cases.
- In certain limited instances it is possible for the transferor to opt out of the final tax on the transfer value and the transferor in such case will be taxed at his applicable marginal tax rate on the "profit" or "gain" derived on the said transfer of property.

- Two notable cases where the transferor can opt to be charged on the "gain" or "profit" are in case of:
  - i. A transfer by a person who is not resident in Malta and who is resident for tax purposes in another country. However a 7% provisional tax must be still paid relating to such transfer and such payment is not refundable and cannot be reduced.
  - ii. A transfer of property forming part of a project made by a company which has issued debt securities to the public for the purposes of developing the said project and said securities are listed on a stock exchange recognised under the Financial Markets Act.
- Certain transfers of property are also exempt from tax – such as transfers of property between spouses consequent to a separation and intra-group transfers of property

In case where capital allowances have been claimed, considerations of balancing allowances and balancing charges also arise.

##### (2) Duty on documents

- Duty on documents is also chargeable upon transfers of property. The standard rate is of 5% on the higher of the consideration paid or the market value of the said property.
- The law contemplates limited circumstances where the transfer of property is exempt from duty including transfers of property between spouses consequent to a separation and intra-group transfers of property.

##### (3) Taxes on rental income

- Generally a person may opt either:
  - i. to be charged at his applicable tax rate on the rental income derived (deducting from such rental income certain allowable deductions); or
  - ii. to be charged 15% of the gross rental income derived.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) Security interests are predominantly created over specific assets and do not extend their reach to the debtor's future assets and debts.

(2) One of the exceptions to the above is the **general hypothec**, which extends over all the present and future property of a debtor in favour of a creditor for the fulfilment of a (present) obligation – however it is limited to present debts owed by the debtor to the creditor and does not extend to future debts incurred by the debtor to the creditor.

(3) The registration of the general hypothec results in a high ranking that provides the creditor with a certain level of **protection** and **certainty**.

(4) The *ad valorem* registration tariff for hypothecs may prove to be a deterrent since general hypothecs securing a considerable amount of debt may prove to be rather expensive.

(5) The expense related to the registration of hypothecs also applies to special hypothecs which are registered over specifically identified immovable property.

(6) Enforcement of security out of court i.e. without the need of judicial intervention is rare in Malta, while enforcement in court is subject to a number of formalities which may render the enforcement cumbersome, time consuming and relatively expensive.

(7) Relative to some common law jurisdictions, enforcement of the creditor interest is not as creditor friendly in Malta – self-help mechanisms are not generally possible.

(8) Subject to certain exceptions, banks are precluded under the Banking Act (Chapter 371 of the laws of Malta) from purchasing, acquiring or holding any immovable property other than for the purpose of conducting their business.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The Code does not generally restrict or control the terms of a lease of commercial tenement to protect the tenant.

The Code prescribes certain rights and obligations of both the lessor and lessee. The lessor's rights include but are not limited to the following:

- in the absence of an agreement as to the amount of rent payable to the tenant, the rent shall be set by the relevant regulations to reflect the Property Market Value Index, as may be established by regulations made by the Minister responsible for accommodation and in the absence of such regulations, the rent shall from the first payment of rent due after January 2014, increase by five per cent per year until the coming into force of the said regulations;
- when a tenant uses the thing leased for any purpose other than that agreed upon by the parties, or in a manner which prejudices the lessor, the latter can easily evict the tenant and the tenant has no protection, such as a right to a new lease;
- the lease can exclude the ability of the tenant to assign or sub-lease, and the lessee is not entitled to sub-let a thing or to assign the lease if this was agreed upon in the contract of lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A contract of letting and hiring under Maltese law is dissolved ipso jure upon the fulfilment of a condition under which the dissolution of the contract was expressly covenanted in the lease agreement. This is provided in Article 1569(1) of the Code.

A landlord can therefore immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided in the contract of lease.

## 8. Foreign direct investment

### Q. The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. Mechanisms are also in place in the Land Acquisition (Public Purposes) Ordinance to ensure that this compensation is fair and reflective of the true market value of the property. The law does not distinguish between Maltese or foreign land owners in this respect.

(2) Since Malta's accession to the EU, and the dismantling of the exchange control regime, all external transactions and related payments may be carried out without restriction. There are no exchange controls or restrictions on repatriations of profits and capital from land.

(3) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

### Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

#### Comment

(1) Change of use of land and the control of commercial development are regulated through three acts which work in parallel, namely the Environment Protection Act (Chapter 549 of the Laws of Malta), the Environment and Planning Review Tribunal Act (Chapter 551 of the Laws of Malta) and the Development Planning Act (Chapter 552 of the Laws of Malta). The three acts are aimed at eventually replacing in its entirety Chapter 504 of the Laws of Malta, the Environment and Development Planning Act of 2010.

The competent authority regulating environmental issues is the Environment and Resources Authority ("ERA") whilst the competent authority regulating planning matters is today the Planning Authority ("PA").

(2) Change of use is also regulated by the Development Planning (Use Classes) Order (the "Order"), which was last updated in February 2014 (Subsidiary Legislation 552.12).

(3) The Order classifies the land classes in eight different categories - changing the use of land from one class to the other may require a full development permit issued by PA, and is subject to fees as provided in the Development Planning (Fees) Regulations (Subsidiary Legislation 552.12).

(4) Any full development permit is subject to a minimum development permit fee of 120 Euro (additional fees are calculated *ad valorem* through different rates per square metre of land in question) and an environment fee. In some cases these fees are capped at a maximum charge to avoid unnecessary financial burdens however there is no capping for commercial developments.

(5) The planning directorate has up to eight weeks to finalise a recommendation on an application, but this usually takes much longer since recommendations depend on external factors and revision.

(6) The 2014 amendments introduced exceptions where a full development permit is not required for a change of use in land within the same, or where the change in use will result in a lesser environmental and traffic impact on the land in question.

## 10. Environmental

### Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

#### Comment

(1) Environmental Protection and planning are regulated *inter alia* by the Environment Protection Act (Chapter 549 of the Laws of Malta) and the Environment and Planning Review Tribunal Act (Chapter 551 of the Laws of Malta) and a number subsidiary legislations. A number of subsidiary legislations regulate specific aspects of environmental and planning matters, including areas ranging from industrial emissions and noise pollution levels to the conservation of marine fauna and the scheduling of areas designated as nature reserves.

(2) ERA is responsible for the implementation of more than 200 EU Directives, Regulations and decisions under Malta's EU environmental *acquis*.

(3) The Environment Protection Act also obliges ERA to endeavour to establish mechanisms aimed at preventing, controlling, reducing and remedying

pollution and degradation of the environment and managing environmental emergencies when they arise. ERA is tasked with environmental protection and enforcement, impact assessments, environmental permitting and compliance and habitat conservation, among others.

(4) The Prevention and Remedying of Environmental Damage Regulations (Subsidiary Legislation 549.97) establishes a liability-based system based on the polluter-pays principle whilst also implementing them Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. This gives ERA the authority to take both preventive and remedial measures in cases of 'environmental damage', with the measures and expenses being borne by the polluter, via security over property or other guarantees.

(5) The Environment Protection Act also establishes fines for offences including the obstruction or hindrance of authority officials from carrying out their duties, the failure to comply with planning enforcement orders, or the building or development of land in breach of conditions or restrictions in a permit.

(6) The Maltese Criminal Code also contains some provisions on environmental damage caused by radioactive material.

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# Mauritius



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** As a principle, alien individuals or alien corporations are not permitted to acquire local land directly or indirectly except with the prior consent of the Prime Minister's Office or if the acquisition is made under specific investment schemes which are subject to conditions. No consent is required to enable a non-citizen who wishes to lease a property.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals including domestic companies can own land outright except for State land, which is only subject to leasehold rights. However any domestic company having a foreign shareholder must seek the approval of the Prime Minister's Office before acquiring an immovable property. Additionally, Mauritian companies holding a category 1 global business licence issued by the Mauritius Financial Services Commission require the prior approval of the Prime Minister's Office for any acquisition of immovable property in Mauritius. There is no restriction on lease and occupancy rights.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** There is a central register of titles to land in Mauritius which is kept by the Land Registry Department of the Registrar General. The Land Registry Department is publicly accessible and

provides information on the immovable property for the safeguard of the interests of creditors, the parties and third parties. Each immovable property has a personal identification number (PIN) which provides a unique identification of the property and its owner. The land registers at the Land Registry provides information as to the extent of the land, ownership, mortgages, long term leases and certain other important rights such as easements and pre-emption rights. Problems over titles to land are rare as they are drawn up by notaries public who have the duty to ensure the registration and inscription at the Land Registry Department.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** In Mauritius, the transferor of a freehold or leasehold property is subject to a standard land transfer tax of five per cent (5%) of the value of the property transferred. The transferee is also subject to registration duty tax of a standard rate of five per cent (5%) in the value of the property at the time of registration. However, these taxes are exclusive of the notary fees applicable for the transfer of a freehold property which generally ranges between 0.5% and 2% of the value of the property. Furthermore, the gains arising from the disposal of land in Mauritius will be considered as part of gross income if it arises only in the course of business and would therefore be subject to income tax. If the gains from the disposal of land are made between two individuals, such capital gains would not be taxable in Mauritius for the purposes of the Income Tax Act 1995 at the rate of 15%.



## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment**

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** There is a legal framework for commercial leases, which provides for protection of the tenant and for some control on the terms of the agreement. There are parameters regarding the increase of rents. The lease can validly exclude some of the obligations of the landlord to do some repairs or to compensate the tenant for improvements on expiry of the lease. When a lease of business premises expires, the landlord cannot evict the tenant with a court order. The lease can validly exclude the ability of the tenant to assign or sub-lease. A lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided under the lease agreement.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Specific investment schemes have been developed to attract direct foreign investment in real estate properties, these schemes target high net worth

individuals. In addition, Mauritius has signed several Investment Promotion and Protection Agreements with other countries which offer protection/indemnifications to investors of a signatory state against expropriation or nationalisation.

In addition, in the event of a compulsory acquisition, the government of Mauritius is required to compensate the land owner or leaseholder.

There are no exchange controls and no restrictions on repatriation of profits and capital in Mauritius, as a result, any gains derived by investors from real estate projects or from any other industry in Mauritius can be freely repatriated. Interest on foreign loans would be subject to withholding taxes depending on whether the entity is a domestic entity and in such a case would be subject to a tax rate of fifteen per cent (15%) or in the event it is a GBL entity, it would be exempt from taxes.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated and subject to permits for both business and residential developments. In Mauritius, real estate promoters or individuals are required to have a Building Land Use Permit which is delivered by the respective municipality (for urban areas) or district council (for rural areas) prior to the start of any land development in the respective region and which is subject to certain conditions and approvals from other authorities including environmental authorities. Additional permits may be required depending on the type of development/project.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties in Mauritius. There are environmental laws which prevent the public dumping on unoccupied land in as much as there is a dedicated 'Environment Police' which ensures that the occupiers or owners do not default on

their duty to keep in the land in a proper state. The Environment Police is empowered to fine the occupiers or owners of a property in the event the latter defaults on its obligation of keeping the land in good state.

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# Mexico



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Foreign legal entities and individuals may *directly* acquire and own land in Mexico (other than in the "Restricted Area" which conforms a strip of land of one hundred kilometres along frontiers and fifty kilometres along beaches) by waiving the right to invoke the protection of their country of citizenship in connection with the relevant real estate asset and, therefore, being deemed Mexican nationals for that purpose only (i.e. subject to Mexican regulations and courts on land and property) (the "Waiver"). In this case, aliens will require, prior to the land purchase, the following: (i) if Mexico does not have diplomatic relationship with the alien's country, a permit from the Mexican Ministry of Foreign Affairs to carry out the land purchase; or (ii) if Mexico has diplomatic relationship with the alien's country, filing of the Waiver acceptance with the Mexican Ministry of Foreign Affairs.

(2) Foreign legal entities and individuals may *indirectly* acquire and own land in Mexico in the Restricted Area (other than for residential purposes), by participating in or setting up a Mexican legal entity that files acceptance of the Waiver with the Mexican Ministry of Foreign Affairs and providing notice of the acquisition within 60 days thereafter.

(3) Foreign legal entities and individuals may *indirectly* acquire *rights to use* land in Mexico for residential purposes in the Restricted Area, through a Mexican trust with a Mexican authorised financial institution as trustee, prior obtaining a permit with the Mexican Ministry of Foreign Affairs to that effect.

(4) No restrictions for aliens to lease land in Mexico other than observance of the usual local and civil laws also applicable to nationals.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All nationals (including locally incorporated companies) can own land outright; however, Mexican legal entities with provision of foreign investment admission in their by-laws may also acquire land in the Restricted Area (as defined in Q1) as follows: (i) if not for residential purposes, by providing notice of the acquisition within 60 days thereafter; and (ii) if for residential purposes, through a Mexican trust with a Mexican authorised financial institution as trustee, prior obtaining a permit with the Mexican Ministry of Foreign Affairs to that effect.

(2) No restrictions for nationals to lease land in Mexico other than observance of the usual local and civil laws.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** Mexico has a Public Registry of Property system which is locally regulated and managed by each State that allows owners to have safe title to their real estate assets. The Registry shows the extent of the land, ownership, title chain, liens, attachments, longer-term leases and certain other important rights, such as rights of way and domain restrictions. The Registry provides publicity and bona fide priority if title, lien, attachment and other property rights and actions are

recorded with it. Since the Registries are not controlled by the federal government, each jurisdiction has its own operating practices in terms of title recording timing, but in average it may take 4-6 weeks from recordation filing (depending on workload and, therefore, big city Registries take much longer than those of smaller cities). Upon registration, title bona fide priority is protected as recording effects are retroactive to the date of recordation filing.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Income taxes are standard and regulated by the federal government and range from 30% to 35% over gains.

(2) Transfer taxes and title registry fees are regulated by each State. Although in most jurisdictions, transfer taxes ranges between 2-4% over property or transaction value and registry fees are not substantial and usually charged on the basis of property or transaction value with a cap (e.g. MX\$17,000 pesos or US\$1,000 dollars), there are few places where local authorities will assess transfer taxes based on formulas or registry fees without caps, in which cases transfer taxes and registry fees may be higher than normal.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) Owner may mortgage specified land. (2) Mortgage can secure all present debt generically. (3) Mortgages cannot secure future debt (other than revolving or available unused credit lines). (4) A mortgage can guaranty foreign currency indebtedness, but borrowers may choose to pay in pesos at the exchange rate published by Mexico's Central Bank. (5) The mortgagee cannot sell immediately on a default by private sale, without court order and public auction. (6) On insolvency the mortgage ranks prior to all unsecured creditors except for some employee benefits and insolvency costs. (7) Mortgages must be

formalised through a deed granted before notary and recorded with the Public Registry of Property in order to have first priority rank.

Other commonly used forms of guaranty in Mexico to secure creditors is the guaranty trust, which is a bankruptcy remote vehicle where land is transferred out of the ownership of the borrower to a financial institution trustee (for the benefit of creditors) and may be reverted to the original owner upon payment of credit in full and, therefore, not causing transfer taxes under most jurisdiction in Mexico. Guaranty trusts allow for a private sale of the secured assets or adjudication by the creditor.

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) Civil law is neutral regarding landlord and tenant, allowing both parties to freely agree most of the lease terms. (2) Procedural law tends to protect tenant and a court order on eviction may take from 6 to 18 months, depending on motions, appeals and injunctions (*amparos*). (3) There are no controls on rents. (4) The lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements at lease expiration. (5) Tenants have rights of first refusal to lease and pre-emptive rights to buy the leased property, which can be usually waived in the lease agreement under most jurisdictions. (6) The lease can validly exclude the ability of the tenant to assign or sub-lease. (7) Lessees are not released from their obligations under a lease when they sublease (unless otherwise agreed by the parties).

#### 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes but may not evict unless a court

order is obtained. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided in the lease agreement; however, the bankruptcy court may determine the need for the lease to remain in effect for the tenant to be able to reorganise, in which case, payment of rent should be considered a priority by the court and payable to the landlord before any creditor as a material and surviving operating cost.

## 8. Foreign direct investment

### Q. The law is friendly to foreign direct investors in land?

**Comment** (1) Mexican law is friendly to foreign direct investors in land (please see response to Q1). (2) The government has to pay compensation for expropriation or compulsory purchase of land promptly and in cash. (3) There are no subsidies and special zones where taxes are relaxed. (4) There are no currency exchange controls or restrictions on repatriations of profits and capital from land. (5) There are no material withholding taxes on the interest on foreign loans and so long as foreign creditors comply with certain requirements under Mexican tax law, a withholding rate of 4.9% applies.

## 9. Development of land

### Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Construction and change of use of land are highly regulated under Mexican law and permissions from public safety, environment as well as urban development are required. There is also strong supervision from authorities during construction and a certificate of construction termination is issued by the relevant government agency upon completion and complying with specific and detailed regulation requirements. Local authorities in each jurisdiction control and govern construction and use of land, so permission costs and timeframe varies from city to city.

## 10. Environmental

### Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties and the general principle is that the authorities will pursue the polluter for clean-up and penalties; however, Mexican environmental law considers the owner of a property (even if it did not cause the contamination or did not use the land, but leased it to a third party who polluted) as jointly and severally liable for cleaning contamination (not for penalties though, which will be assessed only to the person contaminating). Shareholders and directors of a legal entity may also be liable for contamination caused by such company.

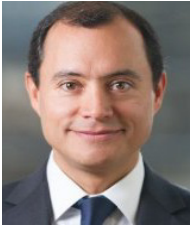
**General comment** The Mexican real estate industry has evolved rapidly in the last 5 years since the creation of FIBRAs (Mexican REITs) and other types of public investments for real estate development such as the CKDs (capital certificates for development) (both type of vehicles are listed on the Mexican Stock Exchange and the international markets), allowing individual and sophisticated investors to participate with equity in the real estate sector. Furthermore, small developers have become institutionalised players and large international investors have entered the country through joint ventures with local realtors or directly by setting up operations in Mexico. Title insurance has also become a practice in Mexico, giving more confidence to foreign lenders, while Mexican banks are a competitive choice too nowadays. Finally, Public Registries of Property are in the process of updating and digitising their data that will make them faster and friendlier to due diligence and real estate transactions in general.

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# Moldova



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations, and local corporations owned or controlled by aliens cannot own agricultural land. They can own any other type of land. They can lease all types of land, including agricultural.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country, especially urban areas. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register and the register is very reliable. (4) Problems over title are rare. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business**

**purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable. 20% VAT applies when the land contains a building (applies only on the value of the building sold).

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. (2) The mortgage must specify the debt precisely and must specify a maximum amount. (3) The mortgage can be in a foreign currency. (4) The mortgagee can sell immediately on a default by private sale, if so provided, without a court order or public auction **provided the mortgage agreement contains a special clause**. (5) There are temporary freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits, **but junior to insolvency costs**. (7) There are substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to

associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease **provided only it obtained the consent of the landlord therefor.**

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land **if tenant is current on rents falling due after insolvency proceedings are opened.**

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations

of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company **if their fault is proven.**

**General comment** The practice for land transactions are in the main quick and efficient because Moldovan has a title registry as from 1999 which is reliable and works.

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# Monaco



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** There are no restrictions relating to the purchase or the rental of Monaco real estate by foreigners.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register. (4) Problems over title are rare. (5) Extra due diligence, e.g. into rights of occupation is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are quite substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. There are no taxes on the gains on a transfer of such land or leases (no capital gain taxes but only transfer taxes payable by the purchaser / lessee).

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage must specify the debt precisely. (3) The mortgage can be in a foreign currency but, if not, can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are not payable to the mortgagee/insolvency estate. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**



**Comment** The law does restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are controls on rents, (2) the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant and the tenant has protection, such as a right to a new lease, (4) the lease cannot validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord cannot immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided and the landlord's termination rights on a default are restricted. (2) If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are no subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and

residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

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# Mongolia



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Foreign legal entities, companies with foreign investment or foreign citizens cannot hold land ownership or possession rights, but may only hold land use rights. The land use right cannot be transferred to any third party or pledged as security. Land ownership rights can be transferred and sold only among Mongolian citizens based on approval from the land authority.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** Only Mongolian citizens can hold land ownership rights. Mongolian citizens and legal entities (i.e., local companies without foreign investment) can hold land possession rights initially for up to sixty (60) years with a right to extend for up to forty (40) years.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There is a register of title to land and the land register includes the information about the issuance date of the land certificate, the name of the title holder, the code of the land lot, its size and location, mortgages over the land. The register is comparatively reliable however the overlapping issue is common.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes. The holder of the land ownership or possession right must pay 2% of tax on sales of immovable properties including land.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** The land in ownership or possession right (not use right) can be pledged as a security in favour of the Mongolian citizens and legal entities without foreign investment.

The Pledge over the immovable property and land rights must be registered with the relevant land authorities and immovable property registration office in order to become valid. If bankruptcy proceedings are initiated against the borrower, the creditor with the perfected security interest is entitled to payment from the proceeds of the perfected security interest on a first priority basis.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of

**landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** A holder of land possession right may sub-lease all or part of the land to a third party upon obtaining a prior approval from the land authorities. The law does restrict or control the terms of a lease. However, lease term cannot be longer than the basic land possession right's term. When a lease of business premises expires, the landlord can evict the tenant.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease agreement for commercial purposes if so provided/in the lease agreement. If the tenant becomes bankrupt, the landlord can terminate the lease if so provided in the agreement between the parties.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Under the Land Law, foreign legal entities, companies with foreign investment or foreign citizens cannot hold land ownership or possession rights, but may only hold land use rights. The land use right cannot be transferred to any third party or pledged as security while land possession right can only be transferred and pledged to Mongolian citizens and legal entities without foreign investment.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** The holder of the land possession or use right must use the land as per the purpose stated in the land possession or use agreement. The official permissions of the relevant authorities are required to build on or change the use of land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is liable to clean up contamination around its land. The holders of the land title are responsible for arranging the land specification and quality control assessment for each 5 years. General and detailed environmental impact assessment must be conducted for any new project as well as the renovation and expansion of existing industrial work, service and construction activities.

### General comment

The Land Law provides three types of land rights, namely, land ownership rights, land possession rights, and land use rights. Each of these rights is explained below:

(a) land ownership right means the right to have a legitimate control over the land including the right to dispose of such land. Only Mongolian citizens can hold the right to own land for family use or commercial purposes. Land ownership rights can be transferred and sold among Mongolian citizens based on approval from the land authority.

(b) land possession right means the right to have a legitimate control over land in accordance with its permitted use under the terms and conditions specified in the land possession contract. Mongolian citizens and legal entities can have the right to possess land initially for up to sixty (60) years with a right to extend, to lease the whole or part of the land held under its possession, to transfer it with the approval of the land authority and to pledge the land as security for Mongolian citizens and legal entities without foreign investment.

(c) land use right means the right to utilise one of the useful characteristics of land in accordance with the contract entered into with the land owner (i.e., either the State or the citizens of Mongolia) or with the holder of land possession right.

Under the Land Law, foreign legal entities, LLCs with foreign investment or foreign citizens cannot hold land ownership or possession rights, but may only hold land use rights. The land use right cannot be transferred to any third party or pledged as security

while land possession right can only be transferred and pledged to Mongolian citizens and legal entities without foreign investment.

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# Montenegro



## 1. Foreigner's ownership

**Q. There are no restrictions on the ownership or leasing of land by foreigners?**

**Comment** Foreign individuals and foreign corporations are not permitted to be the owners of:

- 1) natural resources;
- 2) goods in common use;
- 3) agricultural land;
- 4) forest and forest land;
- 5) cultural monument of great and special importance;
- 6) immovable property in a land-border area to a depth of one kilometre and islands;
- 7) immovable property which is located in an area which is to protect the interests and security of the country, legally declared an area in which a foreign person cannot have a property right.

There are no restrictions for leasing of land by foreigners.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land and are not limited to leases or mere occupancy rights?**

**Comment** Natural resources and goods of natural use cannot be privately owned.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in most of the country, especially urban areas. The land register shows the surface of the land, ownership and third party rights, such as servitudes and pre-emption

rights. The register is reliable. Problems over title are rare.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are notarisation fees, registration fees and translation costs. The tax rate for transfer of land is 3% of the market value of land in the moment of transfer.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt and the maximum amount of secured debt must be specified. The mortgage cannot be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. There are no substantial costs or fees involved in land mortgages, apart for the fees for registration and notarisation.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law slightly restricts or controls the terms of a lease of commercial premises to protect the tenant. Note: there are no controls on rents, the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, the lease can validly exclude the prohibition of the tenant to sub-lease, landlord must give a consent for the assignment of lease, lessee is released from its obligations under a lease when it assigns the lease, and lessee is not released from its obligations under a lease when it subleases the commercial premises.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided by the lease agreement. Lease agreement may be terminated if insolvency proceedings are initiated against tenant or landlord.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land in cash or by granting ownership or co-ownership over the immovable property. There are special zones where taxes are relaxed. There are no exchange controls or

restrictions on repatriations of profits and capital from land. There are withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land. Construction works may be commenced on the basis of technical documentation and upon obtaining building permit. Usage of facility is allowed upon obtaining use permit.

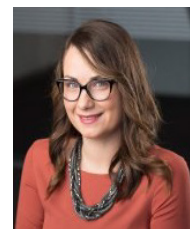
## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is not liable to clean up contamination by former owners/lessees. Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

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# Mozambique



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** The Mozambican Law states that the land is a State property. An alien only can hold the right to use and benefit the land (DUAT), subject to certain legal pre requirements.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Even nationals (including locally incorporated companies) cannot own land. They can only hold the right to use and benefit the land (DUAT) for a maximum period of 50 years (in case of economic activities) and can be renewed for the same period.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The process to obtain the right to use and benefit of land is not quick but once you have it, it is safe since it assures the right held.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** the right to use and benefit of land only can be transferred by heritage. Otherwise only the immovable built on the land can be transferred. In urban areas the building transfer implies an automatic right to use and benefit the land. In rural areas, the building transfers shall be prior approved by the competent authority.

However, any of the above mentioned possible transfers involve costs (taxes, fees, notarisation fees and registration fees).

The transfer above mentioned involves costs (taxes, fees, notarisation fees and registration fees), depending on the situation. *Please note: this is a repetition*

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The holder of the right to use and benefit of land cannot mortgage the land. The holder can only present/show the right title to use and benefit of land title to financial institutions for the purpose of obtaining loan.

The related assets (immovable built on the land) are very protective of the mortgagee as creditor. The immovable holder can grant the immovable to mortgage.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**



**Comment** The land cannot be leased, only the immovable built on the land can be disposed of including leased.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** The land cannot be leased, only the immovable built on the land can be disposed of including leased.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Foreign investors can hold the right to use and benefit the land, provided that they have an approved investment plan and in case of individuals they are in Mozambique for more than 5 years and legal entities shall be duly registered in Mozambique.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** The land shall be used for the purpose that it was requested by the holder of the right to use and benefit the land to the government. Before the holder of the right to use and benefit the land starts a construction he shall obtain a construction licence before the competent authority.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties and neither project/company can be licensed and implemented without the required environmental approvals.

**General comment** According to the Constitution of the Republic of Mozambique, the right of ownership over land is vested in the State and "*the land is the property of the State and cannot be sold or otherwise alienated, mortgage and encumbered or attached (distrained)*".

In terms of the Land Law, to an individual or corporate entity is only granted the right of land use and benefit (DUAT) and the Land Law establishes the terms under which the creation, implementation, modification, transfer and termination of the right of land use and benefit operates.

Notwithstanding the fact that, the land is owned by the State, local and foreign private entities and individuals have the right to use and benefit of the land (right of use and benefit of land) through the DUAT Title granted for a specific purpose.

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# Namibia



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Land is *divided* into 3 x different 'kinds' of land:

- (1) Land *situated within* Local Authority Areas (i.e.: "Municipal Land");
- (2) Land *situated outside* Local Authority Areas (and *not situated within* Communal Land Areas)(i.e.: "Agricultural-/Farm Land"); and
- (3) Land *situated within* Communal Land Areas (i.e.: "Communal Land").

In terms of Article 16(1) of the Namibian Constitution, all persons shall have the right to acquire, own and dispose of immovable property, provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.

### (1) Municipal Land:

There are no restrictions on alien individuals and alien corporations to acquire or dispose of Municipal Land and there are no restrictions on alien individuals and alien corporations to let or hire Municipal Land.

[Note: the legislator is in the process of amending the Local Authorities Act 23 of 1992, in terms of which it is intended to designate areas within Local Authority-/Municipality Areas, into areas which are reserved for Namibian citizens ("Namibian-Zones"/"Namibian-Zone-Properties") and areas which are Open Zones ("Open-Zones"/"Open-Zone-Properties").

If and when the Local Authorities Act 23 of 1992 should be amended, alien individuals and alien corporations (or corporations incorporated in Namibia in which the controlling interest is held by

aliens), will apparently be prohibited from acquiring Namibian-Zone-Properties.

Alien individuals and alien corporations (or corporations incorporated in Namibia in which the controlling interest is held by aliens), will apparently also be prohibited from acquiring business properties situated in Open-Zones and will only be allowed to acquire residential properties situated in Open-Zones.

The Local Authorities Amendment Bill [B.12-2015] was passed by the National Assembly, but the National Council had reservations about certain amendments and apparently referred the Amendment Bill back to the National Assembly with proposed amendments.

Currently it is not certain whether the Local Authorities Amendment Bill [B.12-2015] will be passed and if passed, in which amended form it might be passed.]

### (2) Agricultural-/Farm Land:

Alien individuals and alien corporations (including locally incorporated corporation in which the controlling interest is not held by Namibian citizens) may only acquire Agricultural-/Farm Land and may only hire Agricultural-/Farm Land for a period exceeding 10 (ten) years, with the prior consent of the Minister of Lands (Agricultural (Commercial) Land Reform Act, 6 of 1995), which consent shall only be granted, inter alia, where the acquisition of the land will constitute an eligible investment as contemplated in section 5 of the Foreign Investments Act, 27 of 1990 in respect of which a Certificate of Status Investment has been issued/will be issued.

The State has a preferent right to purchase Agricultural-/Farm Land.

If Agricultural-/Farm Land is alienated (or if Agricultural-/Farm Land is held by a corporation, where shares in the corporation are alienated), the Agricultural-/Farm Land must first be offered to the State, and only where the State waives its preferent right to purchase the Agricultural-/Farm Land, the Agricultural-/Farm Land (or the shares in the corporation) may be alienated to a private individual/private corporation.

[Note 1: No portion of Agricultural-/Farm Land may be sold unless the Minister of Agriculture consents thereto in writing (Subdivision of Agricultural Land Act 70 of 1970).

No lease in respect of a portion of Agricultural-/Farm Land of which the period is 10 years or longer may be entered into, unless the Minister of Agriculture consents thereto in writing.

Consent is usually given where the said portion can be used as an individual economical unit.]

[Note 2: Namibia is divided into 13 Regions in respect of which Regional Councils have been established (the Regional Councils Act 22 of 1992).

Regional Councils have the power to establish, manage and control Settlement Areas (previously "Peri-Urban Areas") in respect of areas outside any Local Authority-/Municipality Areas.

Land which falls inside a Settlement Area ("Settlement Area-Land") is *not subject to* the above-mentioned Agricultural (Commercial) Land Reform Act, 6 of 1995 and there are no restrictions on alien individuals and alien corporations to acquire or dispose of Settlement Area-Land and there are no restrictions on alien individuals and alien corporations to let or hire Settlement Area-Land.]

[Note 3: The legislator is in the process of amending the Regional Councils Act 22 of 1992.

If and when the Regional Councils Act 22 of 1992 should be amended, alien individuals and alien corporations or corporations incorporated in Namibia in which the controlling interest is held by aliens, will apparently be prohibited from acquiring Settlement Area-Land.

The Regional Councils Amendment Bill [B.11-2015] was passed by the National Assembly, but the National Council apparently objected to the principle of the Bill with a 2/3<sup>rd</sup> majority.

The National Assembly must now reconsider the principle of the Bill and has to reaffirm the principle of the Bill with a 2/3<sup>rd</sup> majority.

Currently it is not certain whether the Regional Councils Amendment Bill [B.11-2015] will be passed and if passed, in which amended form it might be passed.]

### (3) Communal Land

All Communal Land vests in the State in trust for the benefit of the traditional communities residing in those areas (Communal Land Reform Act 5 of 2002).

No right conferring freehold ownership is capable of being granted or acquired by any person (whether alien or not), in respect of any portion of communal land.

The relevant Communal Land Board and/or the Minister of Land may grant a right of leasehold in respect of portions of Communal Land, subject to the consent of the relevant Traditional Authority or Arbitration-decision.

The maximum lease-period length is 99 years.

If the lease-period exceeds 10 years, the Minister must approve the leasehold.

In practice the Land Boards and/or the Minister only grant rights of leasehold for 25 years, after which they then decide on whether to renew the leasehold, or not.

[Note: In terms of the Communal Land Reform Amendment Act 13 of 2013 alien individuals and alien corporations who wish to acquire a right of leasehold must first obtain a written authorisation of the Minister of Lands before he/she applies for such right.

The Communal Land Reform Amendment Act 13 of 2013 was assented to on 24 December 2013 and will come into operation on a date still to be determined by the Minister of Lands.

Currently it is not certain whether and when this Amendment Act might become operational.]

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** In terms of Article 16(1) of the Namibian Constitution, all persons shall have the right to acquire, own and dispose of immovable property.

All nationals (including locally incorporated companies) can own land outright.

There are however the following exceptions:

### (1) Municipal Land:

As mentioned under Question 1, above, the legislator is in the process of amending the Local Authorities Act 23 of 1992, in terms of which it is intended to designate areas within Local Authority-/Municipality Areas, into areas which are reserved for Namibian citizens ("Namibian-Zones"/"Namibian-Zone-Properties") and areas which are Open Zones ("Open-Zones"/"Open-Zone-Properties").

If and when the Local Authorities Act 23 of 1992 should be amended, a Namibian with a higher level of income may not buy residential property in a Zone reserved for Namibian citizens with a lower level of income than such Namibian citizen, except if the Minister allows/approves it.

A higher level of income Namibian citizen may however buy Namibian-Zone-Properties, if the property is a business or where the land is reserved for business purposes.

Any Namibian citizen may buy any Open-Zone-Property.

A corporation which is incorporated in Namibia, but in which the controlling interest is held by foreign nationals, constitutes a foreign national, and is prohibited from acquiring Namibian-Zone-Properties and Open-Zone-Properties, except for Open-Zone-Properties which are residential properties.

Currently it is not certain whether the Local Authorities Amendment Bill [B.12-2015] will be passed and if passed, in which amended form it might be passed.

### (2) Agricultural-/Farm Land:

The State has a preferent right to purchase Agricultural-/Farm Land (Agricultural (Commercial) Land Reform Act, 6 of 1995).

If Agricultural-/Farm Land is alienated (or if Agricultural-/Farm Land is held by a corporation, where shares in the corporation are alienated), the Agricultural-/Farm Land must first be offered to the

State, and only where the State waives its preferent right to purchase the Agricultural-/Farm Land, the Agricultural-/Farm Land (or the shares in the corporation) may be alienated to a private individual/private corporation.

[Note: No *portion* of Agricultural-/Farm Land may be *sold* unless the Minister of Agriculture consents thereto in writing (Subdivision of Agricultural Land Act 70 of 1970).

No *lease* in respect of a *portion* of Agricultural-/Farm Land of which the period is 10 years or longer may be entered into, unless the Minister of Agriculture consents thereto in writing.

Consent is usually given where the said *portion* can be used as an individual economical unit.]

### (3) Communal Land

All Communal Land vests in the State in trust for the benefit of the traditional communities residing in those areas (Communal Land Reform Act 5 of 2002).

No right conferring freehold ownership is capable of being granted or acquired by any person (whether alien or not), in respect of any portion of communal land.

The relevant Communal Land Board and/or the Minister of Land may grant a right of leasehold in respect of portions of Communal Land, subject to the consent of the relevant Traditional Authority or Arbitration-decision.

The maximum lease-period length is 99 years.

If the lease-period exceeds 10 years, the Minister must approve the leasehold.

In practice the Land Boards and/or the Minister only grant rights of leasehold for 25 years, after which they then decide on whether to renew the leasehold, or not.

## 3. Proof of title

### Q. Proof of title to land is quick and safe?

#### Comment

(1) Title to all Municipal Land and all Agricultural-/Farm Land is recorded/registered in Namibia's Deeds Registry in terms of the Deeds Registries Act 47 of 1937.

(2) Leaseholds in respect of Communal Land is registered in a prescribed register by the Land Boards/the Ministry of Lands in terms of the Communal Land Reform Act 5 of 2002.

(3) The Deeds Registry shows the extent of the land, ownership, mortgages, long-term leases and certain other important rights, such as rights of way and pre-emption rights.

(4) The state does not guarantee the accuracy of the Deeds Registry.

(5) The Deeds Registry is however very reliable and only duly qualified and admitted attorneys and conveyancers are allowed to prepare and lodge deeds at the Deeds Registry, who take responsibility for the correctness of facts referred to in titles, deeds and documents lodged/registered at the Deeds Registry.

Problems over title are very rare.

(6) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

##### Comment

##### **(A.1) Costs relating to the transfer of land:**

(1) Apart from normal legal fees depending on the scope of the work, fairly substantial transfer and documentary taxes on transfers of land can be payable, depending on the value of the land and/or the amount of consideration paid in respect of the land.

(2) **Transfer Costs** payable in respect of the **registration of transfer of land** mainly comprise of:

- Attorney/Conveyancer–Transfer Fees (Deeds Registries Act, 47 of 1937):

The fees are calculated on the value of the land in accordance with a sliding scale-tariff which is prescribed and fixed by the Deeds Registries Regulations.

The fees can vary between 0,4% and 1,2% depending on the value of the land.

- Transfer Duty (Transfer Duty Act 14 of 1993):

Transfer Duty is payable in respect of the consideration paid in respect of the land.

Transfer Duty payable by a natural person-purchaser is calculated according to a sliding scale and can be between 0,4% and 6%.

Transfer Duty payable by a corporate-purchaser is 12% of the consideration paid in respect of the land.

- Stamp Duty (Stamp Duties Act 15 of 1993):

Stamp Duty is payable on the Transfer Deed relating to land purchased.

The Stamp Duty is calculated on the value of the land or the consideration paid for the land (whichever is the higher).

Stamp Duty payable by a natural person-purchaser is approximately 1% of the amount which exceeds N\$600 000,00 of the value of or the consideration for the land.

Stamp Duty payable by a non-natural person-purchaser is 1,2% of the value of or the consideration for the land.

(3) There are no differences with regard to land transfer costs, between business- and residential land transfers.

**(A.2)** The taxes on the gains on a transfer of such land can be fairly substantial.

(1) Apart from normal Income Tax payable on the consideration received in respect of investment-property sold, 15% Value-added Tax ("VAT") is payable on the consideration received in respect of business properties.

(2) Various supplies are VAT-exempted and VAT-zero-rated.

- e.g.: if the business property is sold by someone who is registered for VAT to someone else who is also registered for VAT and the property is sold as a going concern, the supply is zero-rated, and 0%-VAT is payable.

(3) No Capital Gains Tax is payable in Namibia.



**(B.1) Costs relating to the entering into of a lease agreement:**

- (1) Apart from normal legal fees depending on the scope of the work, only Stamp Duty is payable on leases whereby immovable property is let.
- (2) Stamp Duty (Stamp Duties Act 15 of 1993) is calculated in accordance with a prescribed scale on a sum equal to the aggregate amount of rent payable in respect of the period for which the lease is required to be stamped in terms of the Stamp Duties Act 15 of 1993:
- Where the lease period does not exceed 5 years it is 0,5% of the total consideration paid in respect of the lease.
  - Where the lease period exceeds 5 years but not 10 years it is 0,8% of the total consideration paid in respect of the lease.
  - Where the lease period exceeds 10 years but not 20 years it is 1% of the total consideration paid in respect of the lease.
  - Where the lease period exceeds 20 years it is 1,5% of the total consideration paid in respect of the lease.

**(B.2)** The taxes on the gains on leases of land used for business purposes can be fairly substantial.

15% Value-added Tax ("VAT") is payable on the rent received in respect of business properties, where the annual turnover exceeds an amount of N\$500 000,00.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

### Comment

- (1) The owner of land can mortgage specified land.
- (2) The mortgage can secure all present and future debt generically.
- Where future debts are secured, a maximum amount must be specified.
- (3) The mortgage can be in a foreign currency.
- (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court

order (except if otherwise agreed to by the debtor/mortgagor).

- (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee if pledged to the mortgagee.
- (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs (except for costs of realisation).
- (7) There are fairly substantial costs and fees involved in land mortgages (e.g.: Stamp Duty = 0,5% of the debt secured/to be secured).
- (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease.
- (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g.

- (1) there are no controls on rents,
- (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease,
- (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease,
- (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and
- (5) a lessee is not released from its obligations under a lease when it assigns the lease.

[Note: the only statutory restriction applicable to leases of commercial premises is provided for in the

Rents Ordinance 13 of 1977 which provides that where a lease is terminated by the landlord, by giving notice, that the landlord must give notice of at least one year.

The tenant may however consent in writing, on a later date than the commencement or renewal of the lease, to a shorter period of notice.]

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

### Comment

(1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided.

(2) If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

### Comment

(1) The general regime regarding protection of foreign investment is outlined in the Foreign Investment Act and the Namibian Constitution. The Foreign Investment Act provides that no enterprise, or part of an undertaking carried on by an enterprise, or interest in or right over any property forming part of such undertaking, shall be expropriated, except in accordance with the provisions of Article 16(2) of the Constitution, which provides that the state may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by an Act of Parliament.

The Minister of Industrialisation, Trade and SME Development may issue a certificate of status investment which certificate confers benefits in respect of exchange control restrictions, and makes certain provisions of the Foreign Investment Act applicable to a foreign investor who has been issued such certificate. These provisions provide for:

- a. the availability of foreign currency for certain payments;
- b. transfer of profits and proceeds of sale;
- c. retention of foreign currency obtained from a sale of exported goods;
- d. compensation in the case of expropriation; and
- e. settlement of disputes in respect of status investments.

(2) The Export Processing Zones Act (Act No. 9 of 1995) (the EPZ Act) provides for the establishment, development and management of EPZs, whose objectives and purposes are to:

- a. attract, promote or increase the manufacture of export goods;
- b. create or increase industrial employment;
- c. create or expand export earnings;
- d. create or expand industrial investment, including foreign investment; and
- e. encourage technology transfer and the development of management and labour skills in Namibia.

The EPZ regime affords investors certain tax benefits (which are given to achieve technology transfers, capital inflow, skills development and job creation) in respect of income tax, value added tax, and stamp and transfer duty.

(3) There are exchange controls on repatriations of profits and capital from land.

Foreign loans to Namibian residents require prior approval from the Bank of Namibia, which is usually granted when the repayment and servicing of loans do not disrupt the balance of payments, and the level of interest rates paid is reasonable in terms of prevailing international rates. The repayment of foreign loans requires Bank of Namibia approval.

Interest payments at rates approximating current rates (interest rates may not be excessive compared to rates charged by local Banks), however can be made without prior approval, and are freely transferable to non-resident creditors.

Share certificates that are to be issued to non-resident shareholders against an underlying same-value inflow of capital from abroad with appropriate 'Non-Resident' endorsement renders such investments identifiable as non-resident investments in Namibia at all



times. Future possible local sale or redemption proceeds of such Namibian assets owned by non-residents can, under the prevailing Exchange Control Rulings, be regarded as freely remit-table abroad through normal banking channels.

(4) There are withholding taxes on the interest on foreign loans.

Subject to any double taxation agreements that may be in place, any person who makes payment of any amount of interest for the benefit of a non-resident shall withhold an amount equal to 10 per cent of that amount of interest from that payment.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

### Comment

(1) Developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land.

(2) Developments of land (e.g.: subdivisions, consolidations and township establishments) are regulated by the Townships and Division of Land Ordinance 11 of 1963 and must be approved by the Townships Board, the Namibia Planning Advisory Board and/or the Minister of Urban and Rural Development.

(3) The change of use/zoning of land is regulated by the Town Planning Ordinance 18 of 1954 and is subject to the Town Planning Scheme imposed by the relevant Municipality.

A Re-Zoning must be approved by the relevant Municipality.

(4) Buildings to be constructed on land must be built in accordance with the relevant Municipality's building regulations and may not be in conflict with the relevant Municipality's Town Planning Scheme.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

### Comment

(1) The environmental rules are not strict, with liabilities for clean-up and penalties.

(2) An owner or lessee of land is only liable to clean up contamination by former owners/lessees, to the extent that this is necessary, and constitutes taking reasonable practicable steps, to prevent third parties suffering damages caused by a harmful physical condition of the land.

(3) If an offence under the Environmental Management Act, 2007 has been committed by a body corporate and is proven to have been committed with the consent or connivance or, to be attributable to any neglect on the part of-

(a) any director, member, trustee, manager or other similar officer of the body corporate; or

(b) any person who was purporting to act in the capacity of a director, member, trustee, manager or similar officer,

that person as well as the body corporate is deemed to have committed the offence and is liable to be proceeded against and punished accordingly.

Any person who fails to comply with any condition attached to the environmental clearance certificate commits an offence.

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# The Netherlands



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Both individuals and legal entities may hold and exercise rights over real estate. In general, there are no restrictions on foreign ownership of property.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a land register of title to land in the country. The land register shows the extent of the properties, ownership (full ownership, rights of leasehold, rights of superficies), mortgages and certain other encumbrances. The register is very reliable. Problems over title are rare.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** For the transfer of property, a notarial deed of transfer and registration of a true copy of this deed with the land register is required. Apart from

normal legal fees depending on the scope of the work, there are no very substantial transfer or notarisational fees, other than fixed registration fees for the land register on transfers of land.

Transfer tax at a rate of 6% is levied in respect of the acquisition of real estate situated in the Netherlands, or certain rights concerning such property, for example, the rights of usufruct and long lease. For private residences the rate is 2%. The relevant party acquiring the real estate assets concerned is liable to pay such transfer tax, regardless of whether or not such party is a private individual, a legal entity, or a resident or non-resident of the Netherlands.

For Dutch resident companies and Dutch resident individuals operating a business in the Netherlands to which the real estate concerned is allocated, (corporate) income tax is imposed on the taxable amount (*belastbaar bedrag*), which includes income from real estate and capital gains realised on the transfer of real estate.

For Dutch resident individuals, no income tax is imposed on capital gains realised on the transfer of the individuals' private residence.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** If it is not determined otherwise in, for example, rules concerning the ground lease of the property, the owner of land can mortgage its property. A notarial deed of mortgage and registration of a true copy of this deed with the land register is required. The mortgage can secure all present and future debts and must specify the current debt precisely. The mortgage can be in a foreign currency. The mortgagee

can sell on a default by public auction or by private sale, with a court order. There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee. On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. There are no substantial costs or fees involved in land mortgages, other than fixed registration fees for the land register.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Dutch law distinguishes two types of business leases, being retail leases and other commercial space leases (such as office space or industrial space). The Dutch Civil Code contains mainly directory law, which allows for contractual deviation. However, it also contains mandatory and semi-mandatory provisions, for instance in relation to termination and rent review for retail leases.

Leases for commercial property can be entered into for either a fixed or an indefinite period. For office space, parties are free to decide on the term. For retail space, subject to mandatory provisions, the initial term is five years, with an automatic extension upon expiry up to ten years. Retail leases for a term less than two years are exempt of the mandatory regime.

Parties are free to agree the amount of rent – this is not regulated by Dutch law. Parties can also agree to an indexation scheme and a rent review mechanism. If no such provision is included in the lease agreement, a rent review will not be possible. In case of a retail lease, if the then current rent amount does not correspond with the rent of comparable leased properties in the area, each party may periodically request a court to determine the rent at the end of a lease term or every five years. Prior to the court procedure, parties should appoint an expert evaluator to advise the court.

Sub-letting by the tenant of the leased premises in whole or in part is permitted unless it has reason to believe that the landlord has reasonable objections to

this. This is mandatory law, so parties may deviate contractually. The Council for Real Estate's general terms and conditions stipulate that sub-leasing is subject to the landlord's prior permission.

The landlord must repair defects to the leased premises upon the tenant's request, although it is not obliged to repair minor damages which by law must be accounted for by the tenant or defects which are attributable to the tenant. If the landlord defaults on its obligation to repair the defect, the tenant may repair the defect itself and request that costs be reimbursed. The tenant may offset these costs against the rent payable. Further, the tenant may request a decrease of the rent equal to the decrease of the enjoyment of the leased premises caused by a defect attributable to the landlord. The landlord is liable for any damages that result from a defect in the leased premises, provided that: (i) the defect occurred after commencement of the lease and is attributable to the landlord; (ii) the defect existed at commencement of the lease and the landlord was aware or should have been aware of it; or (iii) the landlord stated at commencement of the lease that the defect did not exist. This is mandatory law with regard to the second provision.

The main obligation of the tenant is to pay the rent. If it fails to do this, the landlord is entitled to statutory interest. Generally, the lease agreement includes a penalty clause. This penalty will be due instead of the statutory interest, unless otherwise agreed.

The tenant may make alterations to the leased premises only with permission of the landlord. Permission is not required for alterations that can be removed or restored at the end of the lease without substantial costs.

If the landlord refuses its permission, the tenant can ask the court for permission. The court will grant permission for alterations that are necessary for an effective use of the leased premises by the tenant and where no substantial interest of the landlord is violated.

The tenant is entitled but not obliged to remove the permitted alterations at termination of the lease. The tenant may request reimbursement of the costs for the alterations if the landlord is unjustly enriched by these alterations. This is directory law and may be excluded by contract.

The tenant must cooperate with the execution of urgent maintenance or renovation works. The landlord must still provide quiet enjoyment to the tenant as stated under the lease, as the tenant may claim a reduction of the rent in case of maintenance works or a renovation.

Upon termination of the lease, the tenant must generally deliver the premises back to the landlord in the original state, as set out in a description drawn up at commencement of the lease. If no such description was drawn up, the tenant must reinstate the leased premises in a good and orderly state, clean and entirely vacated. Parties may also agree that the leased premises can be re-delivered to the landlord “as is”.

## 7. Termination of leases

### **Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** If a lease agreement is entered into for a fixed period of time, neither party can terminate the lease prematurely, unless by mutual consent. Termination of the lease based on a default of the tenant is only possible by court order.

If a lease agreement is entered into for an indefinite period of time both parties may terminate the lease at any given time, with due observance of the applicable notice period.

If the tenant goes into bankruptcy, both the landlord and the receiver/administrator can terminate the lease agreement prematurely with a notification period of three months.

For retail space, a specific regime applies. If the landlord gives notice of termination, the lease agreement will continue until the competent court has terminated it (unless the tenant agrees to termination). There are limited statutory grounds available to the landlord for terminating a lease. The notification period must be at least one year. Where the court allows the claim, it shall also set a vacation date.

With regard to an office lease the only mandatory regulation concerns the end of the lease. The lease agreement terminates by expiry of the term or, if no term has been agreed, by termination of one of the parties. In order to oblige the tenant to vacate the leased premises, the landlord must give a notice of

eviction. The obligation to evict is subsequently suspended for two months by law as of the date of the eviction stated in the notice of eviction. (A tenant is not entitled to a suspension of eviction if it has given notice of termination of its own accord or if it has expressly agreed to termination.)

Within the two-month period the tenant may request the courts to extend the suspension term. By filing this request, the obligation to evict is further suspended after the expiry of the two-month period until a judgment has been handed down by the competent courts. The courts can extend the suspension term by up to one year and the tenant may repeat this request for extensions twice. The suspension term can therefore be extended by up to three years.

A request to extend the suspension term is judged by a weighing of interests: the interests of the tenant in an extension of the eviction period versus the interests of the landlord in an immediate eviction. In any case a request for extension will be denied if the landlord can show that an extension would be unacceptable in view of misconduct by the tenant.

## 8. Foreign direct investment

### **Q. The law is friendly to foreign direct investors in land?**

**Comment** There are no restrictions on foreign investment in real estate.

## 9. Development of land

### **Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. In the Netherlands, an environmental permit is required for the construction of buildings. Constructing building without having obtained the necessary building permit can be enforced by the authorities, meaning the building may have to be removed. The issuance of permits, including procedural rules, legal redress and enforcement action, is governed by the Act containing general provisions on environmental permitting (WABO). The WABO forms the legal basis for also permitting various other activities (than construction

of a building), such as operating a facility, deviating from a municipal zoning plan, activities that involve designated monuments, etc. An environmental permit is also required should the use of a building or land deviate from the permitted use set by the municipal zoning plan. Obtaining such 'deviation' permit highly depends on the willingness and cooperation of the municipality involved.

## 10. Environmental

### **Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Strict soil remediation regulations apply in the Netherlands.

The most important requirements regarding prevention and remediation of contaminated soil and groundwater have been laid down in the Soil Protection Act (SPA). The SPA distinguishes between 'historical' soil and groundwater contamination (caused before 1 January 1987) and 'new' soil and groundwater contamination (caused from 1 January 1987 onward). All new soil contamination must be prevented as far as possible, and in the event that new soil or groundwater contamination occurs nonetheless, all new contamination must be cleaned up. For historical soil contamination, remediation requirements only apply if the soil contamination is considered 'severe' and an urgent clean-up is required. Whether contamination must be deemed severe contamination is determined by a number of factors, including whether certain limit values (intervention values) are exceeded. The urgency of a clean-up depends on a risk assessment.

Anyone who intends to remediate or move contamination must notify the authorities. Remediation may, in principle, only be carried out in accordance with a remediation plan that has been approved by the authorities. The objective of the clean-up should be that the soil becomes suitable for the intended use. Upon completion of the clean-up, a final report must be issued to the authorities for approval. The authorities will determine whether the clean-up meets the conditions stated in the remediation plan. If the contamination has not been entirely removed, restrictions regarding the use of the soil and 'aftercare' requirements may also be imposed.

The authorities may also require remediation prior to redevelopment as a condition of planning permission.

In theory, under the SPA, the polluter is primarily responsible for the contamination; if the polluter no longer exists or is not creditworthy, the landowner will be held responsible, regardless of whether he contributed to the contamination. However, the authorities have discretion in deciding whether to assign responsibility for remediation to either the polluter or the landowner, and in practice, the polluter plays a very limited role in the discussions. The SPA does not deal with apportioning liability and recourse between the various parties that may be held responsible. That should be determined under rules of civil law. A party that is held responsible by the authorities for a remediation under the SPA, or otherwise incurs cost in relation to contamination he or she did not cause, may try to take recourse against the polluter on the basis of tort, or against the party from whom he or she acquired the site. In addition, an owner of a site from which contamination migrates to an adjacent site may be held liable by the owner of the adjacent site, regardless of whether the owner of the site caused the contamination.

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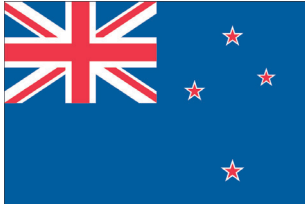


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# New Zealand



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** For various types of land (eg most agricultural and coastal land, and land forming part of business transactions over \$100m), Government permission is required before non-NZ persons/corporations are entitled to purchase or take a long term lease of such land. The process is reasonably transparent and applications for consent are seldom declined.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** - There is a register of title to land in most of the country, especially urban areas. The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. The state guarantees the accuracy of the register. Problems over title are rare. Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. NZ currently does not have a capital gains tax on the sale of land, other than in limited exceptions.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt generically. The mortgagee can sell immediately on a default by private sale, if so provided, without a court order or public auction, subject to statutory obligations to give notices of default and achieve the best price reasonably obtainable. On insolvency the mortgage ranks ahead of all unsecured creditors including taxes, employee benefits and insolvency costs. There are no substantial costs or fees involved in land mortgages. It is possible for a tenant to mortgage the lease if permitted by the terms of the lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law imposes very limited restrictions in the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided, although a tenant is granted statutory rights to have the lease reinstated at the discretion of the Court if the tenant can demonstrate that it will meet the lease obligations going forward (frequently granted). If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided, subject to a tenant's right to relief as above.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are withholding taxes on the interest on foreign

loans which are difficult to avoid, but these are not generally seen as high.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land. However, these rules are transparent and are generally administered by local authorities. They are rarely subject to central Government intervention.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are not particularly strict, with reasonably relaxed liabilities for clean-up and penalties. An owner or lessee of land may be liable to clean up contamination by former owners/lessees. Shareholders and directors of the company owning or leasing the land are seldom liable for contamination caused by the company.

**General comment** New Zealand has an efficient and transparent land title system. While Government approval is required for investments in particular categories of land by overseas persons/corporations, generally the process is transparent and well-understood. Approval is nearly always given, although negotiation with the regulator is often required on the conditions of consent. NZ has few charges on the transfer of land, with no stamp duties and no capital gains tax payable (other than limited exceptions). Landlords and tenants have broad freedom to negotiate commercial terms, although tenants do have an ability to seek relief from termination from the Court.



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# Nicaragua



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** - Alien individuals and alien corporations are permitted to own or lease local land directly except for land located within an area of 5 km from the local borders and public coastal land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** - All nationals (including locally incorporated companies) can own land outright except for specific areas such as: protected areas; coastal land; municipal land and land belonging to indigenous communities; all of which may not be transferred to particulars. In general terms leases and occupancy rights are limited to a 10 year period; however, there are some exceptions such as municipal land which may only be leased for a 1 year term. The owner has free right to renew. In most cases these occupancy rights can be sold or pledged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in every department of the country. Ownership to a property is obtained until the title has been registered. The land register shows the extent of the land, ownership, mortgages, leases and certain other important rights, such as rights of way and pre-emption rights. The state guarantees the accuracy of the register. The register is reliable. Problems over title are rare. Extra

due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no very substantial transfer taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgage of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage must specify the debt precisely. In general terms the mortgage cannot be in a foreign currency but it can be indexed to a foreign currency. The mortgagee cannot sell immediately on a default by private sale, without a court order or public auction. There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee. On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. There are no substantial costs or fees involved in land mortgages. It is possible for a tenant to pledge the lease if permitted by the terms of

the lease and the above comments generally also apply to this pledge of a lease. These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant. There are no controls on rents, the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, when a lease of business premises expires, the landlord can easily evict the tenant, the lease can validly exclude the ability of the tenant to assign or sub-lease, and a lessee is released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are no subsidies and special zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and capital from

land. There are withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules and permits needed depending on the type of project.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is liable to clean up contamination by former owners/lessees. Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** It is highly recommended to carry out a due diligence process on the property before proceeding with the purchase of land.

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# Nigeria



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Foreigners can own or lease land directly or indirectly through companies locally incorporated, subject to necessary approvals including the consent of the Governor of the State where the land is situated (Land Use Act, Cap L5 Laws of the Federation of Nigeria, 2004). Foreign corporations, pension funds and other institutional trade investors cannot own or lease land directly but indirectly as shareholders in a Nigerian SPV. Generally, Garrigues are limited to rights of occupancy: See Q.2.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) do not own land outright. They only have statutory/customary rights of occupancy, evidenced by a certificate of occupancy, for a limited period, usually granted for up to 99 years. A right of occupancy bears the semblance of a lease issued by the Government and is granted subject to certain conditions and may be revoked where such conditions are breached. The right of occupancy may be renewed upon its expiration. The holder of a right of occupancy may only alienate, transfer, lease or mortgage his interest in land subject to the consent of the Governor of the State where the land is located.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in most States in the country, especially in the urban areas. The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights and restrictions such as pre-emption rights, rights of way, cautions and notices. However, a low percentage of land has actually been registered. Land can be registered within 6 months and a land search can be completed within a day at the lands registry. The state does not guarantee the accuracy of the register. The register is not very reliable as a registered title on the face of the register is only a presumption of ownership that may be rebutted. Problems over title are common. Extra due diligence, *e.g.* into rights of occupation, may not usually be straightforward especially in respect of undeveloped land.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** There are diverse charges and taxes on occupation as well as on perfection upon transfer of land. Other than registration fees and capital gains tax, other taxes include value added tax on rental income from land leases, land use charge, neighbourhood improvement charges, and governor's consent fees. For example, it costs about 4% of the assessed value of the land to register land in Lagos State.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The holder of land can mortgage land subject to the consent of the Governor of the State where the land is located. In order to protect the mortgagee as creditor, the mortgage must be registered at the lands registry. Registration protects the mortgagee's interest in the property and will rank superior to other unsecured creditors and those latter in time. Where the mortgagor is a company, the mortgage must also be registered at the company's registry.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not regulate the terms of a lease of commercial premises to protect the tenant. The terms of leases of commercial premises are governed by contract. For instance, there are no controls on rents payable and the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. In addition, the lease can validly exclude the ability of the tenant to assign or sub-lease and upon expiration of the lease, the landlord can easily terminate the lease without any statutory requirements for notice to quit.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A business lease can grant the landlord a right to immediately terminate the business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Foreign direct investors freely can hold land, repatriate capital and income proceeds and enjoy immunity from expropriation without "adequate compensation". Although a right of occupancy can be expropriated for public purposes, adequate compensation must be paid by the government. There is free trade zone development status granted to foreign land developments by the government which confers on such projects complete holiday from taxes, rates and levies.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Development and building permits are required to erect buildings. A statutory right of occupancy is granted for specified purposes and use of the land other than for the purpose so granted may be a ground for revocation of the grant. An application for a conversion of purpose of a statutory right of occupancy may be made to the Governor of the State where the land is located.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The use and development of land requires environmental and technical analysis as well as environmental impact assessment reports that require governmental approvals. Although varied, the environmental rules for land use and development are not strictly enforced, but must be adhered to before regulatory permits are issued by governmental authorities.

**General comment** Foreign investors can repatriate returns on investments that they bring into Nigeria as long as the importation of the investment capital was formally certified at the moment of importation. Although current monetary policies appear to restrict the pricing of land leases with foreign currency,

payments may be made from offshore services or foreign currency payments indexed to the local currency.

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# Norway



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. The owner has a free right to renew. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country, especially urban areas. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights, however, as the registering of title and liens etc. is not compulsory, the register is not necessarily updated. (3) The state guarantees the accuracy of the register, however the guarantee is limited to the actual listings. (4) Problems over title are rare. (5) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, and a stamp duty comprising 2.5% of the market value at the time of registering title, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt but must specify a maximum amount. (3) The mortgage can be in a foreign currency but needs to be specified. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the mortgagee cannot enforce the mortgage without the consent of the insolvency estate. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes (other than with respect to taxes which are secured by statutory liens) and employee benefits. An insolvency estate will have a



first priority lien, ranking ahead of all other security over all the estate's assets (including real property) as security for insolvency costs, limited to the maximum amount of 700 times the standard Norwegian court fee (currently NOK 1025). (7) There are no substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles (other than item (4) for assets which are covered by the Financial Collateral Directive) generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if such breach (combined or individually) constitutes a material breach of the agreement. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so

provided, unless the bankruptcy estate assumes (and complies with) the tenant responsibilities.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are no special zones where taxes are relaxed, except in the arctic island group Svalbard, which has a special tax regime (3) There are no exchange controls or restrictions on repatriations of profits and capital from land, except withholding tax on dividend distributions (that mainly apply to distributions to shareholders resident outside of the EU/EEA without tax treaty protection. (4) There are no withholding taxes on the interest on foreign loans. Please note however that there are discussions on whether to introduce withholding taxes on interest on foreign loans in the future.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can under certain circumstances be liable for contamination caused by the company.

**General comment** The practice for land transactions are in the main quick and efficient because there are no supervising corporate body controlling ownership or the transfer of such, and because registering of title transfers is not compulsory. Taxes on land and rents from land are not exceptionally onerous.

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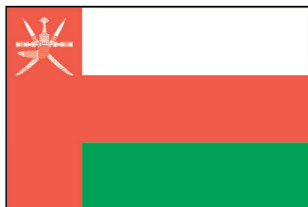


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# Oman



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens provided that ownership or leasing of lands are for its corporate purposes?**

**Comment** (1) Alien individuals and alien corporations are not permitted to own or lease local land directly. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land provided that such ownership or leasing of land is required for the commercial activities of the local entity. (3) Government permissions for ownership or leasing of land are commonly given for major projects and the like.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** - All nationals (including locally incorporated companies) can own land outright. The owner has a free right to lease and renew leasehold rights as per the terms of the lease. These occupancy rights can be sold or mortgaged without official approval subject to any limitations or restrictions that may be provided for by contract.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country, especially urban areas. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as usufruct rights, rights of way and pre-emption rights. (3) The state guarantees the

accuracy of the register and the register is reliable. (4) Problems over title are rare. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land or usufruct rights over land used for business purposes or in the grant of a long lease of land or usufruct rights over land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of or usufruct rights over such land or the grant of leases or usufruct rights over such land. (2) The taxes on the gains on a transfer of such land or leases owned or held by a corporate entity are reasonable. Property owned or leased by a natural person is not subject to any gains tax.

## 5. Mortgages

**Q. Mortgages of land, inclusive of usufruct rights and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** - (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present debt generically and must specify the debt precisely. The mortgage may secure future debt. (3) The mortgage can be in a foreign currency with an

equivalent amount being stated in RO for determination of the mortgage registration fee. (4) The mortgagee cannot sell immediately on a default by private sale without a court order and the sale then taking place through a public auction unless the parties mutually agree to the sale without the matter proceeding to court. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee provided this is stated in the mortgage contract. (6) On insolvency the mortgage ranks prior to all unsecured creditors except taxes, employee benefits and insolvency costs and the mortgage ranks after these creditors. (7) There are no substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease and the usufruct rights if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises or the grant of usufruct rights does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control most of the terms of a lease of commercial premises to protect the tenant, e.g. (1) the landlord cannot increase the rent for the premises for up to a period of 3 years in the case of commercial property and in the case of residential property unless otherwise agreed by contract, (2) the lease can exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot evict the tenant for a period of up to 5 years and thereafter if the landlord does not wish to renew the lease he must give 3 months' notice in confirmation of its intent not to renew the lease for a further term. The tenant of commercial premises shall, however, have the protection of a lease term for up to a period of 5 years unless otherwise provided for by contract, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its

obligations under a lease when it assigns the lease unless permitted by the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can with the service of 90 days' notice terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. Development of land - Official permissions are required to build on or change the use of land. Any development of land will also be subject to normal public safety and environmental restrictions?**

**Comment** - Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are strictly regulated?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Directors of the company owning or leasing the land can be liable for contamination caused by the company, if the Company fails to discharge its statutory obligations;

**General comment** The practice for land transactions are not in the main quick and efficient because the land law was enacted in 1980 and has not kept pace with development of Oman. The law, in our opinion, requires considerable reform. Taxes on land and rents from land are not exceptionally onerous.

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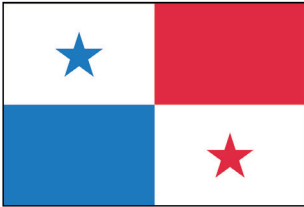


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# Panama



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** There is a Constitutional restriction that provides that alien individuals and alien corporations as well as Panamanian nationals whose capital is of foreign origin (totally or partially), cannot own land that is located within 10 kms of a national frontier.

The restriction does not apply to the lease of land.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Provided the source of their capital is not foreign (totally or partially).

There are also restrictions to title over insular land – but ownership can be obtained in determined circumstances (special developments, whether social or touristic) and as far the land is not reserved for government programs. In such cases, the land can be leased by the government.

The following belong to the State and are of public use and therefore may not be the object of private appropriation:

1. The territorial sea and fluvial waters, the beaches and their shores and those of the navigable rivers, and ports and estuaries.
2. The lands and waters destined for public services and for all kinds of communications;
3. The lands and waters designated, or that the State may designate, for public irrigation services, hydroelectric production, drainage and aqueducts;

4. The airspace, the undersea continental shelf, the bed and subsoil of the territorial sea;

5. All other properties defined by law for public use.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a central register of title to land in the country. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register - /the register is very reliable. (4) Problems over title are common, basically because when the original title was granted, the land was not properly measured and there are overlaps. It is important to understand that about 40% of the land in Panama is not titled. There is an aggressive program run by the government to complete titling, but there are individuals or corporations claiming title over the same parcel. Special attention is to be given to beach front property. (4) There is not a formal registry for possessory rights and special due diligence is to be carried out when dealing with them.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are substantial transfer or documentary taxes, notarisat



fees and registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are substantial.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage must specify the debt precisely and must contain a way to specify a maximum amount (in other words, there should be a way to determine it, if the amount is not specified). (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale (if the guarantee is granted to a trust, the private sale can take place, without a court order). (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee. (6) On insolvency the mortgage ranks prior to all unsecured creditors, save for taxes, employee benefits and insolvency costs. (7) There are substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally would also apply to this mortgage of a lease (be advised, however, that this is not of common practice in the jurisdiction). (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not generally, restrict or control the terms of a lease of commercial premises to protect the tenant, Note: (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business

premises expires, the landlord cannot easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, (5) a lessee is released from its obligations under a lease when it assigns the lease, (6) an eviction process can take several years since the judicial system grants legal avenues to the lessee to dilate the process, and (7) there is a constitutional prohibition restricting the free disposition of land for more than 20 years.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided. Nevertheless, in practice, usually the eviction process is dilated by the tenant and it can take years.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash – in theory – in practice, it can take years for payment to be obtained. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.



## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees (the obligation is tied up to the land – whoever owns/leases it: thus it is in rem). (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** Although the processes are simple and reliable, the costs of titling, mortgaging and registration of leases (in the latter case, compulsory when over US\$3k) are substantial.

The main challenge the country faces is that 40% of land that has not been officially titled and creates lots of litigation around it. Although the National Government has run a project to complete the titling process, the process itself shows deficiencies and is corrupted. Since there is not a central registry of possessory rights (related to that 40% of untitled land), it is risky to incorporate such land to productive activities beyond agro-forestal ones, and banks do not accept land as security.

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# Paraguay



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Generally, there are no restrictions on the ownership or leasing of land by aliens in Paraguay. Foreign nationals and companies may own, use and dispose of land freely. However, pursuant to the Border Security Law (Law N° 2532/05), natives of the countries bordering Paraguay (Argentina, Bolivia and Brazil), or corporations owned mostly by natives of any of those countries, may not be owners, joint owners or beneficial owners of rural properties located within 50 kilometres of the country's international borders, unless expressly authorised by the government to do so for reasons of public interest.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in the entire country. (2) The land register shows the extent of the land, ownership, mortgages and certain other important rights, such as rights of way. (3) The state does not guarantee the accuracy of the register. While proof of title to properties in urban or suburban areas are quick to obtain and fairly reliable, proof of title to properties located in rural areas, especially those located in remote or sparsely populated areas, such as

the northern Chaco region, may be significantly slower to obtain and significantly more unreliable. (4) Problems over title are not uncommon in remote rural areas.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. Notary public fees are generally fixed at 0.75% of the transfer value, although they are negotiable. Municipal taxes amount to approximately 0.3%, judicial fees to 0.74% of the transfer value. Administrative and title search costs are typically not material. (2) The taxes on the gains on a transfer of such land or leases are reasonable; any gain or profit obtained by a seller from the transfer of real estate will be subject to corporate or personal income tax. Additionally, the acquisition of real estate property in Paraguay is levied with a 5% Value Added Tax, which is applied on a tax base equivalent to 30% of the property transfer value (sale price), resulting in an effective rate of 1.5%

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure present debt and must specify a maximum amount. The lack of determination of the eventual credit guaranteed does not preclude the validity of the mortgage, provided that the maximum amount covered by the guarantee is specifically stated. (3) The mortgage may be in local or foreign currency or may be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale without a court order or public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency, the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are no substantial costs or fees involved in land mortgages; public notary and registration fees will apply.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Generally, commercial landlords and tenants are free to agree to the terms of a lease without restriction. However, pursuant to the Civil Code, lease terms may not exceed five (5) years (although they may be subsequently renewed), unless the leased property is the site of a construction project or used to plant agricultural products to be harvested in the long term. In both such exempted cases, lease terms may extend to up to twenty (20) years.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. Absent any contractual agreement to the contrary, the Civil Code expressly allows for termination after two (2) months of non-payment. (2) If the tenant becomes bankrupt,

the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are no exchange controls or restrictions on repatriations of profits and capital from land. The right of ownership for national and foreign investors is guaranteed, without any other limitation than those established by the Constitution and other laws, including the Investment Law (Law N° 117/91). However, as set forth in Q1 above, unless authorised by the government, natives of the countries bordering Paraguay or corporations composed mostly by natives of any of those countries, may not be owners, joint owners or beneficial owners of rural properties located within 50 kilometres of the country's international borders.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Developments and change of use of land are generally lightly regulated, for neither business nor residential developments, other than with respect to typical public safety and environmental restrictions. (2) Municipal governments are empowered to regulate land use, setting the categories of lands (urban, suburban and rural) and to issue permits to new urban developments or over certain activities in the areas under control of each municipality. Before making the decision to acquire real estate for a specific project, it should be verified that such real estate is located in an appropriate zone or, as the case may be, in an area that can be changed (residential, offices, industrial, etc.). (3) Municipal governments must grant permission to construct buildings or projects that affect land or buildings declared national monuments or buildings of historical interest. (4) Most Municipalities regulate the land use planning and construction, and related factors, such as setbacks, land cover, maximum heights, etc.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees.

**General comment** The real estate sector in Paraguay has markedly different realities in urban and rural settings. In Asunción and other urban centres, investing in real estate is typically and safe (and often very successful) endeavour. The same is true for most suburban and some rural areas. However, certain areas, mostly rural and located in remote areas of the country, present a significantly higher risk for potential investors. Some of the most important concerns are: (i) the occupation of land by unauthorised persons (often politically or ideologically motivated); (ii) the informal occupation of public land; (iii) the division and the informal transfer by the owner of property ownership titles granted by the State; (iv) discrepancies in surface area expressed in the registered titles of ownership and the physically occupied or claimed area; (v) the occupation of land by heirs who did not open probate; and (vi) overlapping property rights over the same property. Additionally, the Public Registry of Property is not fully digitalised, although efforts are underway to achieve 100% inclusion of all properties in the national registry. To date, only properties located in Asunción and other urban centres have been included.

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# Peru



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Aliens are not allowed to own land within 50Kms. of the borders without appropriate permission. Elsewhere, no restriction applies.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment**

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** Problems over title are rare.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Apart from normal legal, notary public and registration fees depending on the scope of the work, there is a 3% tax assessed on the purchaser based on the value recognised in respect of the property for municipal taxes, as well as capital gains tax.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** On insolvency the mortgage ranks prior to all unsecured creditors except for employee benefits.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** (1) The law does not restrict or control the terms of a lease of commercial premises, except for a maximum term for the lease (6 years) and (2) there are no controls on rents.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** A landlord can terminate a business lease if the tenant does not pay the rent for two consecutive periods or breaches other terms of a lease of land used for commercial purposes if so provided.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** There are no exchange controls or restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** There are different rules for urban and agricultural land. Particularly in urban areas, there are rules on zoning restricting the use of land for specific purposes. Also construction permits need to be obtained to build.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** An owner or lessee of land is liable to clean up contamination by former owners/lessees.

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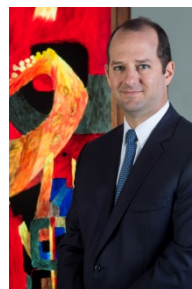
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# The Philippines



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** As a general rule, aliens are not allowed to own land in the Philippines although this rule admits of certain exceptions. Aliens are allowed to lease land in the Philippines, but the terms of the lease are subject to certain conditions.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All Philippine nationals are generally entitled to acquire and own lands or real estate in the Philippines. There are, however, some restrictions on public lands and subject to size and other restrictions for private agricultural lands covered under agrarian reform laws.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** Registration in a public registry creates constructive notice to the whole world and a person dealing with registered land may generally rely on the correctness of the certificate of title issued for this purpose. We note, however, that due diligence is advisable to confirm if there are issues with the current or original registration.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** In addition to the legal fees, registration fees, and taxes on any gains, there are transfer taxes, documentary taxes and notarisation fees on the transfer of land or lease of land used for business purposes or the grant of a lease on such land.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** Mortgages of land and related assets (by non-consumers) are generally protective of the mortgagee as a creditor. Until discharged, the mortgage follows the property and subsists notwithstanding changes of ownership. However, no mortgage purporting to convey or affect registered land shall take effect as to third parties until its registration with the registry.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Generally, the law is protective of landlords. However, the law provides for limitations on the terms of the lease under certain conditions.



## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** The lessor may terminate the lease on default by or bankruptcy of the tenant, but he/she can eject the lessee only on certain grounds and by judicial ejectment.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** In general, foreign direct investment in land is allowed. Philippine corporations with foreign investment (that are considered as Philippine nationals) may own land, and alien corporations may generally lease land in the Philippines subject to certain limitations. However, there are foreign exchange controls that will apply to the repatriation of profits if these are purchased through the Philippine banking system.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Development or changes of use of land are regulated and certain rules and procedures apply depending on the classification of the land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are generally strict with tight liabilities for clean-up and penalties. An environmental compliance certificate should be secured as a necessary permit for the commencement of a potentially environmentally-critical project.

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# Poland



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Local corporations owned or controlled by aliens from outside the EEA or having alien directors from outside the EEA can own or lease local land on obtaining a special permit. For local corporations owned or controlled by aliens or having alien directors from the EEA, no permits are required except for the purchase or lease of agricultural or forest land, which is usually restricted to certain kinds of owners/possessors.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright except for the purchase or lease of agricultural or forest land, which is usually restricted to certain kinds of owners/possessors.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land called 'the land and mortgage register'. The land and mortgage register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emptive rights. The state guarantees the accuracy of the register subject to a given plot of land being acquired in good faith and in accordance with Polish law. Problems over title are not uncommon, and

carrying out due diligence investigations is a market standard before any acquisition.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes, notarisation fees or registration fees on transfers of land used for business purposes or the leases of such land or the grant of leases of such land. The taxes on the gains on a transfer of land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage it. The mortgage must specify the debt precisely and it can secure future debt, however it must specify a maximum amount. The mortgage can be in a foreign currency. The mortgagee cannot sell immediately on default in a private sale, if so provided, without a court order or public auction. There are some freezes and other interferences in the mortgage if the owner enters bankruptcy proceedings, eg any rents are not always payable to the mortgagee. On insolvency, the mortgage does not rank prior to all unsecured creditors including employee benefits, alimony and insolvency costs; the mortgage ranks after these creditors. There are no substantial costs or fees involved in land mortgages. It is not possible for a

tenant to mortgage a lease, but a perpetual usufructuary may mortgage the right of the perpetual usufruct and the abovementioned terms apply. These principles generally apply to associated assets such as insurances, shares and a bank account for rent.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law in most cases does not restrict or control the terms of a lease of commercial premises to protect the tenant, eg there are no controls on rents, the lease can validly exclude most obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on the expiry of the lease. When a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease. The lease can validly exclude the ability of the tenant to assign or sub-lease without the landlord's consent, and a lessee may not be released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant breaches the other terms of a lease of land used for commercial purposes, if so provided. If the tenant goes bankrupt, the landlord cannot terminate the lease. The landlord may terminate the lease if the tenant does not pay the rent for two rent periods only on notice.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. There are subsidies and special zones where taxes are relaxed. In general, there is a 20%

withholding tax on interest payable to a foreign corporate lender. It can be potentially mitigated under the relevant tax treaty or on payments between certain affiliated companies under implemented Parent Subsidiary Directive

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and changing the use of land are tightly regulated, including both business and residential developments. There are different, more restrictive rules for forest and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are not strict, with relaxed liabilities for clean-up and penalties. However, an owner or lessee of land may be held liable to clean up contamination by former owners/lessees. Directors of a company which owns or leases the land may be liable for contamination caused by the company.

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# Portugal



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly. However, a foreign entity investing in real estate Portugal must obtain a Portuguese taxpayer number and, if resident outside the EU, appoint a Portuguese tax representative.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in the country, especially urban areas. The land register shows the extent of land, ownership, mortgages, longer-term leases and certain other important rights. Any facts/acts resulting in the creation, recognition, acquisition or modification of any rights *in rem* must be registered at the Land Registry. Lack of registry of any relevant fact that should be registered significantly affects the level of legal protection vis-à-vis third parties as there is a general principle of priority of the first registered right over any other further incompatible rights (even if established before the registered right). There is no state guarantee of title. However Land Registry is part of and is managed by the State. Its purpose is to publicise information on

the legal status of property with a view to assure that all transactions related thereto are properly and lawfully made.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work and reasonable notarisation and registration fees, the most significant costs in a Land transfer are with Property Transfer Tax (IMT) and Stamp Duty

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The mortgage can secure all present and future debt to the creditor but must specify a maximum amount. The mortgage cannot be in a foreign currency. The mortgagee cannot sell immediately on a default by private sale. The sale of mortgaged property is made via a court procedure. On insolvency the mortgage ranks prior to all unsecured creditors including taxes except for State and Local authorities' credits in respect of Property Transfer Tax, Property Tax and Inheritance & Donation Tax.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. there are no controls on rents, the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, the lease can validly exclude the ability of the tenant to assign or sub-lease. Landlord and tenant are free to agree on any terms of commercial leases.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay two consecutive rents by serving a notice to the tenant. If the tenant breaches other terms of a lease used for commercial purposes the Landlord must file a termination claim to the court. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The government has to pay compensation for a compulsory purchase of land in cash. There are subsidies and special zones where taxes are relaxed, namely for urban rehabilitation. There are no exchange controls or restrictions on repatriations of profits and capital from land. There are material withholding taxes on the interest on foreign (classic) loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are relatively strict with some liabilities for clean-up and penalties. An owner or lessee of land is generally not liable to clean up contamination by former owners/lessees.

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# Puerto Rico



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

### Comment

- (1) Alien individuals and alien corporations are permitted to own or lease local land directly.
- (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land.
- (3) Government permissions are commonly given for major projects.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright, provided they are of legal age and have legal capacity to contract.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

### Comment

- (1) There is a centralised Registry of the Property divided into 29 sections island wide.
- (2) The Registry of the Property shows the area of the land, ownership, mortgages, recorded leases and certain other important rights, such as rights of way and other easements. Recordation of title to land and certain liens over the same in the Registry of the Property is optional and not compulsory. Some liens,

such as a mortgage, must be recorded in the Registry of the Property in order to be valid.

(3) The Registry of the Property provides a public faith system which is fairly reliable depending on the status of recordation of documents that have been filed. Several sections of the Registry of the Property have massive backloads of documents pending to be recorded. A third party who acquires title to a land from a person who appears in the Registry of the Property as the recorded owner of the same, thus trusting the records of the Registry of the Property, will be protected in a court of law against another party who proves to be the owner of title to the land but that did not record his title.

(4) Problems over title are very common but an expert real estate counsel will be able to remediate most of them.

(5) Extra due diligence, e.g. into rights of occupation, is usually straightforward. Title searches or other specialised investigations within the records of the Registry of the Property will entitle the interested party to obtain desired information regarding a particular parcel. Title insurance policies are also available and provide title security for owners and creditors of real estate. Most major title insurance companies of the United States provide services in Puerto Rico.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**



**Comment**

(1) Apart from normal legal fees depending on the scope of the work, Puerto Rico has significant transfer taxes, registration and notarisation fees for transfers of land (e.g. transfer taxes and registration fees are estimated at \$5.65 per \$1,000 of value for the transfer, plus a statutory notarial fee equal to 0.5% of the value of the transaction (up to the first \$5M of value; negotiable amongst the parties for the excess) payable to the Notary Public who executes the Deed of Purchase and Sale.

(2) The taxes on the gains on a transfer of such land or leases are reasonable.

**5. Mortgages**

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment**

- (1) The owner of land can mortgage specified land.
- (2) The mortgage can secure a specific debt, as well as all present and future debt, up to the amount of the mortgage itself.
- (3) The mortgage cannot be in a foreign currency; they must be in US Dollars.
- (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. Foreclosure of mortgages over real estate in Puerto Rico is a highly regulated procedure under the Mortgage Act, which requires a complete judicial procedure.
- (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the insolvency estate (until such time as the bankruptcy court lifts the stay in favour of the mortgagee). Puerto Rico is regulated under the United States Bankruptcy Code.
- (6) On insolvency, a duly recorded senior mortgage creditor ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs up to the value of its collateral.
- (7) There are substantial costs and fees involved in land mortgages (e.g. the execution and recordation of a mortgage is estimated at \$5.85 per \$1,000 of value of

the mortgage, plus a statutory notarial fee equal to 0.5% of the value of the mortgage (up to the first \$5M of value; negotiable amongst the parties for the excess) payable to the Notary Public who executes the Deed of Constitution of Mortgage).

(8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease.

(9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents (except those associated with the recording costs listed on item 7 above).

**6. Controls on terms of leases of land**

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant or the landlord (general concept of freedom of contract applies; parties can agree to any and all covenants so long as the same are not contrary to existing laws, moral or public order). Notwithstanding, the term of a lease cannot exceed 99 years.

- (1) there are no controls on rents,
- (2) the lease can validly exclude obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease,
- (3) when a lease of business premises expires, the landlord can evict the tenant and the tenant has no protection, such as a right to a new lease (unless a renewal option was agreed to on the lease and the terms and conditions for its exercise were met by the corresponding parties),
- (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and
- (5) a lessee is not released from its obligations under a lease when it assigns the lease, unless lessor expressly agrees to provide a release and accept the new assignee as sole lessee and responsible party under the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

### Comment

(1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. However, eviction processes can take up to 6 to 8 months in court.

(2) If the tenant becomes bankrupt, the landlord cannot terminate the lease until such time as the bankruptcy court approves or rejects the lease, as per the United States Bankruptcy Code.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

### Comment

(1) The government has to pay just compensation for a compulsory purchase of land in cash.

(2) There are subsidies and special zones where taxes are relaxed.

(3) There are no exchange controls or restrictions on repatriations of profits and capital from land.

(4) There are no withholding taxes on the interest derived by a foreign lender not otherwise engaged in a trade or business in Puerto Rico if the lender is not related to the borrower which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

### Comment

(1) The environmental rules are strict, with tight liabilities for clean-up and penalties.

(2) An owner or lessee of land may be liable to clean up contamination by former owners/lessees.

(3) Shareholders and directors of the company owning or leasing the land may be liable for contamination caused by the company, depending on multiple factors to be determined on a case by case basis.

**General comment** Real estate transactions for transfer land and creation of liens are reasonably quick in nature depending on the underlying land's title status as per the Registry of the Property. Several factors such as segregations or multiple title changes pending recordation may affect the time factor in a real estate transaction given that additional due diligence must be performed in order to confirm that the title will be eventually duly recorded. Despite legislation enacted in 2010 which was intended to speed up the recordation process, the Registry of the Property in Puerto Rico continues to suffer from multiple backlogs. The type of property being transferred or encumbered can also imply different time frames (e.g. residential development projects are more complicated in nature than a single commercial property transfer).

Taxes on land and personal property from land are not exceptionally onerous. Property tax rates vary among municipalities but can be estimated in a range of 8-12% of the property's assessed value (values assessed by the taxing authority based on historical values).

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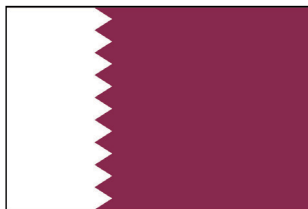


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# Qatar



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** (1) Generally speaking alien individuals and alien corporations are not permitted to own or lease local land directly. Aliens are permitted to own land in specially designated areas. (2) Local corporations owned or controlled by aliens or having alien directors cannot own or lease local land (except in the aforementioned specially designated areas). (3) Government permissions are possible for major projects and the like.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** Freehold and leasehold ownership of land is possible. In certain designated areas, foreigners are also allowed to own freehold interests in land.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** (1) There is a register of title to land, however it is not publicly accessible. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights. (3) Once title to land is registered, problems over title are rare. (4) Extra due diligence can be complicated due to the lack of public access to the land register.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** (1) We are unaware of very substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land (such as usufruct property rights) other than the usual sale or transfer fees prescribed by the competent authorities in the State of Qatar (for example, for land or property transfers between Qatari nationals, the Real Estate Registration Department at the Ministry of Justice applies a fee of  $0.0025 \times$  land or property value, while, for transfer of a usufruct right between foreign nationals, the Ministry of Municipality and Urban Planning applies a fee of  $0.01 \times$  land or property value). (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure present and future debt generically but must also specify the amount of the debt. (3) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (4) On insolvency the mortgage ranks prior to all unsecured creditors in relation to that asset, except for statutory claims (such as employee benefits). (5)

There are no substantial costs or fees involved in land mortgages. (6) Leasehold rights (usufruct) are considered real rights and can therefore be made subject to mortgages; contractual leases (e.g. short term commercial/residential leases) cannot.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Law No (4) of 2008 which governs leases and the relationship between landlords and tenants does not distinguish between categories of premises. This law sets out a number of provisions to control the terms of a lease of commercial premises to protect the tenant, e.g. there are controls on rents and deposits, and the lease cannot validly exclude any obligations of the landlord to repair the premises. In practice, the legal protections offered by this law can be circumvented by landlords by not offering lease terms greater than one year.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord cannot freely force a tenant to vacate the leased premises or property. Article 19 of Law No. (4) of 2008 sets out certain circumstances (including non-payment of rent), upon the occurrence of which, the landlord is entitled to apply to the Rental Disputes Resolution Committee at the Ministry of Municipality and Urban Planning for an eviction order.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on

the interest on foreign loans from foreign financial institutions which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** In 2014, Qatar introduced a specific law aimed at regulating the development of land. Pursuant to this law, property developers must be licensed by the Ministry of Economy and Commerce. Specific rules apply to the sale of units "off-plan". In addition, certain other municipal licences are required for property developments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are relatively strict, with liabilities for clean-up and penalties. (2) Shareholders and directors of a company owning or leasing the land may, in certain circumstances (including relating to the type of corporate entity) be liable for contamination caused by the company.

**General comment** The practice for land transactions are developing and will be in the main quick and efficient once new legislation is implemented. Taxes on land and rents from land are not exceptionally onerous.

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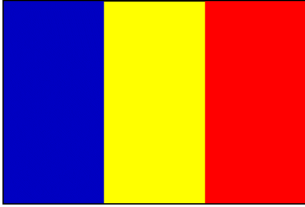


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# Romania



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Citizens of a European Union or European Economic Area member state (**EU-state**), stateless persons domiciled in an EU-state or in Romania and legal entities set-up in an EU-state can acquire the ownership of lands in the same conditions as Romanian citizens and legal entities. Foreign citizens, stateless persons and legal entities pertaining to other countries can acquire the ownership of lands according to international treaties, based on reciprocity and in conditions which are not more favourable than the ones applicable to citizens and legal entities pertaining to an EU-state. These restrictions do not apply to buildings, which can be freely owned by aliens.

Regarding the lease of lands and buildings, there are no specific restrictions for aliens.

However, depending on the nature of the land (e.g. agricultural located outside the city limits, forests, land in the private property of the state or the administrative territorial units etc.), the interested buyer/tenant must observe certain formalities and procedures (e.g. notification formalities, public auctions, pre-emption/preference rights etc.).

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land and buildings outright (subject to specific formalities, depending on

the nature of the land). For enforceability purposes, the owners must register their ownership right with the Land Books. Upon the completion of the cadastral works for all administrative territorial units in Romania, the registration with the Land Book will have constitutive effect (i.e. the ownership right shall be transferred upon the registration in the Land Books).

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** Real estate in Romania is currently subject to the Land Books publicity system. Land Books are public records kept for each real estate, evidencing any and all successive rights in the immovable asset, the beneficiaries thereof and the encumbrances affecting the respective assets.

Although currently the registrations in the Land Books are performed for enforceability purposes, upon the completion of the cadastral works for all administrative territorial units in Romania, the ownership title over real estate properties shall be validly transferred only upon its registration in the Land Books (i.e. the "constitutive effect" as opposed to the "enforceability effect" against third parties).

Furthermore, according to the current legal framework, the ownership title over a real estate which is registered in the Land Books is consolidated at the expiry of five years calculated from the date when the registration request was submitted with the relevant Land Book, subject to fulfilling certain conditions provided by law.



#### 4. Cost of land transfers

There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains.

**Comment** For real estate transfers (i.e. asset deals), the fees are calculated as a percentage of the real estate's transfer value. Such fees comprise (i) notarisational costs (e.g. for transactions larger than approximately EUR 133,335, the notarial fee amounts to approximately EUR 1,130 plus 0.44% of the transaction value exceeding EUR 133,335) and (ii) Land Book registration costs (i.e. 0.5% for registrations in favour of a legal entity or 0.15% for registrations in favour of individuals, in both cases applied to the transfer price).

For real estate leases, there are no substantial taxes or registration costs.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Generally, the owner can mortgage its real estate properties. The amount secured by the mortgage must be at least determinable and it cannot secure all present and future debts generically. The mortgage can be contractually agreed in a foreign currency. There are cases in which the mortgagee can sell immediately on a default by private sale, without a public auction, but there are also cases in which it must observe the public auction procedure.

There are freezes and other interferences in the mortgage if the owner enters insolvency proceedings. On insolvency, if the mortgaged asset is sold, the mortgage ranks below insolvency costs, but above other unsecured creditors.

The mortgage costs comprise (i) notarisational fees, determined by reference to the value of the secured amount and per each mortgage agreement, regardless of the number of mortgaged assets (e.g. for secured amount exceeding approximately EUR 111,110, the notarial fee amounts to approximately EUR 285 plus 0.07% of the amount by which the secured amount exceeds EUR 111,110) and (ii) Land Book registration

costs (i.e. EUR 25 for each real estate plus 0.1% of the value of the secured amount).

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** For business leases, the law is generally permissive and the parties can freely establish the contractual provisions and deviate from the provisions of the Civil Code. For example, the lease can validly exclude (i) the landlord's obligations to repair, insure or compensate the tenant for improvements on expiry of the lease, (ii) the tenant's ability to assign or sub-lease, as well as the tenant's release from its obligations under the lease when it assigns the lease, (iii) the tenant's preferential right to re-lease the premises.

Lease agreements are deemed writs of execution and the landlord can enforce its rights more easily for (i) the payment of the rent and for (ii) the tenant's eviction at the termination of the agreement, if the lease agreement is registered with the Romania fiscal authorities or if it is executed as a notarial deed. Otherwise, the landlord must address the courts of law in order to enforce the abovementioned rights.

Lease agreements can be concluded for a maximum period of 49 years and must be registered with the Land Books for enforceability purposes.

#### 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** The parties can agree contractually that the landlord can terminate a business lease with immediate effect, by serving a termination notice to the tenant, if the tenant does not pay the rent or breaches other terms of a lease. In the absence of express contractual provisions, the termination of the lease is decided by the courts.

However, the parties cannot terminate a lease agreement as a consequence of opening the insolvency proceedings against the other party.

The Civil Code also provides express conditions for the lease of dwellings which cannot be excluded contractually.

## 8. Foreign direct investment

### Q. The law is friendly to foreign direct investors in land?

**Comment** The government does not treat foreign investors any differently than Romanian investors. The law provides limited cases in which the real estate investments may benefit from subsidies or relaxed taxation (e.g. industrial parks, "free trade" zones etc.), of which can benefit both foreign investors and Romanian investors.

The compulsory purchase of real estate is possible only for reasons of public interest, at a local or national level. The government has to pay a fair compensation for the compulsory purchase promptly and in cash.

## 9. Development of land

### Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated (i.e. there are strict procedures and formalities), including both commercial and residential developments. However, the legal framework is generally clear and predictable. There are different rules which must be observed for developments on urban and agricultural land.

## 10. Environmental

### Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. The environmental liability is determined on an objective basis and is governed by the 'polluter pays' principle (i.e. the person responsible for the pollution will be liable for damages). An owner or lessee of land is not liable to clean up contamination by former owners/lessees. In principle, shareholders and directors of the

company owning or leasing the land cannot be liable for contamination caused by the company, however it must be analysed on a case-by-case basis.

**General comment** The Romanian real estate market is currently undergoing an ascendant path. We see more and more investors taking interest in Romania, starting from the development of office buildings, followed by retail and industrial projects. The Romanian legal framework has for the most part been brought into harmony with the legislation of the European Union.

The law imposes specific procedures and formalities for real estate transfers, developing a land or for changing its destination, which can be sometimes time consuming. However, the legal framework in this respect is generally clear and can be easily followed.

The lease of a real estate for commercial purposes is simple and straightforward, and the costs associated are not significant. The law generally protects the freedom of the counterparties in regulating the clauses of the business leases, without over-protecting the tenant.

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# Russia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly subject to some restrictions. For example, they are not allowed to own land within a border area or a seaport and they are entitled only to lease agricultural land. (2) Generally, local corporations owned or controlled by aliens or having alien directors can own or lease local land. Such entities may possess agricultural land plots on a leasehold basis only. (3) Government permissions are commonly given for major projects and the like given for leases.

Relevant statutes: Land Code, Law on Circulation of the Agricultural Lands and Law on Seaports.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. Such land shall not be barred from turnover and subject to restricted turnover. However in some areas (e.g. major cities) nationals and companies may not be able to buy land outright. The owner of the land is entitled to sell, grant, pledge lease or otherwise dispose of the land. There are some categories of land plots which cannot be privatised, such as streets, squares, boulevards, land plots within a coast line, land plots within state reservations and national parks, etc. Nationals and locally incorporated companies can also buy state owned land plots. State owned land plots are sold or

rented out through the action, however there are some exceptions.

Relevant statutes: Civil Code and Land Code.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in the Russian Federation. (2) The land register shows the extent of the land, the assignment of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way. (3) The state does not guarantee legal title to land. Legal title can be challenged in court. However the state guarantees the accuracy of the register. The register is quite reliable. (4) Problems over the title are common.

Relevant statutes: Law on the State Registration of Rights to Real Estate.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no very substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. The fees for state registration constitute comparatively insignificant amounts. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage land. Mortgage over state owned land is generally prohibited subject to some exceptions. (2) Mortgage can secure all present and future obligations. The mortgage must specify the secured obligation precisely, i.e. the mortgage agreement must contain provision on the amount of debt, the grounds for the debt and the term. (3) The mortgage can be in a foreign currency but, if not, can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. In certain circumstances the mortgagee is entitled to assume title to the mortgaged assets at the market value. (5) There are some interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. However, in this case the mortgagee is entitled to get only 70 per cent (80 per cent in case a bank is a mortgagee) of the proceeds of enforcement. (7) There are no substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease within the period of the relevant lease agreement and subject to the consent of the land owner. The above comments in (1) to (8) generally also apply to this mortgage of a lease.

Relevant statutes: Mortgage Law, Civil Code, Bankruptcy Law.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law generally does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on

expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant and the tenant has a pre-emption right to a new lease unless otherwise provided in the lease agreement, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease.

Relevant statute: Civil Code.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord cannot immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes. The termination is subject to prior notification of the tenant within a reasonable period. Under the applicable legislation the lease may be terminated per the landlord's request if the tenant's use of the property materially breaches the lease agreement; if the tenant materially deteriorates the property; if the tenant fails to pay the rent within the designated period twice and if the tenant does not perform capital repair. The lease agreement can set out additional grounds for the termination of the lease. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

Relevant statute: Civil Code.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land. The amount and the procedure of payment of compensation for the land plots are defined in the agreement on the compulsory purchase of land. If the owner refuses to sign such an agreement the state body may request the compulsory purchase in court. (2) There are special economic zones in the Russian Federation where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) Generally the amount of withholding tax for corporations is equal

to 20 per cent. However the amount of withholding tax may be reduced to zero if so provided by a double taxation treaty.

Relevant statutes: Land Code, Tax Code and Law On Special Economic Zones.

## 9. Development of land

### **Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. Generally the building permission is necessary for the building on the land subject to some exceptions (e.g. building of the garage, the buildings and structures of the supportive use). If the relevant building permission is not obtained the court may deem such building as an unauthorised construction and this construction may be pulled down. Moreover there may be additional restrictions due to special regimes of land (e.g. land within a state border area). In order to change the use of land it is necessary to file an application and certain documents. There are different rules for different categories of land.

Relevant statutes: Urban Development Code and Law On Transfer of Lands.

## 10. Environmental

### **Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are rather strict with quite tight liabilities for clean-up and penalties. In particular, the owners and the tenants of the land must take measures for the soil preservation, protection land from erosion, liquidation of the effects of pollution, land restoration, etc. For the breach of such obligations administrative and criminal sanctions may be imposed. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) Directors of the company owning or leasing the land can be liable for contamination caused by the company.

Relevant statute: Land Code, Code of Administrative Offences and Criminal Code.

**General comment** As a general comment it should be specially noted that in the Russian Federation the state does not guarantee legal title to land. Therefore legal title to land is often subject to challenge in court. For example, such situation may take place in case the legal title to land is based on a void transaction. Another problem is that in certain areas (e.g. major cities such as Moscow and St. Petersburg) it is rather difficult to acquire ownership of land because the state authorities are not often willing to cooperate as they are not interested in private ownership to land. Consequently, persons willing to buy land have to enter into long-term lease.

As for the procedure for acquiring rights to land plots, the distinction depends on the conditions for acquiring such rights. Conditions may include the type of right to the land plot being acquired, the type of existing right to a land plot, the legal basis for the acquisition of rights to the land plot and the specific purpose of acquiring the right to a land plot.

The procedures for obtaining the rights to a state or municipally owned land plot and the procedure for obtaining the rights to a privately owned land plot are quite different. It is important that state or municipally owned land plots may be acquired based on the resolution of state or local authorities which are entitled to dispose of such land plots. Generally, the procedure for obtaining state or municipally owned land is associated with a large number of administrative formalities. On the contrary, the procedure for acquiring rights for an individually owned land plot is easier. The parties enter into the land sale and purchase or lease agreement which is subject to further state registration. However, prior to such registration, the land plot must undergo cadastral registration in the State Real Estate Cadastre. As a result of cadastral registration the land plot will get a unique state cadastre number.

It is also important to underline that according to mandatory provision of the Civil Code, Russian law shall apply to contracts with respect to land plots situated on the territory of the Russian Federation. Furthermore, Russian state courts have exclusive jurisdiction to determine any disputes arising in connection with rights to land situated in Russia. Therefore parties are not entitled to submit a relevant dispute to a foreign court or arbitration tribunal.

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# Rwanda



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Foreign citizens can lease local land but they cannot have a title deed. They receive a leasehold of 20 years or 49 years renewable depending on the type of land and amount to be invested.

Sample comment: (1) Alien individuals and alien corporations are/are not permitted to own or lease local land directly. (2) Local corporations owned or controlled by aliens or having alien directors can/cannot own or lease local land. (3) Government permissions are rare/commonly given for major projects and the like/sometimes given for leases.]

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Local company under control of foreign citizen (more than 50% of the share capital) can lease local land but they cannot have a title deed. they receive a lease hold of 49 years renewable depending on the type of land and amount to be invested.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The land has been organised and there is a form to be filled and signed by the seller and the buyer and the transfer can be done within 30 days if all documents required are available.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are reasonable transfer or documentary taxes and/or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land reasonable and there is a flat fee for the transfer of ownership: +/-50\$.

(2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically even if when they can identify the type of future debt it is better to specify them to avoid any problem of interpretation in the future and there is a need to specify a maximum amount. (3) The mortgage cannot be in a foreign currency but it can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately without a court order, a permit to sell in case of receivership or public auction. (5) There are no freezes or other interferences in the mortgage except by order of the



court if the owner enters bankruptcy proceedings, e.g. the rents are not payable to the mortgagee/insolvency estate except by order of the court. (6) On insolvency the mortgage ranks/does rank prior to all unsecured creditors including taxes, employee benefits and insolvency costs: the mortgage ranks before these creditors. (7) There are reasonable costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease BUT I'm not aware of any such mortgage in Rwanda for the moment. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease except with the written approval of the Landlord.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided the landlord's termination rights on a default are restricted as there is a notice period of at least 30 days to be given to the

lessee. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land except laws related to money laundering or terrorism act obliging banks to verify the reason for a transfer and the countries where the money is going. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are not tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for land transactions are in the main quick and efficient because there have been many reforms to ease the process and forms to be filled in and signed to make the process quick and efficient, and Taxes on land and rents from land are not reasonable.

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# Saint Lucia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** The ownership of land or leasing for more than one year is subject to a Government licence, readily granted except in circumstances of speculation

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title to land is quick and safe.

**Comment** All lands in Saint Lucia are identified by Blocks and Parcel numbers and ownership of each parcel is represented by a Land Register. The Register, in addition to identifying the owner also discloses whether there are any encumbrances on the parcel

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are substantial transfer comprising (a) "Vendors' tax – 5% for nationals or 10% for non-nationals; (b) 2%% Stamp Duty; and (c) relatively insignificant registration charges. The percentages are of the transactional value of the transfer.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land cannot mortgage specified land, though he may hypothecate (charge) the same. (2) The mortgage (charge) can secure all present and future debt generically but must specify a maximum amount. (3) The mortgage (charge) cannot be in a foreign currency but can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee/insolvency estate. (6) On insolvency the mortgage ranks prior to all unsecured creditors excluding taxes, employee benefits and insolvency costs. The mortgage ranks after these latter creditors.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord cannot immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes even if so provided. The landlord's termination rights on a default must be exercised through the courts

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are minimal exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated, including both business and residential

developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are not strict, with relaxed liabilities for clean-up and penalties. (2) Shareholders and directors of the company owning or leasing the land cannot be liable for contamination caused by the company.

**General comment** Generally, land transactions are relatively quick and simple.

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# São Tomé



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and corporations are allowed to own or lease local land directly, notably by acquiring such rights from private entities that currently own land in the country. Nevertheless, most of the land in the country is held by the State and foreign individuals and entities may, subject to certain limits, acquire concession rights, surface rights and leases. Although applicable laws also provide that citizens and companies may acquire, an ownership title from the State under a purchase and sale agreement, these agreements are still not duly regulated, which makes the acquisition of ownership titles from the State unavailable at the time.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. Nonetheless, please refer to our previous comments on acquisition of ownership titles from the State, as the lack of regulation on purchase and sale agreements also affects the national citizens and corporations.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The country provides a land registry system, in accordance with which rights over land, when duly registered, are enforceable against third parties. However, there are no registers of titles over

land in most of the country and problems regarding these titles are common.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** There might be material costs involved as certain fees (e.g registration fees) are calculated based on the value of the underlying transaction.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can take out a mortgage on such land, which can secure all present and future debt, provided such debt is specified and subject to a maximum secured amount. The mortgagee cannot sell the covered assets immediately on a default by the mortgagor without a court order. Mortgagees are preferential creditors, meaning that the same are entitled to be paid first with the proceeds of the sale up to the amount secured by the mortgage, except for specific privileged credits directly related to the mortgaged property (taxes due in connection with the specific property and expenses incurred within legal proceedings for the preservation or liquidation of the concerned immovable property).

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** In general, lease laws do not tend to protect the landlord. There are, actually, mandatory provision on several matters provided in favour of the tenant. Moreover, the landlord may only prevent the leases' renewal in case the same needs the property for its own housing or use or to carry out works to increase the property's area and units, and even in such cases, a proper proceeding must be filed with the courts.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** In certain cases of default or breach of the lease by the tenant (e.g non-payment of rent, use for an unauthorised purpose), landlords can actually terminate the lease irrespective of any contractual provisions related thereof. Regardless, even in such cases the termination of the lease by the landlord must be declared by a court, for which a proper proceeding must be filed.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** Private property over land is guaranteed by the law and the State shall, in principle, pay compensation in case of compulsory appropriation of the land from private entities. The Investment Code also foresees some tax incentives for certain types of investments which may be granted by means of an Investment Contract. No controls or restrictions apply to the repatriations of profits or any revenues related to the land.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Construction and changes in the use of land are regulated and require special permits from public authorities, which vary depending on the type of development that one intends to carry on.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**General comment** As far as it is publically known, public authorities are currently studying and discussing changes to laws and regulations which govern land issues and matters. New laws may be enacted shortly.

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# Saudi Arabia



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** (1) Alien individuals resident in the Kingdom of Saudi Arabia (the **Kingdom**) and companies incorporated in the Kingdom, are permitted to own or lease land outside of the holy cities of Mecca and Medina, to conduct their licensed activities or for residential purposes, subject to obtaining all prior approval or permits by the relevant local authorities. Non-Saudi Muslims may lease real estate in Mecca and Medina for a renewable period of two (2) years. (2) Locally incorporated companies owned or controlled by aliens or having alien directors can own or lease land to conduct the activities they are licensed to undertake in the Kingdom. The licensing of such foreign/alien owned/controlled corporations is subject to the foreign investment laws and regulations of the Kingdom. (3) Alien individuals resident in the Kingdom and companies incorporated in the Kingdom may own real estate for development or investment purposes, subject to obtaining the prior approval of the relevant local authority and other specific requirements (please see responses to Q9 below). (4) Gulf Cooperation Council (**GCC**) citizens, whether natural persons or corporations wholly-owned by GCC individuals, may own or lease real estate, outside of Mecca and Medina, for residential or investment purposes in the Kingdom, and are treated as citizens of the Kingdom in this regard. GCC citizens, however, remain subject to certain limits in relation to the number and purpose of real estate they can own and develop in the Kingdom.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated wholly Saudi-owned companies) can own land outright. These rights can be sold or mortgaged, subject to obtaining prior official approval (especially in cases where the purchaser is a on-Saudi or non-wholly Saudi-owned corporation, and subject to the restriction on the transfer of land in Mecca and Medina to non-Saudis or non-wholly Saudi-owned corporations.).

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** (1) There is a register of title to land in most of the country, however such register is not publically available and is generally only accessible by judicial bodies and officials. Regulations providing for a publicly-accessible electronic register of real estate have been issued, but are yet to be implemented across all areas of the Kingdom. (2) The land register includes details of the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, so long as such rights have arisen or been created in accordance with the rules of Islamic Law (*Shar'iah*). (3) Title deeds issued by the real estate registry are usually reliable, however, they remain subject to challenge or questioning by public authorities or officials. (4) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.



#### 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are minimal notarisation and transfer fees on transfers of land. (2) Any gain realised by a non-Saudi person following a transfer of commercial real estate or a commercial lease is subject to a 20% tax, in accordance with the Kingdom's Income Tax Regulations. (3) Real estate owned by a Saudi Arabian company or business establishment and any gain realised by such company or establishment following the transfer of real estate or a lease, are subject to a 2.5% *Zakat* payment.

#### 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land is legally permitted to mortgage specified land. However, public notaries (who are responsible for registering such security) tend to refuse to register mortgages in favour of commercial banks, on an assumption that the secured liabilities will not be *Shari'ah* compliant. (2) The mortgage can secure debt, provided that the relevant mortgage or security document clearly identifies the debt being secured. (3) The mortgagee cannot seize and sell immediately on a default by private sale, if so provided, without a court order or public auction. (4) A mortgagee may seek preliminary or injunctive proceedings to ensure a mortgaged asset remains safe until the debt owed to it (which is secured by the mortgage) is repaid. (5) A mortgager remains entitled to any yields resulting from a mortgaged asset (unless otherwise agreed). (5) On insolvency, a mortgage perfected by registration ranks prior to all unsecured creditors. (6) There are no substantial costs or fees involved in land mortgages. (7) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (6) generally also apply to this mortgage of a lease.

#### 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease; however, limitations of liability for a party's own acts or omissions remain largely unenforceable, (3) when a lease of business premises expires, the landlord may evict the tenant and, subject to any terms of agreement between the landlord and tenant which provide otherwise, the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is released from its obligations under a lease when it assigns the lease, subject to the terms of such lease, the prior approval of the landlord, and the acknowledgments of the lessee (as assignor) and the assignee. (6) Different rules apply to cases where the lessee is a government authority and in relation to finance leases.

#### 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) A landlord may, upon at least 15-days notice to the tenant, terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

### Q. The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay 'fair' compensation for a compulsory purchase of land from such land's owner. (2) There are no subsidies and special zones where taxes are relaxed. (3) Taxes apply on repatriations of profits and capital from land. (4) There are withholding taxes on the interest/commission on foreign loans which are difficult to avoid.

## 9. Development of land

### Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** (1) Developments and change of use of land are regulated, including both business and residential developments, and are subject to obtaining the prior municipal approvals and permits from the municipality where the relevant development/land is located. (2) Developments or changes in the use of land by non-Saudi persons are subject to the prior approval of the Saudi Arabian General Investment Authority (SAGIA), and foreign investment in respect of real estate requires that the total cost of any real estate development project (undertaken for such investment purposes) exceeds SAR 30 million and occurs within five (5) years from the date of purchase of the real estate.

## 10. Environmental

### Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up, implementation of remedial and preventative measures (which are subject to the prior approval of the General Authority for Meteorology and Environment), and penalties. (2) Any person, whether an owner or lessee of land, a shareholder or director of a company, or otherwise, who is deemed to have caused a contamination will be liable for the clean up of such contamination.

**General comment** In addition to real estate rules and regulations applicable on a national level in relation to real estate in the Kingdom, land transactions may also be subject to further specific rules and regulations based on the location of the real estate in question (for example, leases in relation to property located in Jubail and Yanbu are subject to the rules and regulations of the Royal Commission for Jubail and Yanbu, and land located in one of the Kingdom's Economic Cities must be registered with the Economic Cities' Authority's land register). The government is currently in the process of implementing a new taxation regime on unbuilt land exceeding a certain area.

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# Scotland



## 1. Alien ownership

### Q. There are no restrictions on the ownership or leasing of land by aliens?

**Comment** In this context we are treating aliens as non-nationals of the jurisdiction. Alien individuals and alien corporations are permitted to own or lease land in Scotland. Local corporations owned or controlled by aliens or having alien directors can own or lease land in Scotland. There are processes in place for Government permissions for major projects.

## 2. Absolute ownership

### Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright. These occupancy rights can be sold or mortgaged without official approval. The maximum terms for residential and commercial leases are 20 years and 175 years respectively.

## 3. Proof of title

### Q. Proof of title to land is quick and safe?

**Comment** All titles to land in Scotland must be registered in the Land Register which is based on the cadastral map. The Land Register shows the extent of the land, ownership, standard securities (fixed charges), leases with a duration of more than 20 years and registered third party rights. Some third party rights eg. options to purchase, cannot be registered in the Land Register and therefore have to be covered in due diligence. The state guarantee of title is provided under the Land Registration etc. (Scotland) Act 2012.

On registering an application the Keeper will warrant to the applicant that the title sheet for the property is accurate.

Up until approximately 40 years ago, titles to land had to be registered in a deed based register (the Register of Sasines). Usually more due diligence is required in a transaction involving a Sasine title which is being mapped onto the Land Register for the first time.

Extra due diligence into matters which cannot be ascertained from the Land Register is dealt with contractually and varies hugely from transaction to transaction.

## 4. Cost of land transfers

### Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Apart from normal legal fees depending on the scope of the work, the following taxes and costs need to be considered:

- Value Added Tax (VAT) at 20%
- Land and Buildings Transaction Tax (LBTT)

The current rates for commercial property, based on the purchase price, are:

£0 to £150,000	0%
£150,001 to £350,000	3%
Above £350,000	4.5%

Where VAT is payable on the purchase price, LBTT is due on the purchase price plus the VAT element.

- Capital Allowances

- Land Registration/Companies House fees

## 5. Mortgages

### **Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** Fixed security can be granted over heritable property (land and/or buildings) by granting a standard security (the Scottish equivalent of a legal charge).

The standard security can secure all present and future debt generically.

The standard security can be in a foreign currency.

Under Scots law, a creditor is entitled to exercise any of the rights conferred on him under a standard security. These rights are governed by a set of statutory rules known as Standard Conditions. These apply and govern the terms of a standard security unless they have been otherwise varied in the document (to the extent permitted by the legislation). In the event of default, before exercising its rights, the creditor must follow some preliminary statutory steps.

On insolvency the standard security ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs.

There are normal legal costs and registration fees involved in taking fixed security over heritable property in Scotland.

It is possible for a tenant to grant a standard security over a lease which is for a duration of more than 20 years and if permitted by the terms of the lease. The comments above also generally also apply to this standard security.

In order to take fixed security over associated assets such as insurances, shares and bank accounts for rents, it would be necessary to secure these by way of an assignation in security.

## 6. Controls on terms of leases of land

### **Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** We have answered ‘Can’t say’ because there are two parts to this question and our answers for each part differ. In relation to the first statement ie. ‘The law relating to business leases of commercial premises is very protective of landlords’ our answer is yellow. In relation to the second statement ie. ‘the law does not restrict or control the terms of leases of such land’, our answer is blue (True).

There is very little statutory regulation of commercial leases in Scotland. Much of the Scots law relating to the commercial landlord/tenant relationship is based on the common law.

There are no controls on rent.

With regard to repairs, there are certain obligations implied on a landlord at common law that the landlord can and should negate. The lease should also contract out of the common law rule whereby material damage or destruction will terminate the lease.

The tenant does not have any statutory right to compensation for goodwill or any improvements made to the premises during the lease.

There is no concept of security of tenure under Scots law. The only exception is very limited cases under the Tenancy of Shops Act, for a very limited period. A landlord or tenant will need to serve a notice at least 40 days before expiry of a lease, but provided such notice is given, the lease will terminate on the contractual expiry date.

Sub-tenants acquire no security of tenure against a head landlord. If the head lease is terminated, the sub-tenant’s rights automatically come to an end. A sub-tenant can seek contractual protection from the head landlord.

There is no concept of privity of contract in commercial leases. The lease will usually require the landlord’s consent to an assignation. Normally an assignation by a tenant will relieve the outgoing tenant of any further liability under the lease.

## 7. Termination of leases

### **Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** There are statutory protections for tenants to prevent a landlord acting unreasonably in

terminating a lease for a non-monetary breach. The statutory provisions also set out minimum periods for notice in respect of all breaches. However there is no further right of relief for the tenant so that, for example, if a monetary breach has occurred and the tenant ignores the warning notice, the lease can be terminated without any claim for relief to the court. Most leases provide that the landlord can terminate the lease if the tenant becomes insolvent.

## 8. Foreign direct investment

### Q. The law is friendly to foreign direct investors in land?

**Comment** (1) Financial compensation is payable for the compulsory purchase of land. (2) There are generally no subsidies and special zones where taxes are relaxed however there are some designated Enterprise Areas where modest tax benefits apply. There is an occasional legacy of favourable tax treatment in historic Enterprise Zones. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There is a 20% rate of income tax withholding on interest but not when paid to a resident of a territory which has a favourable double tax treaty with the United Kingdom. (5) There are anti avoidance measures applying to residential property purchases and holdings by corporate vehicles designed to mitigate tax on property transfers.

## 9. Development of land

### Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use are tightly regulated for both business and residential developments. There are variations to the statutory regime for urban and agricultural land.

## 10. Environmental

### Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** There is a statutory regime controlling emissions into the environment. Permits are required for certain emissions to water, air and land. Criminal and civil sanctions apply for failure to comply with the statutory regime. The polluter pays principle [please review] applies to contamination of land. Where the polluter cannot be identified, the owners, lessees and former owners and lessees may be held liable.

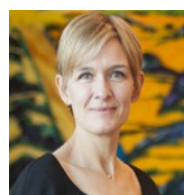
Shareholders and directors of the company owning or leasing the land cannot be held liable for contamination caused by the company.

**General comment** (1) As at January 2016, the Scottish Government plans to create a public register of persons who have control of land in Scotland. This will be done by amending the Land Reform (Scotland) Bill which is currently being debated by the Scottish Parliament but has not yet been passed. (2) All investors are subject to statutory anti-money laundering rules and checks which will principally be carried out by their solicitors, accountants and banks with which they deal. (3) In general, foreign investment in Scotland is encouraged and the regime is considered to be benign.

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# Serbia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and corporations are permitted to own land under the condition of reciprocity. (2) Alien individuals and corporations can own business purpose real estate, including land, only if it is necessary for running a business in Serbia. (3) Alien individuals and alien corporations are currently not permitted to own agricultural land as they can only lease it. However, as Serbia has signed a Stabilisation and Association Agreement with EU, a ban on owning agricultural land is needed to be moved until 2017.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Absolute ownership is a constitutional category in Serbia, with a restricted number of limitations (such as expropriation, concession and tenancy rights awarded by authorities during the socialist era of former Yugoslavia etc.)

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) Problems over title are common. (2) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (2) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) Concept of leasing of land is not familiar in Serbian Law and there is no specific act

regulating the leasing of land. (2) Bearing in mind that Serbia was a socialist state, often the State is still the owner of the land, and the lease of the land in the ownership of state is regulated by special administrative regulations.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** If parties did not stipulate differently, the landlord can terminate the lease, if the tenant fails to pay due rent within 15 days upon receiving a warning notice.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government does not have to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are strict exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid, although, there is a tendency on increasing the number of treaties on avoiding double taxation. (5) The government is generally open to all foreign investments and supports investors.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Legislation on developments and change of use of land is not transparent and detailed, including both business and residential developments. (2) There are different regulations for urban and agricultural land. (3) The process of obtaining relevant permits is long, costly, unpredictable and non-transparent. (4) Permissions must be in accordance with official planning papers approved by local governments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, but monitoring and inspection system are inefficient. (2) The owner or lessee of land is liable for cleaning up contamination made by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** At the moment, the land transactions are not quick and efficient because the law forbids the acquiring of agricultural land by foreigners, and the majority of land in Serbia represents agricultural land. On the other hand, most of the land in urban and non-urban areas are owned by state or by municipalities, and acquiring of this land is possible only through slow administrative procedures. Bearing in mind the obligations arising from country EU candidatureship, these regulations are expected to be changed in the following years.

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# Seychelles



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** - A Non-Seychellois individual or corporate body may purchase a privately owned immovable property or rights therein in Seychelles provided that a sanction is obtained from the Government of Seychelles. Any acquisition of an interest in land through purchase or lease of land or rights therein must be pursuant to an approved development project. Ownership of immovable property or rights therein is limited to natural persons or a local company with natural persons as shareholders, directors and beneficial owners. In the case of corporate shareholders, directors and beneficial owners in a local company the shareholders, directors and beneficial owners must be easily traceable in Seychelles to natural persons.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. The owner has a free right to sell or mortgage his/her immovable property without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There are two registers of titles to land in the Seychelles which are kept by the Property Registry of the Registrar; one for old and one for new land. The search in the new registry is done by parcel

number. The Property Registry is publicly accessible and provides information on the immovable property to protect the interests of creditors, the parties and third parties. The land registers at the Land Registry provide information as to the extent of the land, ownership, mortgages and long term leases. Problems over titles to land are rare as they are drawn up by a notary who is required by law to ensure that the registrations of land titles are properly done.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** - Apart from normal legal fees depending on the scope of the work, there is a stamp duty of 5% of property value, notary fees ranging between 1-2% of the purchase price and a registration fee of SCR 25.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** - The owner of land can freely mortgage his/her land to secure a present or future debt. The mortgage must be registered and inscribed with the Registrar. The mortgagee cannot sell immediately on a default by private sale, if so provided without a court order or public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, but the rents are payable to insolvency estate. (6) On insolvency the mortgage ranks/does not rank prior to all unsecured creditors

other than taxes, employee benefits and insolvency costs the mortgage ranks after these creditors. (7) There are no substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law in respect of commercial leases provides for protection of the tenant and it does restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are controls on rents, (2) the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. The lease can validly exclude the ability of the tenant to assign or sub-lease, and a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Foreign investors are able to own and hold land subject to the provisions of certain specific laws, but see question 1. They may buy land freehold from private owners and even obtain long term leases of state land subject to the approval of the Seychelles

Investment Board and the Ministry of Land Use and Housing. The aim of the Ministry is to ensure direct investment in Seychelles.

As regards the compulsory acquisition or taking of possession of any property by the government, the law requires the Government to pay "prompt and full compensation" for the property.

There are no exchange controls and no restrictions on repatriation of profits and capital in Seychelles, consequently, any gains derived by foreign investors from real estate projects or from any other industry in Seychelles can be freely repatriated. Interest on foreign loans would be subject to withholding taxes depending on whether the entity is a domestic entity and in such a case would be subject to a tax rate of fifteen per cent (15%) or in the event it is an International Business Company, it would be exempt from taxes.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated, including both business and residential developments. There are different rules for urban and agricultural land. In Seychelles, real estate promoters or individuals are required to have a planning approval from the Planning Authority prior to the start of any land development. Additional permits may be required depending on the type of development/project.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. There are environmental laws which prevent the public dumping on unoccupied land. These laws are enforced by designated officers. These designated officers are empowered to fine the occupiers or owners of a property in case an offence is committed in this respect.

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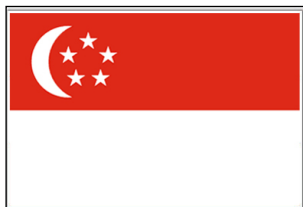


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# Singapore



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are not permitted to acquire any interest in certain classes of residential property except by way of security and with approval from the relevant authority. (2) Likewise, local companies where not all the shareholders and directors are Singapore citizens may not acquire any interest (excluding security interests) in such residential property, except with approval from the relevant authority. (3) Government permissions are given largely based on economic benefit to Singapore or other public policy considerations. Residential property is as defined in the Residential Property Act and includes (a) any vacant land or land upon which exists any structure which is constructed or used contrary to any written law, (b) any building or any part thereof which is permitted to be used pursuant to any written law as a dwelling-house, (c) any land zoned for residential purposes in the Master Plan and (d) any other land or building as the Minister in charge may declare to be residential property, but excludes (i) any land (vacant or otherwise) which is zoned for industrial or commercial purposes in the Master Plan or (ii) any land or building, or any part thereof, which is permitted to be used pursuant to any written law solely for industrial or commercial purposes (iii) any hotel registered under the Hotels Act and (iv) any other land or building as the Minister in charge may declare to be industrial, commercial or non-residential property.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals, including locally incorporated companies with a few exceptions (e.g., a company formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion or any other like object not involving the acquisition of gain by the company or by its individual members cannot acquire any land without the approval of the Minister in charge) can own land outright. However, the title to most land in Singapore is held under Government leases which usually range from 99 years to 999 years, or under sub-leases from agencies to whom the Government has leased the land. Such sub-leases have varying tenures, but as an example, many sub-leases of industrial lands have 30-year tenures, with conditional options to renew for a further 30 years. The leasehold interests can generally be assigned to nationals, subject to restrictions imposed in the leases. Restrictions imposed by the agencies issuing the sub-leases are generally prompted by the economic interests of Singapore or other public policy considerations.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way. Interests such as rights of purchasers may be notified on the land register via caveats. (3) The state guarantees the accuracy of the register. (4) Problems over title are rare.

(5) Landed properties and flatted units can be purchased from their developers before the construction is completed and their certificates of title are issued. Pending issue of such certificates, the interests of purchasers, mortgagees and other claimants can be notified on the land register by caveats, which generally rank according to their order of registration.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Ad valorem stamp fees are payable on transfers of interests in land (leasehold or otherwise). The basic rate is about 3% of the consideration for the transfer or the market value of the land transferred, whichever is higher. Whether stamp fees are payable turns on whether the land is classified as residential property, and not on whether the land is used for business purposes. However, additional stamp duty is payable by the purchaser and/or seller on transfers of certain types of properties (such as residential or industrial land) under specific circumstances. (2) Goods and services tax is also payable on the consideration for the transfer if the land is not residential property and the transferor is an entity which is, or should be, registered under the Goods and Services Tax Act. As at 31 January 2016, the rate of such tax is 7%. (3) There is no capital gains tax in Singapore, but income tax will be payable at the relevant rate if the transferor is, or is deemed to be, a trader in real estate.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage the land. (2) The mortgage can secure all present and future debt generically. (3) The mortgage can secure liabilities in a foreign currency. (4) The mortgagee can sell immediately on a default by private sale, if so provided, without a court order or public auction. (5)

There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are not payable to the mortgagee/insolvency estate. However, if the owner is a company in respect of which an application for a judicial management order has been filed in court, a statutory moratorium automatically applies against enforcement of the mortgage, subject to the exceptions and rules under Part VIIIA of the Companies Act. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are certain statutory claims which rank ahead of mortgages, such as claims for unpaid property tax, certain unpaid maintenance fees and sinking fund contributions or certain road-making charges. (8) It is possible for a lessee to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (7) generally also apply to this mortgage of a lease. (9) The principles in (1) to (6) generally apply to associated assets such as insurances, a bank account for rents, or shares (other than shares in certain regulated entities, which may be subject to specific restrictions).

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can have the right to evict the tenant (and can apply to the court for assistance by the sheriff if the tenant refuses to vacate the premises) and the tenant has no protection, such as a right to a new lease, if that right is not provided in the lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease, unless the lease expressly provides otherwise.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory acquisition of land in cash and if payment is not made upon taking possession of the acquired land the amount accrues interest at the rate of 6% per annum until payment is made. (2) There are no subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) Although the legal framework for land pollution may be said to be relatively basic and rudimentary, there are nonetheless environmental legal rules against pollution and contamination of land, e.g. there are legal restrictions against polluting land and a polluter may be liable to imprisonment or a fine or be required to remove and clean-up the polluting matter. (2) Liability for pollution and clean-up is generally imposed on the polluter, although an occupier of the premises may be presumed to have caused the pollution. A person who has "permitted" the discharge of the pollution into the land or water may also be held liable for cleaning up the land and an owner or lessee may be held liable to clean up the land this basis. However, he is not liable for clean up on a strict liability basis simply as an incident of his ownership / lesseeship. (3) Shareholders and directors of the company owning or leasing the land are generally not liable for contamination caused by the company. It may also be noted that control of environmental land pollution is also imposed by administrative legal means, e.g. through contracts with State landlords through whom most industrial premises are in practice leased.

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# Slovakia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** There are certain restrictions in relation to agricultural land, namely that alien individuals and alien corporations are not permitted to own agricultural land directly. Such land can be acquired only by natural persons residing or legal entities having its registered office in Slovakia for at least ten years and carrying out agricultural activity for at least three years.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** There are certain restrictions in relation to agricultural land, namely that alien individuals and alien corporations are not permitted to own agricultural land directly. Such land can be acquired only by natural persons residing or legal entities having its registered office in Slovakia for at least ten years and carrying out agricultural activity for at least three years.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a register of title to land in the whole country. The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. The state guarantees the accuracy of certain data in the register; however the

title to real estate as registered in the register can be challenged before a court.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt rather generically but should specify a maximum amount. The mortgage can be in a foreign currency. The mortgagee can sell fairly promptly on a default by private sale, if so provided, without a court order or by public auction. There are certain interferences in the mortgage if the owner enters bankruptcy proceedings. On insolvency the mortgage ranks prior to all unsecured creditors including taxes and employee benefits but after insolvency costs. There are no substantial costs or fees involved in land mortgage registrations. It is not possible for a tenant to mortgage the lease. These principles generally apply to



associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of commercial premises

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such commercial premises (ignore rights of termination on default)?**

**Comment** The law in principle does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude obligations of the landlord to repair, insure or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant (court eviction order is required) however the tenant has no protection such as a right to a new lease unless agreed otherwise, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it subleases the property.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can terminate a business lease fairly promptly if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land even if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** There are restrictions in relation to agricultural land, namely that foreign individuals or legal entities are not permitted to own agricultural land directly. Such land can be acquired only by natural persons residing or legal entities having its registered office in Slovakia for at least ten years and carrying out agricultural activity for at least three years.

There are certain possibilities of subsidies (including tax reliefs) for foreign investors in case of substantial investments. Other than restricted ownership of agricultural land, there are no exchange controls or restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated fairly tightly, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are not very strict, with certain liabilities for clean-up if the authority can prove originator of the liability. The environmental burden should in principle stay with the originator of the burden, its legal successor (e.g. upon sale of business, merger, conversion of the state-owned enterprise into a private joint stock company, etc.) or property owner as a fall-back position (upon meeting certain specific conditions. Shareholders and directors (apart from directors' liability for breach of duty of care) of the company owning or leasing the land cannot be liable for contamination caused by the company.

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# Slovenia



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Aliens may acquire ownership of land pursuant to conditions set forth by statute or an international treaty ratified by the Slovenian National Assembly. Several major categories of aliens (nationals of the European Union, the European Economic Area, and the Organisation for Economic Co-operation and Development) are subjected to the same legal framework as Slovenian nationals. Some categories may obtain land ownership subject to reciprocity, i.e. heirs by virtue of inheritance and nationals of European Union candidate states. Other restrictions may apply and further advice may be obtained on the subject. No specific restrictions exist for the leasing of land by aliens.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. Certain limitations related to the object of the potential acquisition may exist, e.g. whether it is a public good or *res extra commercium*.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The land register shows the extent of land ownership, mortgages, several other rights in rem, and civil obligations, as well as pending procedures related to specific title particulars. As the land register is

unified for the whole country and run electronically, one can obtain an excerpt for any registered land plot online and free of charge. The state does not guarantee the accuracy of the land register, but anyone who relies on the registered rights in good faith cannot suffer any adverse consequences, i.e. it is possible to acquire a right despite an inaccurate land registration record.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** A special sales tax of 2% is levied on the transfer of real estate not subject to value added tax. The latter applies only to new business premises at a rate of 22%. In addition, reasonable notarisation fees apply as well as any potential legal fees, depending on the workload and complexity of the matter. Concerning leasing, rents are generally not subject to value added tax, but other taxes apply depending on the capacity of the landlord (pursuant to the Personal Income Tax Act or the Corporate Income Tax Act).

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The mortgage, set forth on the basis of a transaction, is established through the entry into the land register. The sale of the mortgaged real estate may be enforced within a judicial proceeding or, if the mortgage was established in the form of a directly enforceable notarial deed, through notarial sale. The

land register permission has to include, amongst others, the specifics of the mortgaged land as well as the amount and the maturity date of the secured claim. An exemption applies to future and conditional claim(s) arising out of a specific legal relationship whereby the mortgage has to establish the highest amount that the real estate is mortgaged for. The mortgage can be in a foreign currency. In insolvency proceedings, the mortgagee gets a right to repayment prior to other creditors (i.e. the right to separate settlement). A provision stipulating that the mortgagee has the right to the fruits of the mortgaged real estate or any other kind of use thereof is deemed null.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law restricts the terms of a lease to protect the tenant. As a mandatory law, a lease, entered into for an indefinite period of time, is to be terminated judicially and with a one year notice period, unless both parties agree on termination. In addition, the law sets forth several provisions related to the consequences of non-compliance with the contractually agreed time and place of the handover and maintenance of the premises, however the parties may contractually exclude their use. The tenant is not entitled to sub-lease the premises without the landlord's explicit consent.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** The grounds for termination on default of commercial leases are set out in the Act on Commercial Buildings and Commercial Premises, and apply regardless of whether they are included in the lease or not. The landlord may, despite any other contractual or statutory provisions on the duration of the lease, terminate the lease at any time if: (1) the lessee uses the commercial building or the commercial premise in breach of the contract or without due diligence, such that significant damage is made, despite being notified by the landlord; (2) the lessee fails to

pay the rent for two consecutive months upon being notified by the landlord; (3) the landlord requires use of the commercial premises himself, because he cannot use the premises in which he was undertaking his business activity for reasons he is not liable for.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Ownership rights to real estate may be revoked or limited in the public interest with the provision of compensation in kind or monetary compensation. Taxes on property are comparatively low. Foreign corporations conduct their business activities through a subsidiary registered in Slovenia. Currently, no special taxation zones are in place. Bank accounts may be held and repatriation payments may be made in any currency. Interest paid to a non-resident is generally subject to a 15% withholding tax.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** A building permit is generally required to build, demolish or alter the use of a building. In addition, an operating permit is required to start using the building that was built on the basis of such building permits. When changing the use of land, the purpose of specific land is set out in a spatial planning act and one is not allowed to build unless the act is changed. Agricultural land, including the conditions for transfer of such land, is strictly regulated.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Pursuant to the Slovenian Constitution, everyone has a right to a healthy living environment, whereas the law shall establish the conditions and extent of liability for damages. General liability is set out in the Obligations Code and applies to whichever subject caused damage, while the Environmental Protection Act establishes strict liability for risky business activities, including those dealing with waste,

and *actio popularis* relating to omissions of (potentially) damaging behaviour. In addition, the Environmental Protection Act, the Decree on Waste and several other regulatory acts set out fines for non-compliance that vary greatly depending on the severity of the violations. Criminal penalties are reserved for the most serious violations.

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# South Africa



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) A foreign company wishing to acquire property in South Africa must register as an external company in terms of the Companies Act, 2008. (2) Government permissions are commonly given for major projects and the like. (3) The proposed Land Holdings Bill, which was announced during the State of the Nation address on 12 February 2015, will place limitations on foreign ownership of land in South Africa, including a proviso that non-citizens will only be entitled to lease property for a maximum of 30 to 50 years. The Bill also envisages that land will be classified, and foreign nationals will be discouraged from owning land that has been classified as sensitive from an environmental or security perspective, as well as land that is of cultural, historical or strategic significance.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** (1) All South African nationals (including locally incorporated companies) can own land outright. (2) In addition, The Constitution of the Republic of South Africa, 1996 provides that "no one may be deprived of property except in terms of a law of general application". (3) With limited exceptions, an owner of land may mortgage it freely without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) South Africa has an efficient and sophisticated land registration system, governed by the Deeds Registries Act, 1937. (2) Each immovable property in South Africa is shown on a diagram and ownership is recorded in the Deeds Registry. (3) The records of the Deeds Registry show the extent of land, ownership, mortgages, registered leases and certain important rights, such as servitudes and rights of pre-emption. (4) Extra due diligence, e.g. into rights of occupation, may not be straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Transfer costs, which may be substantial, are payable in respect of the transfer of land. (2) Transfer Duty, Value Added Tax and/or capital gains tax may also be payable on both residential and commercial property. (3) A distinction is drawn between commercial property and residential property where rates and taxes are concerned. In the case of *Kalil NO and others v Manguang Metropolitan Municipality and others* 2014 (5) SA 123 (SCA), the Court found that commercial property may be charged higher rates (up to 3,8 times the residential rates). These higher rates are set out in section 19(1)(b) of the Local Government: Municipal Property Rates Act, 2004.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically, but must specify a maximum amount secured. (3) The mortgage can be in a foreign currency or can be indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default without a court order. (5) On insolvency the mortgagee is a secured creditor that ranks prior to unsecured creditors. (6) There are costs and fees involved in land mortgages. (7) It is possible for a tenant under a registered long term lease to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (6) generally also apply to this mortgage of a lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) Commercial leases are negotiated, and may contain onerous provisions that favour the landlord. The law does not restrict or control the terms of a commercial lease to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when the lease expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to renew the lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a tenant may be prevented from being released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided in the lease agreement.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase/expropriation of land. However, the Expropriation Bill, which was passed by the National Assembly at the end of February 2016, allows for the expropriation of property not only for public purposes, but also for public interest reasons to speed up land reform. If enacted, there will be a change in the procedures applicable to expropriations (including the price at which property may be expropriated). (2) There are special zones where taxes are relaxed. (3) There are exchange controls and restrictions on repatriations of profits and capital arising from the sale of land. Proceeds of a sale of immovable property in South Africa held by foreign investors may only be remitted outside the country once South African Reserve Bank approval has been obtained and all necessary taxes have been paid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Developments of land, and the change in use of land, are tightly regulated in South Africa, including both business and residential developments. There are different rules for agricultural land. (2) Policy plans, structure plans, land use management plans and zoning or town planning schemes all determine, identify and allocate specific land uses to specific properties. (3) Change of use of land requires planning approval, which is subject to public participation and may incur objections. These objections are heard by tribunals, which allow appeals to an independent appeal body.



## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental laws and rules are strict, with substantial liability for clean-up and penalties. (2) An owner of land is liable to clean up contamination of former owners. (3) Shareholders and directors of a company owning land can also technically be liable for contamination caused by the company (see *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Co Ltd and others* 2006 (5) SA 333 (W)).

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# Spain



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Spanish common law does not foresee limitations in this regard.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** The land register shows and attests to the ownership states, liens over the property and certain other important rights, such as rights of way and pre-emption rights. Any good-faith third party onerously acquiring a property in Spain trusting in the contents of the land register will be protected in such acquisition.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Apart from normal legal (including notary and land register) fees depending on the scope of the work and the municipal capital gain tax, the transfer of

a business property by means of a notarial public deed will normally trigger Stamp Duty and VAT.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** The mortgage can secure up to a maximum secured amount. The usual foreclosure mortgage proceeding used by commercial creditors is subject to very few opposition rights by the debtor, so the foreclosure proceeding can be defined as very protective for the mortgagee as creditor. Registration of mortgages involves the triggering of Stamp Duty.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can evict the tenant and the tenant has no protection, such as a right to a new lease, and (4) the lease can validly exclude the ability of the tenant to assign or sub-lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other essential terms of a lease of land used for commercial purposes.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** For tax reasons, it is very common that the investment in real estate assets is made through a Spanish entity and not directly by a foreign entity.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. That involves the need to ask for municipal licences, which the municipality will have to grant if the requested licences are in line with the planning regulations in force. With regard to large shopping areas, and especially in places like Catalonia, a special commercial licence must be granted by the regional government.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are strict, with a penalty system that entails that the owner of a plot of land will be subsidiarily liable vs the public administration in case an environmental damage is caused and even if such environmental damage was made by a third-party occupant.

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# Sri Lanka



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?



## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?



## 3. Proof of title

**Q.** Proof of title to land is quick and safe?



## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?



## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?



## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?



## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?



## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?



## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?



## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?



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# Sweden



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and corporations are in general permitted to own or lease local land directly. For agricultural properties located in rural areas there are restrictions, but not based on nationality (Land Acquisition Act (1979:230)). The acquirer of an agricultural property can apply for an acquisition permit at the County Administrative Board.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright, with the above mentioned restrictions. All nationals can have leases and occupancy rights for a maximum lease term of 50 years or 25 years if located within a detailed development plan area. Natural persons may have leases for an unlimited period. The owner has a free right to renew. These occupancy rights can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a nationwide register of title to land, the Swedish Land Registry. (2) The register shows the extent of the land, information regarding ownership, mortgages and mortgage deeds, easements and usufructs and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register.

(4) Problems over title are rare. (5) Extra due diligence is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees, stamp duty is levied at a rate of 4.25 % (1.5 % for private individuals) of the highest of the purchase price or the tax assessment value, when a new owner is registered in the Land Registry. Stamp duty is also levied on transfer of site leasehold. No taxes are levied based on the lease of business premises. (2) Taxes on the gains on a transfer of such land depend on the received compensation.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The last person applying for registration of title may mortgage the real estate. (2) The mortgage can secure all present and future debt generically. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without an enforcement order from the relevant authority. (5) If a titleholder becomes bankrupt, disposal rights over its assets transfers to bankruptcy estate. The proceeds of the mortgage accruing during the bankruptcy benefit the mortgagee and are disbursed after settling the costs of enforcement. (6) During insolvency, the

mortgage ranks prior to unsecured creditors, including taxes and employee receivables. (7) There is a stamp duty of two % of the nominal value of the mortgages taken out. (8) It is possible for tenants of commercial premises to mortgage the lease if approved by the landlord. (9) These principles do generally apply to associated assets such as insurances, shares and bank accounts for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law somewhat restricts and controls the terms of commercial leases to protect the tenant, e.g. (1) there are no controls on rents, but unreasonable terms may be found void or adjusted (2) a lease agreement can validly exclude any obligations of the landlord to repair, insure, or compensate the tenant for improvements on expiry of the lease (3) when a lease of business premises expires, the landlord cannot easily evict the tenant, as the tenant has indirect security of tenure and may be entitled to compensation from the landlord for the damage resulting from the termination of his tenancy (4) the lease can validly exclude the right of the tenant to assign or sub-lease the entire premises (5) the tenant is released from its obligations under a lease when it assigns the lease with the landlord's or Rent Tribunal's approval.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can, with immediate effect, terminate a business lease if the tenant does not pay rent on time. However, the tenant may regain the lease by paying the rent within two weeks from termination. The lease is also forfeited if the tenant, e.g. transfers the lease agreement to a third party or sublets the premises, without the landlord's approval, or materially breaches other lease terms. (Chapter 12, Sections 42-44, Land Code). (2) If the tenant becomes bankrupt, the landlord cannot terminate the

lease in case the tenant/bankruptcy estate pays rents or if the bankruptcy estate within a month from the bankruptcy provides security or declares itself responsible for the tenant's obligations.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) Redemptions of real property for public needs are subject to legal requirements and require payment of compensation. (2) There are some special zones where real estate taxes are relaxed. (3) In the ordinary course of business, there are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no withholding taxes on the interest on foreign loans.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and changed use of land are tightly regulated, including both business and residential developments. For urban land, a local detailed zoning plan usually applies, containing more detailed regulations with respect to the use and design of buildings, public places, etc. than for rural land, which is often regulated by a comprehensive plan/regional zoning plan. As a general rule, deviations from the applicable plan are subject to a municipal decision. Construction of a building normally requires a permit.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with relatively tight liabilities for clean-up and penalties. (2) In case no operator can be identified, which can pay for, or carry out, after-treatment of the property, the person who acquired the property and was aware of the pollution at the time of the acquisition or ought to have been aware of it shall be liable for after-treatment. (Chapter 10, Section 3,



Environmental Code (1998:808)). (3) A parent company, being able to legally and actually influence the operations conducted by the company, can be liable for contamination caused by the company. Liability towards the directors of the company is possible if directors intentionally or through negligence are found guilty for environmental crimes (Chapter 29, Environmental Code).

**General comment** The Swedish real estate market is characterised by high transparency and low transaction costs, efficient procedures and financing alternatives. Investors often use a transactions structure with a HoldCo and separate subsidiary PropCo holding the assets. The transaction structure is often largely tax driven where the sale of subsidiary shares may be tax exempt.

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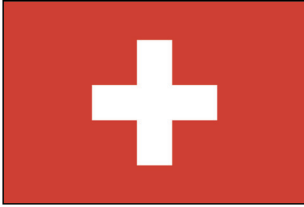


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# Switzerland



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien ownership in real estate for permanent business establishment purposes is not restricted. In terms of land for other purposes, e.g. for residential purposes, however, the ability of alien individuals and alien corporations to acquire ownership is prohibited subject to certain narrow exemptions. Alien individuals and corporations include individuals domiciled abroad, corporations with registered or actual domicile abroad and Swiss corporations controlled by such alien individuals or corporations. EU|EFTA nationals as well as third country nationals entitled to take permanent residence in Switzerland are not considered alien individuals if domiciled in Switzerland. The lease of local land by alien individuals and alien corporations is not restricted as long as the lease is not considered circumventive of applicable ownership restrictions.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** Subject to the restrictions set out under Q1 above, all national individuals and locally incorporated companies can acquire full ownership in land outright, and ownership (as well as some limited ownership rights) can be sold or mortgaged without official approval.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a land register (*Grundbuch*) throughout Switzerland. The land register records the extent of the land, ownership, mortgages and liens (*Pfandrechte*), easements (*Dienstbarkeiten*) and burdens (*Grundlasten*) as well as certain public restrictions. There is a variety of further private rights and restrictions (such as leases, pre-emption rights and restrictions of transferability) which may be registered upon request. It should be noted that, absent the consent of the land owner, the right of third parties to inspect the land register is limited to certain information and does, in particular, not pertain to mortgages. Generally, the land register is deemed to be correct and complete. Subject to certain limited exceptions, *bona fide* purchasers can rely on the existence of any rights evidenced by the land register, and rights not registered cannot be validly held against them.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** In general, there are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and taxes such as (either) profit or income or real estate capital gains tax, and, in certain scenarios or regions, further taxes such as cantonal real estate transfer tax or VAT. Tax treatment of real estate transfers is reasonable and may depend on

whether the real estate is transferred as part of an asset or share deal. The profit deriving from the transfer of a lease may be treated as taxable income.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure current or future debts which are specified or determinable up to a specified amount (incl. interest and costs for debt collection). It is possible to issue mortgage certificates (i.e., promissory notes secured by the mortgage) which can be used as transferrable collateral. The currency of the mortgage (and, consequently, any mortgage certificates) must be in Swiss francs. If so provided, and subject to specific requirements (including, e.g., consent of all parties affected by the private sale, and subject to relevant insolvency regulations) the mortgagee can sell the land in case of a default by private sale without a court order or by public auction. If the owner enters bankruptcy, any future rent is encompassed by the mortgage and will be payable to the insolvency estate on account of the mortgagee. In the bankruptcy of the mortgage debtor who is also the owner of the mortgaged property, the mortgage ranks prior to all unsecured creditors including employee benefits and insolvency costs. There are no substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The terms of leases for commercial premises are to some extent regulated by mandatory law. E.g., tenants of commercial premises can object against rents which are overly excessive, and they have limited rights to object against abusive termination of the lease as well as limited rights to request an extension of the lease in case of hardship. While the tenant can be expected to perform some maintenance and repair works, the landlord's general obligation to

keep the premises fit for the intended use cannot be validly excluded. Sub-lease or assignment are subject to landlord's consent which, however, cannot be unreasonably withheld. In terms of sub-leased premises, the tenant remains responsible to the landlord subject to the terms of the main lease. If the lease is validly assigned, the tenant remains jointly liable with the assignee for a limited period of time.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** If a tenant of a business lease does not pay the rent according to the agreed payment schedule, the landlord can set a payment deadline of at least 30 days. If payment is not made within that timeframe, the landlord can terminate the lease with a notice period of at least 30 days upon the end of any calendar month. In case of bankruptcy, the tenant *and* the administrators can be requested to provide security for future rents. If no adequate security is provided within a reasonable timeframe, the lease can be terminated with immediate effect, or, if bankruptcy occurs after signing of the lease but prior to handover of the premises, the landlord can withdraw from the lease. In case of other violations of the lease by the tenant which make fulfilment of the lease unreasonable for the landlord, a warning can be issued and, in case of on-going non-compliance, the business lease can be terminated with 30 day prior notice upon the end of any calendar month. The above rules cannot be derogated to the detriment of the tenant and do not restrict landlord's ordinary termination rights.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** - As set forth in the comment to Q1 above, the Swiss legal system is friendly to foreign investments in land that may be used for business purposes. Moreover, and subject to certain criteria, full or partial tax holidays may be granted both on cantonal and federal levels in certain regions for newly set up businesses and companies substantially modifying their activities or undergoing economically

motivated reorganisation. There are no exchange controls or restrictions on repatriations of profits and capital from land. Interests paid by a Swiss tax resident borrower are generally not subject to Swiss withholding tax. Interest payments may be subject to 35% Swiss withholding tax if a loan is considered a customer deposit or part of a bond-like financing. Switzerland's sophisticated tax treaty network, however, includes various instruments allowing foreign investors to materially reduce withholding taxes.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Development and change of use of land (including both business and residential developments) are subject to various regulations in order to accommodate public planning, health and safety as well as environmental concerns. There are different rules for building and agricultural land. Applicable requirements are reasonable and not overly burdensome compared to foreign standards. Prior official permission is generally required. Such permission can be obtained by way of efficient and foreseeable proceedings in which compliance with relevant regulations is examined.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** - There are a variety of regulations to secure and protect a sustainable environment. The rules are fairly strict but not onerous and may include liability for clean-up and penalties. In general, primary liability for the costs to clean up lies with whom the contamination was caused by. However, while this is subject to some debate, it cannot be excluded that the owner of the land – even though not directly involved in the contamination – is held liable to clean up contamination by former owners or lessees. Moreover, it cannot be excluded that shareholders and directors of the company owning or leasing the land are held liable for clean-up of contamination caused by the company, in particular if they were directly involved in

the contaminating acts and if they acted in wilful disregard of relevant environmental rules and regulations.

**General comment** Even though there are some restrictions in terms of alien ownership in land used for residential purposes, Swiss real estate law is liberal and Swiss legal practice for real estate transactions is fast and efficient. Swiss law provides for a modern set of statutory rules both in the fields of civil and public law, and taxes on real estate sales and rents are generally moderate.

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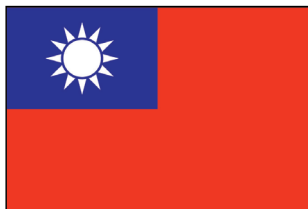
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# Taiwan



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Generally speaking, (1) alien individuals and alien corporations are permitted to own or lease local land directly subject to reciprocity requirement; (2) local corporations owned or controlled by aliens or having alien directors can own or lease local land; and (3) government permissions for ownership of land by aliens are not necessary.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** Generally speaking, all nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?.

**Comment** Generally speaking, (1) there is a register of title to land in most of the country, especially urban areas; (2) the land register shows the extent of the land, ownership, mortgages, and certain other important rights; (3) the accuracy of the register is very reliable; and (4) extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business

purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Generally speaking, (1) apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land; and (2) the taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** Generally speaking, (1) the owner of land can mortgage specified land; (2) the mortgage can secure all present and future debt generically with a specified maximum amount; (3) the mortgage cannot be in a foreign currency; (4) the mortgagee cannot sell immediately on a default by private sale; (5) on insolvency the mortgage ranks prior to all unsecured creditors; and (6) there are no substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Generally speaking, the law does restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on

rents; (2) the lease cannot validly exclude any obligations of the landlord to repair, or make the premises safe; (3) when a lease of business premises expires, the landlord cannot easily evict the tenant; and (4) the lease can validly exclude the ability of the tenant to assign or sub-lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Generally speaking, (1) a landlord cannot immediately terminate a business lease if the tenant does not pay the rent; (2) if the tenant becomes bankrupt, the landlord cannot terminate the lease of such land unless otherwise provided; and (3) the landlord's termination rights on a default are restricted by some conditions.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Generally speaking, (1) the government has to pay compensation for a compulsory purchase of land; and (2) there are subsidies and special zones where taxes are relaxed for specific industries, e.g. the high-tech industry.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Generally speaking, developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** - Generally speaking, (1) the environmental rules are strict, with tight liabilities for clean-up and penalties; (2) an owner or lessee of land may be liable to clean up contamination by former owners or lessees; and (3) responsible persons and controlling shareholders of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** Generally speaking, the practices for land transactions are in the main quick and efficient. Taxes on land and rents from land are not exceptionally onerous.

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# Togo



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and alien corporations are permitted to own or lease local land only with the prior authorisation of the Prime Minister.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There is a conservation office of property and land rights which preserves holder's rights. The rights are published in a land registry in order to create a proof of title. The proof of title to land is safe as pursuant to the law the title to land is irrefutable when it is of first creation. However, the process for getting the title is long.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** - Only registered lands can be mortgaged. The mortgage must specify the debt as well as the land concerned. The mortgagee can sell after a default by private sale, if so provided, without a court order or public auction. On insolvency the mortgagee ranks prior to all unsecured creditors except taxes, employee benefits and insolvency costs. There are substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** Basically, the law relating to business leases is protective of the tenant. The lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. After two years, the tenant gets the right to the renewal of the lease. Furthermore, the lease can validly exclude the ability of the tenant to assign or sub-lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?



**Comment** A landlord can terminate a business lease if the tenant does not pay the rents or breaches other terms of a lease of land used for commercial purposes if so provided. The termination is judicial. The landlord has to give notice to the tenant before the termination.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** The government has to pay compensation for a compulsory purchase of land promptly and in cash. Pursuant to the law relating to the free zone, there are special zones where taxes are relaxed. There are exchange controls or restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Following the law, building is subject to a prior official permit, other than normal public safety and environmental restrictions.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** The environmental rules are not very strict.

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# Trinidad & Tobago



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly in **Trinidad** pursuant to the Foreign Investment Act, Chapter 70:07 without a licence for:

1. residential purposes once the area does not exceed one acre (s.6); and
2. trade or business purposes once the area does not exceed five acres (s.7).

An application for a licence from the Minister of Finance for areas in excess of the above amounts must be obtained by alien individuals and alien corporations.

**Note:** a licence must be obtained by a foreign investor acquiring **any land in Tobago** whether for residential, trade or business purposes as per the Foreign Investment Act (Tobago Land Acquisition) Order 2007.

The Minister may however by Order prescribe areas in Trinidad and Tobago in which a foreign investor may not acquire land whether for residential, trade or business purposes, without first obtaining a licence (s.6(2)).

Notwithstanding the above, land may be acquired by a foreign investor in Trinidad through the following exemptions in section 8:

- (a) on an annual tenancy or for any less interest for the purposes of his residence, trade or business but not exceeding five acres of land in all;
- (b) under an intestacy, or as beneficiary or as an executor under a Will, for a period of one year from the date of the death of the testator or intestate, or for such extended time as the President may grant;

(c) in pursuance of his rights to foreclose or enter into possession as a mortgagee for a period of one year from the acquisition of such land or for such extended time as the President may grant;

(d) as a judgment creditor for a period of one year from the date of his acquisition of the land or for such extended time as the President may grant; or

(e) jointly with his spouse, where that spouse is a citizen of a Member State who is resident in Trinidad and Tobago.

The consideration for land acquired by a foreign investor must be paid in an internationally traded currency through a person authorised by law as a dealer in that foreign currency. However, when a company is incorporated in Trinidad and Tobago such consideration can be financed out of capital reserves or retained earnings generated from its operations (s10).

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally majority owned and incorporated companies) can own land outright. Nationals of Jamaica and Barbados are exempted from the requirements of the Foreign Investment Act and are given the same rights as nationals with respect to ownership rights as they relate to land and shares of companies incorporated in Trinidad and Tobago.

### 3. Proof of title

#### Q. Proof of title to land is quick and safe?

**Comment** In Trinidad and Tobago there are dual systems of land title:

1. The old system or common law system; and
2. The RPA (Real Property Act) system of registered conveyancing.

Title searches are carried out under both systems.

#### 1. Old System

The State does not guarantee title under this system and problems over title can be common. There should be extra due diligence, e.g. into rights of occupation, as the process in assessing title is not usually straightforward. The issues surrounding the Old Law System of eliciting title is twofold, firstly the deeds lodged at the Land Registry where searches are conducted may contain errors which essentially affect the title and secondly the record keeping of the Deeds may not be reliable e.g. there may be deeds missing from the record or in deplorable condition.

#### 2. RPA System

(1) There is a register of title to land. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register, certifies title ensuring the information on the register is very reliable. (4) Problems over title under this system are less common than in the old system.

### 4. Cost of land transfers

#### Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

#### Comment

(1) Apart from normal legal fees which are prescribed by law, there is a transfer or documentary taxes which is known as Stamp Duty and registration fees on transfers of land used for business and residential purposes or leases of such land or the grant of leases of such land, which can be substantial as these values

are assessed on an ad valorem basis. These values are set amounts which are prescribed by the Board of Inland Revenue and can be calculated based on set formulas for different transactions. E.g. Stamp Duty fees payable on the transfer of residential property is different from the Stamp Duty fees payable on the transfer of commercial property.

(2) The taxes on the gains on a transfer of such land or leases can be very substantial. Lex Caribbean does not currently advise on taxes; such information should be sought from a reputable tax advisor. There are no capital gains tax payable by persons who transfer land or shares in Trinidad and Tobago. The taxation is in the form of Stamp Duty payable to the State. On the issue of taxation however, the domicile of the individual or the corporation may have laws that apply to the said persons and which deal with capital gains and other taxes to be paid.

### 5. Mortgages

#### Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically, must specify the debt precisely but does not have to specify a maximum amount. (3) The mortgage can be in a foreign currency but, if not, can be indexed to an internationally traded foreign currency. (4) The mortgagee's right to sell without a court order by private sale or public auction arises immediately on a default and is provided for by statute. Although the right to sell arises on default, the exercise of this right is however regulated by statute for the protection of the mortgagor. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings e.g. the rents are payable to the mortgagee. (6) On insolvency the mortgage ranks prior to all unsecured creditors, including taxes, employee benefits and insolvency costs. (7) There are substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease if the lease so provides.

\* N.B. – Non-consumers are not defined.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. When a lease of business premises expires, the tenant is required to give vacant possession of the premises to the landlord unless otherwise provided for in the lease. If however vacant possession cannot be obtained by peaceable re-entry, the landlord may be constrained to apply to the court for possession. If the lease provides for an option to renew the tenant will then have a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is generally released from its obligations under a lease when it assigns the lease save if not provided for in the lease. (3) *not included?*

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The Government has to pay compensation for a compulsory purchase of land pursuant to the Land Acquisition Act Ch. 58:01. (2) The Ministry of Trade Industry and Investment pursuant to the Free Zones Act Chapter 81:07 can designate free zones which are not subject to licensing

and payment of import duties and VAT. In addition, approved free zone enterprises are exempted from a number of taxes. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are withholding taxes on the interest on foreign loans unless the rate is reduced under a tax treaty pursuant to s.50 of the Income Tax Act, Ch. 75:01.

Please also refer to our response in Q.1 above.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are regulated, including both business and residential developments, by the Town and Country Planning Division (TCPD) of the Ministry of Planning and Development. Planning permission must be given prior to commencing any land development. There are different rules for urban and agricultural land.

A Certificate of Environmental Clearance (CEC) must be issued by the Environmental Management Authority (EMA) before most projects with designated activities can begin and Environmental Impact Assessments may also have to be carried out before a CEC will be issued.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict with liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Any individual who at the time of the violation was a director, manager, supervisor, partner or other similar officer or responsible individual who was purporting to act in such capacity, may be found individually liable for that violation of the company owning or leasing the land for contamination caused by the company pursuant to s.71 of the Environmental Management Act.

For failing to comply with applicable environmental requirements the Environmental Management

Authority can assess damages for a person up to \$5,000 for each violation or \$1,000 per day for continuing or recurrent violations until the violation is remedied or abated.

For a person other than an individual damages for each violation can be assessed up to \$10,000 and up to \$5,000 per day for continuing or recurrent violations until the violation is remedied or abated.

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# Turkey



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly, subject to certain restrictions, which are stricter on the part of alien corporations. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land, while acquisitions are, under certain circumstances, subject to approval by the local governorships. (3) Governorship permissions are commonly given for major projects.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country, especially urban areas. (2) The land register shows the extent of the land, ownership, mortgages, longer-term leases (to the extent such leases are annotated on the land register) and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register. (4) Problems over title are rare. (5) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are some substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes. (2) On the other hand, fees for leases of such land or the grant of leases of such land are less substantial, especially if such leases are not annotated to the land register. (3) The taxes on the gains on a transfer of such land or leases are substantial (exceptions apply).

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage must specify the debt precisely or must specify a maximum amount if the amount of the debt is not known when the mortgage is being established. (3) The mortgage can be in a foreign currency, only if it secures loans extended by financial institutions in a foreign currency or indexed to a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, but must follow special foreclosure proceedings to liquidate the mortgage through a foreclosure process to be carried out by the competent execution office, which will sell the mortgaged property in a public



auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the insolvency estate. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs except for any public receivables in connection with the mortgaged real property. (7) There are no substantial costs or fees involved in land mortgages.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law restricts or controls the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are certain controls on rents, (2) the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe (3) when a lease of business premises expires, the landlord cannot easily evict the tenant and the tenant has a protection, such as a right to a new lease on the same terms (rent being subject to increase), (4) the tenant cannot assign or sub-lease, unless permitted by the landlord, and (5) a lessee is released from its obligations under a lease when it assigns the lease upon permission by the landlord – certain exceptions exist for leases of commercial premises, some of which are set to enter into force on 1 July 2020.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord cannot immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes, the landlord's termination rights on a default are restricted. (2) If the tenant becomes bankrupt, the landlord can request the tenant to secure the future rents and terminate the lease of such land if no security is provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) Foreign investors are free to make foreign direct investments in Turkey, and Foreign investors shall be subject to equal treatment with domestic investors. The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) In principle, the polluter itself is liable to clean up contamination it causes, based on the polluter pays principle. (3) In principle, shareholders and directors of the company owning or leasing the land cannot be liable for contamination caused by the company.



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# Turkmenistan



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and alien corporations are not permitted to own land. Local corporations owned or controlled by aliens or having alien directors cannot own local land. Government permissions are rarely given for major projects and given only for leases.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** Nationals (including locally incorporated companies) cannot own land outright. They can only have leases and occupancy rights. The owner has no free right to renew. These occupancy rights cannot be sold or mortgaged.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** There is a register of title to land in most of the country, especially urban areas. The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights. The state guarantees the accuracy of the register. The register is reliable.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in

the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** The user/leaseholder of land cannot mortgage specified land.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does restrict or control the terms of a lease of commercial premises.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** There is only one landlord of land in Turkmenistan – it is the state. The landlord can immediately terminate a business lease if the tenant

does not pay the rent or breaches other terms of a lease of land used for commercial purposes. If the tenant becomes bankrupt, the landlord can terminate the lease of such land.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** There is no possibility for foreign investment in land: the land cannot be purchased, it can only be leased for industry or building purposes except agriculture.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated in any case, official permission is always required.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. Shareholders, directors and other relevant officials of the company leasing the land can be liable for contamination caused by the company.

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# Uganda



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** (1) Non Ugandan citizens (individuals and corporations) are not permitted to own land in fee simple. A non citizen company is one in which majority shareholding or controlling interest lies with a non citizen. (2) Non Ugandan citizens are permitted to lease land for a maximum period of 99 (ninety-nine) years.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright because the Constitution vests land in the citizens of Uganda.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** (1) The Land Registry can on request provide search results showing ownership of registered land. A disclaimer is however given to the effect that the information is given on the understanding that its accuracy is not guaranteed and that no liability whatsoever can be accepted if loss or damage results from any error, omission or misstatement therein. (2) There are cases of forged titles being used. (3) Extra due diligence is highly recommended.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** Stamp duty, which is at 1.5% of the value of the property as assessed by the Government Valuer may be substantial depending on the value of the property.

The taxes on gains on a transfer of land are substantial (30%).

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comments** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically and must specify a maximum amount. (3) The mortgage can be in a foreign currency. (4) The mortgagee can sell following notice to the mortgagor on a default by private sale, if so provided, without a court order or public auction. (5) On insolvency the mortgage ranks prior to all unsecured creditors excluding taxes, employee wages for a limited period, and insolvency costs. (6) There are no substantial costs or fees involved in land mortgages apart from stamp duty at 0.5% and legal fees based on scope of work. (6) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comments** (1) The law provides for certain implied terms in every lease of commercial premises to protect both the landlord and tenant, (2) There are no controls on rent, (3) The lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (4) When a lease of business premises expires and there is no renewal, the landlord can easily evict the tenant, (5) The lease can validly exclude or restrict the ability of the tenant to assign or sub-lease, and (6) A lessee is not released from its obligations under a lease when it assigns the lease. There is a draft Landlord and Tenant Bill, 2016 that seeks to regulate the relationship between landlords and tenants.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comments** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) A landlord can re-enter the leased premises upon default by a tenant.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comments** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) The Kaweweta Special Economic Zone where taxes are expected to be relaxed is expected to start operating this year. (3) There are no exchange controls or restrictions on repatriation of profits and capital from land. (4) In some situations interest on foreign loans is exempt from tax.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comments** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for land transactions are not in the main quick and efficient because there is need for a considerable reform. Uganda is currently updating its national land information system that will apply to all land tenure systems. This if completed will incorporate functionalities for valuation assessments, physical planning and district land management decisions. It will also reduce the time required to check, update and transfer land and contribute to a reduction in corruption associated with checking, updating or transferring of titles.

**COMPLETED BY MASEMBE, MAKUBUYA,  
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# Ukraine



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to lease local land directly; however they are permitted to own only non-agricultural land and in certain cases. (2) Local corporations directly owned by aliens cannot own agricultural land but can lease it. Local corporations controlled by aliens can own (in certain cases) and lease local land. (3) Government or the Parliament permission shall be obtained for acquisition of land plots by aliens in cases when there are no real estate objects, subject to privatisation and situated on such land plots.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** There are restrictions on the ownership of land by aliens, however they can lease land on the same conditions as residents. Aliens cannot own agricultural land plots. Aliens can obtain property title to non-agricultural land plots mainly in connection with ownership to the real estate objects, situated on such plots. There are no such restrictions for local citizens and legal entities.

The right of foreign citizens as well as the right of foreign legal entities and joint ventures established in partnership with foreign individuals or legal entities to own land is limited. Foreign citizens and persons without citizenship can acquire the ownership right to non-agricultural land plots within the boundaries of localities, as well as non-agricultural land plots outside

localities on which objects of real estate, privately owned by them, are situated. Foreign legal entities and joint ventures established in partnership with foreign individuals or legal entities can acquire the ownership right to non-agricultural land plots: (i) within the boundaries of localities in case of purchasing real estate objects (other than land plots) as well as for construction of objects for conducting entrepreneurship; (ii) outside localities in case of purchasing real estate objects (other than land plots).

The right of land lease can be obtained by all nationals (including locally incorporated companies).

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** (1) The State register of rights in rem to real estate (including land plots) and their encumbrances operates since 1 January 2013, including title to land (2). The register shows the extent of the land, ownership, mortgages, leases and certain other important rights, such as servitudes etc. (3) The state guarantees the accuracy of the register and its information is publicly available. Meanwhile information about rights to land plots, arising before 1 January 2013 is included in the register on optional basis. (4) Problems over title are mostly rare. (5) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

## 4. Cost of land transfers

### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**



**Comment** (1) Apart from normal legal fees depending on the scope of the work, there is no substantial transfer or documentary taxes or notarisational fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically and must specify the debt precisely. (3) The mortgage can be in a foreign currency but special rules of obtaining loans in foreign currency should be observed. (4) The mortgagee can sell on a default by private sale, if so provided, without a court order or public auction. (5) There are freezes in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are no substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** According to legislation land lease agreements cannot be concluded for the period of time which exceeds 50 years. The law has few controls on the terms of a lease of commercial premises to protect the tenant and the lessee, e.g. (1) there are no controls on rents of private land, (2) the lease can

validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land, which is possible only in case of social necessity and after previous and complete compensation (monetary compensation or allotment of another land plot of equal value). The compulsory purchase can be conducted only by means of court decision. Registration of acquirer's property title to the land plot takes place on the basis of court decision and documents, proving previous and complete compensation of the purchase price by transfer of money to notary's deposit or registration of property title to the land plot allotted in compensation of the compulsory purchased one. (2) There are no effective subsidies and special zones where taxes are relaxed. (3) There are exchange controls or restrictions on repatriations of profits and capital from land. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Legislation provides to landowners a possibility to change the use of land (except agricultural land and lands of defence) by their own decision. Construction can be started only after obtaining rights to the relevant land plot and registration of specific declaration (in some cases – obtaining construction permits).

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** Legal regulation of land relations generally is moving in the right direction to ensure rights to land plots and provide sustainable use of land, but in some aspects effective mechanisms of regulation should be developed or improved.

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# United States of America



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** Subject to any applicable economic sanctions and related laws, alien individuals and alien corporations are generally permitted to own or lease local land directly without official approval.

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** There is a local register of title to land in most areas of the country, especially urban areas, but the system of registration is fragmented and process-oriented. The land register shows the extent of the land, legal ownership, most mortgages and encumbrances, and it may show certain other important rights, such as rights of way, but generally not occupancy rights. The government does not guarantee the accuracy of the register, but insurance is commonly available and regularly obtained to insure and defend the state of title for real property owners and lenders. Extra due diligence, e.g. into rights of occupation, and often the completion of a land survey is essential to better understand the state of title and the rights of third-parties for a given property.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** Varying levels of state and/or local taxes are imposed on the transfer of real property (including by means of a long term lease of substantially all of the improvements (i.e. a ground lease)). In certain jurisdictions the transfer taxes, mortgage recording taxes and/or taxes on gains can be quite significant and an essential driver in the structuring of transactions.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** The owner of land can mortgage specified land. The mortgage can secure all present and future debt generically. The mortgage can be in a foreign currency but, if not, can be indexed to a foreign currency. The mortgagee cannot sell immediately on a default by private sale, without a court order or public auction. There are some interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. there is a stay on enforcement. On insolvency the mortgage ranks prior to all unsecured creditors but after taxes, employee benefits and insolvency costs. In certain jurisdictions, there are substantial costs and fees involved in land mortgages. It is generally not possible for a space tenant to mortgage the lease. These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** - The law does not usually restrict or control the terms of a lease of commercial premises to protect the tenant. Note, (1) there are no controls on rents, (2) the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord can evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lease can provide that a lessee is or is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can freely terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided; provided, such termination is generally not effective if triggered by the bankruptcy/insolvency of the tenant. If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land and the bankruptcy law and process will be determinative.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** There are subsidies and special zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and

capital from land. There are no material withholding taxes on the interest on foreign loans which are difficult to avoid, but there can be significant withholding taxes on the gains derived from direct foreign investment in real property (e.g. FIRPTA).

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land may be tightly regulated by multiple levels of government, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land may be liable to clean up contamination by former owners/lessees.

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# Uruguay



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** (1) Uruguay has no differential treatment, restrictions or impediments to the ownership of real estate by foreigners (companies, individuals or both). The ownership can be held by companies or individuals, Uruguayans or foreigners, regardless of their residency or citizenship status or even by foreigners without having ever entered Uruguay. However, there are restrictions to own, lease or exploit agricultural properties by some kind of companies. (2) Private alien corporations and local corporations with bearer shares owned or controlled by private aliens are not permitted to own or lease rural land without the Government's prior authorisation. (3) Public or state-owned alien corporations and local corporations with bearer shares owned or controlled by public or state-owned aliens are not permitted to own or lease rural land. (4) Government permissions are commonly given for major projects and for projects that add value to the country that are carried out by private alien corporations or by local corporations with bearer shares owned or controlled by private aliens. (6) Government permissions cannot be given to public or state-owned alien entities or local corporations with bearer shares owned or controlled by public or state-owned aliens. A special government authorization may be given for projects that add value to the country if the public or state-owned alien has a minority and non-controlling participation in the local corporation.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies with registered shares held by individuals) can own land outright. If the company has bearer shares, it will need an authorisation from the Government to own rural land. Rural or agricultural land owned or exploited by a Uruguayan entity with bearer shares, a Uruguayan entity with registered shares or quotas held by a foreign entity or by a foreign country/sovereign fund (not controlling the entity), needs prior authorisation by the Government. Depending on the type of entity, it could be a straight forward process that would not take much time, or a longer one that could take between 4 and 6 months. They can only have leases and occupancy rights for a limited period of 15 years. The owner has a free right to renew. The owner has a free right to renew subject to the consent of both parties. Nevertheless, if the lease is to install a wind farm, solar farm or a dam, it may have a 30-year term. The property over the land can be sold or mortgaged without official approval if the acquirer is entitled to own the land without the Government's authorisation, and when selling the property, foreigners are also allowed to repatriate the result of their investments, as well as the rents derived from them, without the need of any authorisation or intervention by Uruguayan authorities. Nevertheless, in case of rural land, the Government has a right of first refusal to acquire the land in the same conditions it is offered for sale.

### 3. Proof of title

#### **Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in all the country. (2) The land register shows the extent of the land, ownership, mortgages, registered leases and certain other important rights, such as rights of way and pre-emption rights. (3) The state guarantees the accuracy of the register. (4) Problems over title are very rare. (5) Extra due diligence, e.g. into rights of occupation, is usually straightforward.

### 4. Cost of land transfers

#### **Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The acquisition of a property in Uruguay is levied with the following taxes: (i) Land Conveyance Tax (ITP): every transfer of real estate is subject to this tax, payable both by seller and buyer. The tax rate is 2%, applicable over the fiscal value of the property duly adjusted for inflation. The fiscal value of the property is usually lower (half or less) than its market value; (ii) Deed Registration Stamp Duties: The participation of a Notary Public on every property acquisition is mandatory and every transaction in which a Notary Public participates is subject to these taxes. In the case of purchase deeds, such taxes amount to 0,465% of the purchase price plus VAT (22%); and (iii) Value Added Tax or IVA: Only applicable to those houses acquired from the construction company, the VAT is 10% of the purchase price and is usually included in the price communicated by the developers in the advertisements.

### 5. Mortgages

#### **Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage can secure all present and future debt generically but must specify a maximum amount. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale. A court order and public auction is required. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, except that the creditor must wait 60 days since the insolvency is declared to foreclose the land. (6) On insolvency the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are substantial costs or fees involved in land mortgages, which amount to 0.465% plus VAT of the guaranteed amount plus sundry registration costs. (8) It is not possible for a tenant to mortgage the lease. (9) These principles generally apply to associated assets such as credits, shares and a bank account for rents.

### 6. Controls on terms of leases of land

#### **Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** (1) Over certain properties (those with a construction permit dated before 1968) when the leased property has a business purpose there is a minimum period of 5 years for the lease. So, if the lease was agreed for a shorter period, the lessee will have the legal right to consider the term extended up to 5 years. (2) Guarantees of commitment are usually requested to the lessee. Such guarantees may consist on a deposit held in escrow in a local bank of a certain amount (up to the equivalent to 10 month price), or the joint bail of a local company or individual who can prove certain income or property of assets. (3) If the lessee breaches the obligations under the contract, a judicial process needs to be carried out against him, in order to recover the tenancy of the property and to collect the penalty and the price for the term lessee may not have cancelled the same.



## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** (1) A landlord can immediately terminate (through an expedited judicial process) a business lease if the tenant does not pay the rent or materially breaches other terms of a lease of land used for commercial purposes if so provided. (2) If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land if so provided, unless the tenant does not pay the rent.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are no subsidies or special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land. (4) There are no material withholding taxes on the interest on foreign loans which are difficult to avoid. (5) As informed in Q1 above, there are restrictions to ownership of rural land in case of public or state-owned alien entities.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** (1) Developments and change of use of land are not tightly regulated, including for both business and residential developments. There are different rules for urban and agricultural land. (2) Municipal governments are empowered to regulate land use, setting the categories of lands (urban, suburban, rural) and to issue permits to new urban developments or over certain activities in the areas under control of each municipality, or even creating areas of environmental protection. Before making the decision to acquire real estate for a project, it should be verified that same is located in an appropriate zone or, as the case may be, in an area that can be changed (residential, offices, industrial, etc.) by submitting an Action Plan to the Municipality. (3) If anyone plans to

build a project in an area that cannot be changed, he/she must seek a building permit under an exceptional regime. (4) Most municipalities regulate the land use planning and construction, and related factors, such as setbacks, land cover, maximum heights, etc. Information on the zoning and construction regulations of each plot is of public access, so anyone without disclosing his purpose may obtain information on any plot.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** (1) The environmental rules are not strict, with relaxed liabilities. Said liability includes penalties of up to US\$ 150,000 approximately, indemnifying the damages caused and, if possible, performing the necessary acts to repair the contamination effects. (2) The penalties for not implementing soil conservation measures amount between US\$ 250 and US\$ 300,000 approximately. The owner of the land is jointly liable with the lessee for the payment of these sanctions. Additionally, the entity responsible for the damage may be suspended from performing its activities for up to one year.

**General comment** The real estate industry in Uruguay is very safe and successful. This is mainly a consequence of the conditions of the business environment, such as the long tradition of legal certainty and respect for contracts, private property, predictability, stability and the commitment that the Uruguayan authorities have shown towards protection of private property and investments.



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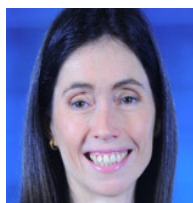
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# Uzbekistan



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** The state is the only and exclusive owner of the land in Uzbekistan. It can be only leased with the right to possess and use for a defined period for a certain amount of money under lease agreement terms. Land can be leased to individuals, legal entities that are residents of Uzbekistan as well as to legal entities with foreign element, alien individuals and alien corporations.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) cannot own land outright. They can only have leases and occupancy rights for a defined period. These occupancy rights cannot be sold or mortgaged without official approval.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other important rights, such as rights of way and pre-emption rights.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in

the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains.

**Comment** Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** The owner of land cannot mortgage specified land.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. there are no controls on rents. When a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease. The lease can validly exclude the ability of the tenant to assign or sub-lease, and a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** A landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided in the lease agreement. The landlord's termination rights on a default are restricted in terms of advance notification of pending termination. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** There are subsidies and special zones where taxes are relaxed. There are no exchange controls or restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are not tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental rules are strict, with tight liabilities for clean-up and penalties. An owner or lessee of land is liable to clean up contamination by former owners/lessees. Directors of the company owning or leasing the land can be liable for contamination caused by the company.

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# Venezuela



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land directly. However, alien individuals and alien corporations cannot own local land located in areas declared by the government as security zones without prior approval from the Ministry of Defense. (2) Local corporations owned or controlled by aliens or having alien directors can own or lease local land. However, corporations owned or controlled by aliens cannot own local land located in areas declared by the government as security zones without prior approval from the Ministry of Defense. The purchase and sale of local land by foreign countries for the use of their diplomatic missions requires certain governmental authorisations. .

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright.

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** (1) There is a register of title to land in most of the country, especially urban areas. (2) The land register shows the extent of the land, ownership, mortgages and certain other important rights, such as rights of way. (3) The state does not guarantee the

accuracy of the register; and the register is reliable. (4) Problems over title are rare.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) Apart from normal legal fees depending on the scope of the work, there are no substantial transfer or documentary taxes or notarisation fees or registration fees on transfers of land used for business purposes or leases of such land or the grant of leases of such land. (2) The taxes on the gains on a transfer of such land or leases are reasonable.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage cannot secure all present and future debt generically, but must specify the debt precisely and must specify a maximum amount. (3) The mortgage cannot be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, without a court order or public auction. (5) There are no freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings. (6) On insolvency the mortgage ranks prior to all unsecured creditors excluding employee benefits. (7) There are no substantial costs or fees involved in land mortgages. (8) It is not possible for a tenant to mortgage the lease.

## 6. Controls on terms of leases of land

**Q.** The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?

**Comment** The law does restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are controls on rents, (2) the lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease, (3) when a lease of business premises expires, the landlord cannot easily evict the tenant and the tenant has certain protections, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, and (5) a lessee is not released from its obligations under a lease when it assigns the lease.

## 7. Termination of leases

**Q.** A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?

**Comment** (1) The landlord's termination rights on a default are restricted (*i.e.*, the landlord can terminate the lease if the tenant fails to pay two rent payments and in certain other cases, but it must follow a lengthy judicial procedure. (2) If the tenant becomes bankrupt, the landlord cannot terminate the lease of such land if so provided **unless the tenant fails to pay two rent payments**.

## 8. Foreign direct investment

**Q.** The law is friendly to foreign direct investors in land?

**Comment** (1) The government has to pay compensation for a compulsory purchase of land promptly and in cash. (2) There are no subsidies and special zones where taxes are relaxed. (3) There are very significant exchange controls and restrictions on repatriations of profits and capital from land.

## 9. Development of land

**Q.** No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are not tightly regulated, including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

**Q.** The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are strict, with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is liable to clean up contamination by former owners or lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The main issues currently affecting foreign investments in land located in Venezuela are significant exchange controls affecting the ability to convert local currency into foreign currency, regulations restricting the ability to freely set lease conditions and the government's recent history of expropriations, confiscations and occupations of land.

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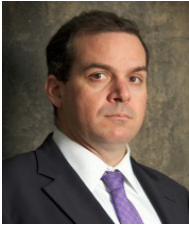
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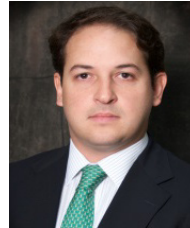
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# Vietnam



## 1. Alien ownership

**Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** There are restrictions on the ownership or leasing of land by aliens. Under Vietnam's constitution, land is collectively owned by the people and managed by the State, i.e., there is no private ownership of land per se, even by Vietnamese people. Land is allocated to land users, including foreign-invested companies established under Vietnamese laws and foreign missions to Vietnam, in accordance with the land management legislation. Under the 2013 Land Law, land is allocated to foreign-invested companies in Vietnam either in form of a land grant (for development of residential projects) or a land lease (for other purposes) with a land use term of not more than 50 years (or not more than 70 years in special circumstances).

## 2. Absolute ownership

**Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** No nationals (including Vietnamese-owned companies) can own land outright because the laws do not recognise private ownership of land. Land is allocated to land users depending on the purpose of use (i.e., residential purposes, commercial purposes, agricultural purposes, etc.). The use term length depends on the purpose of use and is prescribed in the law. Land users will have "land use rights", which allow them to do certain things (such as transfer or mortgage of land use rights) depending on the type of land allocation (i.e., grant or lease) and the land payment structure (i.e., one-off payment or annual payment).

## 3. Proof of title

**Q. Proof of title to land is quick and safe?**

**Comment** The "certificate of land use rights and ownership of house or other assets attached to land" is the proof of title. It is time consuming to obtain the title certificate. Procedures for issuance of this certificate vary depending on each type of transaction and the duration of each procedure also varies. In practice, it may take up to a few months for a certificate to be issued to the land user.

## 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** It is costly to obtain land use rights in Vietnam. Land use fee (in the case of land grant) or land rent (in the case of land lease) following the government-issued price framework is charged by the government to the land users. In case of a transfer of land use rights from a land user to another, the land price is usually determined by the market rate. Besides, there will be statutory stamp duty and CIT (currently at 20%, applicable to corporate transferors of land use rights) on any capital gains.

## 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**



**Comment** The laws require that mortgages of real property (i.e., both land use rights and assets attached to land) be registered with the property registrar to be effective and valid. Mortgagees (i.e., creditors) can enforce the mortgaged property if the borrower defaults on its payment obligations.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** Vietnamese laws do not impose restrictions on landlords of commercial properties in terms of the lease terms, except that undeveloped land is not allowed to be leased – only developed buildings or structures (and land use rights accompanying them) can be leased.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** If a commercial lease provides that the landlord can terminate the lease if the tenant defaults, they can do so.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** Foreign investment in land development/real estate in Vietnam is encouraged. However, the government vets foreign investors before granting them development rights in projects to filter out incapable investors who only look to "flip" the project licence. Foreign investors will have to follow the investment procedures prescribed in the 2014 Investment Law to do business in most sectors, including in real estate, in Vietnam. The 2014 Law on Real Estate Business and the 2013 Land Law also prescribe conditions/restrictions for foreign-invested real estate companies/land users.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Development of land is strictly regulated. Developers are required to develop the land in accordance with the land use plans and zoning parameters. Decisions will be issued by the land regulators for development rights whereas construction permits will be issued by the construction regulators. Consultation with the relevant authorities such as environmental regulators, fire fighting forces, transportation authorities, etc. is required too.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** Vietnamese environmental legislation prescribes strict obligations and liability for clean-ups and prevention of contamination/pollution. Land development is required to follow rules on waste treatment.

**General comment** Land development, including development of commercial properties, is strictly regulated in Vietnam. Land allocated but undeveloped without a legitimate excuse will be revoked by the State.

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# Yemen



## 1. Alien ownership

**Q.** There are no restrictions on the ownership or leasing of land by aliens?

**Comment** Alien individuals and alien corporations are permitted to own or lease local land directly subject to some conditions.

## 2. Absolute ownership

**Q.** All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?

**Comment** All nationals (including locally incorporated companies) can own land outright after obtaining all relevant approvals from the concerned authorities. Some plots of land which were inherited from the British colony are subject to long term leases.

## 3. Proof of title

**Q.** Proof of title to land is quick and safe?

**Comment** Registration of title is mandatory according to the applicable laws. Practically speaking, many locals do not register their title to land to avoid transfer tax of 1% of purchase value. However, if the owner is willing to buy/sell an unregistered land, he will have to pay penalties for non-registration. Such penalty will be calculated starting from the date of ownership of the land. Due to bureaucracy, the process of registration of title is complex and takes several weeks, if not months, to complete.

## 4. Cost of land transfers

**Q.** There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?

**Comment** There are normal legal fees, transfer and notarisation fees plus 1% real estate tax calculated on the purchase value of the property.

## 5. Mortgages

**Q.** Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?

**Comment** (1) The owner of land can mortgage specified land. (2) The mortgage cannot secure all present and future debt. It must specify the debt precisely. (3) The mortgage can be in a foreign currency. (4) The mortgagee cannot sell immediately on a default by private sale, if so provided, without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents are payable to the mortgagee/insolvency estate. (6) On insolvency the mortgage does not rank prior to all unsecured creditors including taxes, employee benefits and insolvency costs/the mortgage ranks after these creditors. (7) There are no substantial costs or fees involved in land mortgages. (8) It is possible for a tenant to mortgage the lease if permitted by the terms of the lease and the above comments in (1) to (8) generally also apply to this mortgage of a lease. (9) These principles generally apply to associated assets such as insurances, shares and a bank account for rents.

## 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does not restrict or control the terms of a lease of commercial premises to protect the tenant, e.g. (1) there are no controls on rents, (2) the lease cannot validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease (such terms to be mutually agreed between the parties), (3) when a lease of business premises expires, the landlord can easily evict the tenant and the tenant has no protection, such as a right to a new lease, (4) the lease can validly exclude the ability of the tenant to assign or sub-lease, (5) a lessee is not released from its obligations under a lease when it assigns the lease.

It is important to mention that the current law has given the parties the freedom to insert the agreed terms and conditions, which will be binding on both parties. Relevant laws may be referred to in case of conditions that were not addressed in the lease agreement.

## 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**

**Comment** Unless stated otherwise in the lease agreement, a landlord can immediately terminate a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes. If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided. Practically speaking, a one month advance notice is required to be sent to the tenant prior to termination, or any other period stipulated by the agreement.

## 8. Foreign direct investment

**Q. The law is friendly to foreign direct investors in land?**

**Comment** The investment law provides local and foreign investors the privilege of obtaining free land for large projects/developments, in addition to various tax and customs benefits.

## 9. Development of land

**Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?**

**Comment** Developments and change of use of land are reasonably regulated, including both business and residential developments.

## 10. Environmental

**Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?**

**Comment** The environmental law regulates the actions of businesses relating to any harm caused to the environment (such as oil and gas related operations). Certain penalties may apply in the events of violations.

**General comment** Title to land in Yemen is generally very problematic. Proper title registration is quite recent. Old titles pose much more difficulties, disputes and uncertainty.

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# Zimbabwe



## 1. Alien ownership

### **Q. There are no restrictions on the ownership or leasing of land by aliens?**

**Comment** (1) Alien individuals and alien corporations are permitted to own or lease local land. (2) Much of the agricultural land is now, however, vested in the government. (3) Where land is still in the hands of individuals and corporations it is liable to expropriation in terms of either section 71 or 72 of the Constitution of Zimbabwe (Amendment No.20). A distinction is necessary at this point between "land" as defined in section 71 and "land" as defined in section 72, as different rules apply. Under section 71, all persons, whether aliens or nationals can own and lease all forms of property including land. However, the Government of Zimbabwe has authority to compulsorily acquire this land if such acquisition is justifiable as being in the interest of the public. Section 72 provides for agricultural land. Similar to section 71, all persons whether alien individuals or corporations can own or lease agricultural land. However, under the same section, the Government can compulsorily acquire any agricultural land by a simple notification in the Government Gazette. The amendment nationalises Zimbabwe's farmland and allows the Government to acquire agricultural land for any purpose, including resettlement and redistribution. Landowners do not receive any compensation for land expropriated by the Government. The acquisition, according to Section 72(3) (c) cannot be challenged on the basis that it is discriminatory, even on the grounds of nationality. This may not be a restriction but the challenges posed by these provisions make it difficult, undesirable and by deduction, operate as a ban against an alien who would wish to own agricultural land in Zimbabwe. However, they are entitled to compensation for permanent improvements they have

effected on the land. (4) Local corporations owned or controlled by aliens or having alien directors can own or lease local land, if such corporations comply with the Indigenisation laws of Zimbabwe. Ownership and leasing is permitted under a Zimbabwe Investment Authority (ZIA) approved project.

## 2. Absolute ownership

### **Q. All nationals (including locally incorporated companies) can own land outright and are not limited to leases or mere occupancy rights?**

**Comment** All nationals (including locally incorporated companies) can own land outright. In the case of agricultural land or other land acquired by the government and which is vested in the government, the rights are confined to leases of up to 99 years. The owner has a free right to renew. These occupancy rights cannot be sold or mortgaged without official approval. Government permissions are usually given if the mortgaging ties up with its national land policy.

## 3. Proof of title

### **Q. Proof of title to land is quick and safe?**

**Comment** (1) While there is a register of title to land, the country only has two offices where this information can be accessed. This generally slows down the process of accessing the information. (2) There is a widespread challenge that most of the properties owned by individuals in new residential developments do not have individual title in their names as there are delays in finalising the processes required to get individual title to such land. (3) The land register shows the extent of the land, ownership, mortgages, longer-term leases and certain other

important rights, such as rights of way, water servitudes and other registrable rights. (4) The state does not guarantee the accuracy of the register. However, the register is largely reliable. (4) Problems over title are common, especially in farming areas. (5) Extra due diligence, e.g. into rights of occupation, is not usually straightforward.

#### 4. Cost of land transfers

**Q. There are no material costs in transferring land or a lease of land used for business purposes or in the grant of a long lease of land used for business purposes, other than normal legal and registration fees and reasonable taxes on any gains?**

**Comment** (1) The capital gains tax in Zimbabwe is high. (2) In addition, there is stamp duty that is payable which may be as high as 3% of the value of the property being transferred. (3) Leases of less than 10 years do not attract any registration fees and/or taxes. (4) VAT is also potentially payable if the property sold is used for business purposes.

#### 5. Mortgages

**Q. Mortgages of land and related assets (by non-consumers) are very protective of the mortgagee as creditor?**

**Comment** (1) The owner of land can mortgage specified land. (2) According to section 44(2) of the Deeds Registry Act [Chapter 20:05], a mortgage can secure all present and future debts. (3) The mortgage can be in a foreign currency. Zimbabwe currently does not have its own national currency and uses mainly the United States of America Dollar. (4) The mortgagee cannot sell immediately on default by private sale, without a court order or public auction. (5) There are freezes or other interferences in the mortgage if the owner enters bankruptcy proceedings, e.g. the rents can be payable to the insolvency estate. (6) In terms of Section 2 of the Insolvency Act [Chapter 6:04] the mortgage ranks prior to all unsecured creditors including taxes, employee benefits and insolvency costs. (7) There are substantial costs and fees involved in land mortgages. (8) In terms of Section 69 of the Deeds Registries Act, a tenant can mortgage a registered long term lease and a registered right of leasehold. (9) These principles do not generally apply

to associated assets such as insurances, shares and a bank account for rents.

#### 6. Controls on terms of leases of land

**Q. The law relating to business leases of commercial premises is very protective of landlords and the law does not restrict or control the terms of leases of such land (ignore rights of termination on default)?**

**Comment** The law does restrict or control the terms of a lease of commercial premises mainly through the Commercial Premises (Lease Control) Act [Chapter 14:04], e.g. (1) there are controls on rents for example the Commercial Premises (Rent) Regulations SI 676 of 1983 regulates the rentals that can be charged on a commercial premises. It further states that any lease agreement, which seeks to evade the regulations imposed by the statutory instrument and other statutory interventions, shall be void. The Act also states that the Minister, to whom is assigned the administration of the Act, can make regulations specifying the rentals chargeable, as well as regulations to do with orders of ejectment against leases of commercial premises. (2) The lessee can also approach the Commercial Rent Tribunal for a determination of a fair rent in the event of disagreement with the landlord. (3) The lease can validly exclude any obligations of the landlord to repair, insure, make the premises safe or compensate the tenant for improvements on expiry of the lease. (4) When a lease of business premises expires, the landlord can have difficulties in evicting the tenant as the tenant becomes a statutory tenant. The landlord can only succeed if he proves to the court that he has good and sufficient grounds for requiring the premises. The tenant is largely protected against after the end of the contractual lease period. (5) The lease can validly exclude the ability of the tenant to assign or sub-lease, and (6) A lessee is not released from its obligations under a lease when it assigns the lease.

#### 7. Termination of leases

**Q. A landlord can freely terminate a lease of commercial premises on default by the tenant if the lease so provides?**



**Comment** (1) A landlord immediately terminates a business lease if the tenant does not pay the rent or breaches other terms of a lease of land used for commercial purposes if so provided, without due process. The landlord may not, however, recover vacant possession of the premises without due process. In terms of section 22 (2) of the Commercial Premises (Rent) Regulations (*supra*), an owner shall not evict a tenant without a court order. (2) If the tenant becomes bankrupt, the landlord can terminate the lease of such land if so provided.

## 8. Foreign direct investment

### Q. The law is friendly to foreign direct investors in land?

**Comment** (1) The government does not have to pay compensation for a compulsory acquisition of land. In terms of the Constitution, the Government has no obligation to compensate the compulsory acquisition of agricultural land, save for the improvements that were made before the acquisition was effected. (2) There are subsidies and special zones where taxes are relaxed. (3) There are no exchange controls or restrictions on repatriations of profits and capital from land provided the initial investment in the land had the necessary exchange control approvals. (4) There are material withholding taxes on the interest on foreign loans which are difficult to avoid.

## 9. Development of land

### Q. No official permissions are required to build on or change the use of land, other than normal public safety and environmental restrictions?

**Comment** Developments and change of use of land are tightly regulated in urban areas through the Regional Town and Country Planning Act [Chapter 29:12], including both business and residential developments. There are different rules for urban and agricultural land.

## 10. Environmental

### Q. The rules governing the environment and liability for clean-ups in relation to land are very light and relaxed?

**Comment** (1) The environmental rules are strict with tight liabilities for clean-up and penalties. (2) An owner or lessee of land is not liable to clean up contamination by former owners/lessees. (3) Shareholders and directors of the company owning or leasing the land can be liable for contamination caused by the company.

**General comment** The practice for land transactions in agricultural areas are not in the main quick and efficient because land acquisition is politicised. The land reform programmes have resulted in an unpredictable pattern of government policies on agricultural land. However taxes on land and rents from land are not exceptionally onerous.

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