

An insight into the real estate market in Taiwan

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Under Taiwanese law, an individual or entity may, individually or jointly with others, own freehold title to real estate (i.e. fee simple), except for the following types of land which can only be owned by the government: (i) land lying within a certain distance of the seacoast; (ii) naturally formed lakes that are needed for public use and the land within a certain distance of those lakes; (iii) navigable waterways and the land within a certain distance of such waterways; (iv) waterways and lakes within the city and township areas, and the land within a certain distance of the banks of such waterways and/or lakes; (v) public thoroughfares; (vi) land with mineral springs; (vii) land with waterfalls; (viii) land with water source for public use; (ix) scenic spots and historic remains; and (x) other types of land that cannot be owned by the private sector.

Legal system overview

Rights over real estate are categorised as rights in rem vis-à-vis contractual rights, meaning that they can be asserted against any third party upon their perfection by registration. In some rare exceptions where registration is not required to establish title to real estate such as if such rights are vested through succession, compulsory execution, taking/condemnation, or a court judgment, although such owners have been vested with the title to the real estate concerned they may not dispose of their ownership until registration has been made/completed. Hence, registration is, by and large, a requisite ingredient/element in establishing title to real estate. In other words, changes in ownership of real estate will not take effect unless and until the changes are registered with the land office.

A title deed (i.e. ownership certificate) represents the owner's title to the real estate; transfer of ownership of real property cannot be registered unless the title deed of the seller/original owner is returned to the land office. Consequently, a purchaser will not be the legal owner of the real property until the registration thereof with the land office is completed. Upon completion of registration, the land office will issue a new title deed to the purchaser/new owner.

Likewise, an encumbrance (e.g. mortgage) created over real estate will not take effect unless and until it is registered with the land office, in which case relevant documents, including the title deed of the mortgaged property, must be submitted to the land office in order to prove the owner's consent to create the mortgage over his/her property. Upon completion of the registration of the mortgage, the land office will issue a mortgage certificate to the mortgagee and return the title deed to the mortgagor/owner of the mortgaged property.

Taiwan is a civil law jurisdiction. The major legislations with respect to real estate in Taiwan include, among others, the Civil Code, the Land Act, the Building Act, the Condominium Administration Act¹ and the Regulations Governing Land Registration.

In practice, before entering into an agreement for the purchase of real estate, it is common for a potential purchaser to conduct a due diligence on the subject property from the legal, financial and technical perspectives. By keying in the lot number(s) of a given land/building, all registered particulars, including the basic information regarding the ownership of and encumbrance(s) over the said land/building can be found, in the form of electronic land/building registration transcripts, from the online database of the land office, which is accessible to the public.

¹ An English translation of the Land Act and other relevant laws/regulations can be found on the online database of the Taiwan Ministry of Justice at <http://law.moj.gov.tw/eng/Law/LawSearchLaw.aspx>.

Real estate rights

In Taiwan, land and buildings are considered to be separate and independent real properties from each other. Hence, if a party would like to construct a building on a land lot belonging to someone else, he/she may consider procuring the right to do so by ² means of (i) a lease, or (ii) superficies

Although real estate ownership in Taiwan is mainly freehold, due to budget constraints, long-term leaseholds/superficies are becoming more common, particularly in the metropolitan areas such as Taipei City, New Taipei City, Taichung and Kaohsiung.

Especially in government Build-Operate-Transfer (BOT) infrastructure projects, superficies are usually granted to project companies qualified under the Act for Promotion of Private Participation in Infrastructure Projects (PPP Act). The PPP Act provides preferential tax and financing treatments for investors of infrastructure projects. Also, under the PPP Act, the Taiwanese government may assist investors in acquiring land necessary for infrastructure projects.

Generally, leasehold titles, except for leasehold of land for constructing buildings, are valid for only up to 20 years. Superficies over state-owned land can be ³ valid for up to 70 years. Renewal options are dependent on the contract terms. As regards superficies over private-owned land, if the superficies without a definite term has existed for more than 20 years, or the purpose of establishing the superficies has no longer existed, the court may, upon the petition of either the superfiary or the land owner, fix the superficies term or terminate the superficies after taking into account the purpose of establishing the superficies and the type, nature, and conditions of the building/structure on such land.

In urban properties, strata titles are fairly common. The Condominium Administration Act was promulgated in June 1995 to standardise condominium management and maintenance practices, which plays a key role in regulating the condominium residents' neighbouring/community relationship.

Restrictions on foreign ownership of real estate

Foreign individuals and companies (except for nationals and companies of China that are subject to certain ⁴ restrictions) are allowed to buy real estate in Taiwan, subject to government approval. Approval is conditional on a reciprocal arrangement, whereby Taiwanese individuals and companies are allowed to buy real properties in the home country of the foreign individual or the country where the foreign company maintains its head office.

Companies established in Taiwan by foreign investors, also referred to as Foreign Investment Approval (FIA) companies, may purchase or lease real properties for their operations in Taiwan. Note, however, that foreigners are prohibited from owning any of the following types of land: (i) forestry land; (ii) land with fisheries; (iii) hunting grounds; (iv) salt fields; (v) land with mineral deposits; (vi) land with source of water; (vii) land within fortified and military areas; and (viii) land adjacent to national frontiers.

Real estate market

Taiwan's real estate market, whether commercial or residential, has been booming for the past few years, primarily as a result of the improved relations between ⁵ Taiwan and China, low interest rates,

² Lending without consideration or easement/servitude is also one of the options. However, we will bypass them in this article as lending without consideration is rarely found in modern society and easement/servitude is typically created for the purpose of right of way.

³ Article 5 of the Measures on Creation of Superficies over State-Owned Not for Public Use Land, last amended on May 18, 2011.

⁴ Since 2002, Chinese nationals and companies were also allowed to invest in real estate in Taiwan if they met certain conditions. To be eligible, Chinese investors must apply to the Investment Commission of the Ministry of Economic Affairs (MOEA) and/or the Ministry of Interior.

⁵ The Economic Cooperation Framework Agreement (ECFA) was signed on June 29, 2010. The agreement is generally considered as a historic breakthrough in the relations between Taiwan and China since the end of the civil war in 1949.

and increased availability of loans. Despite the introduction of a special goods and services tax (also known as "luxury tax") and other anti-speculative measures in early 2011 to cool down the residential property market, housing prices continue to surge.

For the residential property market, Taiwan has one of the highest housing ownership rates in the world, while the number of social housing is relatively low as compared with other Asian countries/areas such as Hong Kong and Singapore. As housing supply has fallen short of demand over the years, residential property prices have been rising since 2003. Since the SARS epidemic ended in 2003, the residential housing market has experienced a boost. Similar to the US and other Asian countries, a lack of inventory of the more affordable houses that first-time buyers are often looking for has become a big problem in Taiwan. The young generation has been left out of the recovery of the housing market more than any other age group, such as their baby-boom parents. Social critics have warned the government that the young generation has never faced a more devastating situation as it currently faces as regards the housing problem.

Taiwan has been one of the most vibrant commercial property markets over the years, with insurance companies, developers and foreign funds being the major active market players. As commercial property prices in Taiwan keep soaring, many investors are keen to tap the opportunities in this sector despite the low gross rental yields. Starting from the end of 2012, in order to curb the insurance companies from excessively pouring huge funds into the local real estate market to lift the prices of commercial properties, the Taiwanese banking regulator has raised the requirements for the minimum rental yields applicable to insurance companies' investments in real estate in Taiwan. As a result, some insurance companies have turned offshore to explore other business opportunities for making investments in real estate.

Leases of business premises

The Civil Code and the Land Act are the two major legislations that regulate leases in Taiwan. While the Civil Code contains provisions on lease agreements in general, the Land Act contains provisions on, among others, (i) administrative matters such as cadastration, land registration, land use, land tax and land expropriation; (ii) lease of houses, building sites and farmland; and (iii) tenants' rights, such as restrictions on the termination of lease by landlords, and maximum rental for residential housing. According to judicial decisions, tenants of commercial buildings are not entitled to all the protection afforded under the Land Act to tenants of residential buildings (such as apartments).

The market for leasing commercial and residential properties is fairly active in Taiwan. Any real property lease for over one year must be in writing. As explained above, lease terms, except for the lease for construction of buildings, cannot be longer than 20 years and are generally for three or five years or longer for commercial properties, and one year or longer for residential properties. If, after the expiration of a lease, the tenant continues to occupy the leased premises or to generate profit therefrom, and the landlord does not object, the lease will be deemed to be for an indefinite term.

If the tenant is in possession of the leased premises when the landlord transfers the leased premises to a third party, the lease will bind the third-party transferee. However, this rule does not apply to a lease of over five years or of an indefinite duration unless the lease concerned has been notarised. In Taiwan, most landlords require a security deposit equivalent to two months' rent or more. For residential properties, the maximum amount of security deposit that landlords may demand by law is two months' rent.

Should the parties to an indefinite-term lease be involved in a dispute over the rent because of a change in the value of the leased premises, either party may ask the court to adjust the rent, unless a rent adjustment mechanism is provided in the lease agreement. For commercial properties, it is common to have a provision in the lease agreement prescribing for the escalation of rent every two or three years based on a fixed percentage or a floating index to be announced by the government. It is also common for the operator of a department store/shopping mall to require that the shop tenant pay either a fixed monthly rent or a turnover monthly rent, whichever is the higher.

The Civil Code requires a tenant to return the leased premises to the landlord upon the expiration of a

lease without indicating whether the returned leased premises should be restored to its original state. However, if the tenant removes the fixtures attached by him/her to the leased premises, he/she should restore the leased premises to its original state. In Taiwan, most lease agreements contain a provision regarding the return of the leased property, which is negotiable. The tenant would usually be required to return the leased premises either (i) in its original state except for normal wear and tear; or (ii) on an "as is, where is" basis.

Investing in real estate – zoning, environment, tax and finance

The use of real property is subject to applicable zoning rules. A developer must obtain a building permit before constructing a building and an occupancy permit before using the building. The permitted use(s) of each unit of the building will be stated on the occupancy permit, and any change to such permitted use(s) requires prior written approval from the authorities. Hence, an investor should always check the zoning of the real property it plans to purchase and the permitted use(s) of the building where it is located in order to confirm whether the subject property can be used for the intended purpose(s). The zoning information can be obtained as long as the lot number of the land is available to the investor, and the occupancy permit can be provided by the owner upon request.

The use of the land should comply with applicable environmental laws and regulations. If the activities carried out on the land fall within the scope prescribed by the authorities pursuant to the Soil and Groundwater Pollution Remediation Act (SGWPRA), an inspection should be conducted to confirm whether there is any pollution before the land or any buildings located thereon can be transferred. If any soil or groundwater pollution is found, remediation actions must be taken and any party suffering damage from the pollution may seek compensation against the polluter and/or the owner. A gross violation of the SGWPRA carries criminal liabilities. As pollution not only has an adverse impact on the value of the property but also carries legal consequences, the results of a due diligence on soil or groundwater pollution usually have a significant role in an investor's decision on whether or not to purchase a subject property.

In addition to the transfer taxes and special tax explained above, a land or building owner must pay the land value tax or the house tax, as the case may be. Land value tax is payable on an annual basis to the city/county; it ranges roughly from 1% to 5.5% of the difference between the starting cumulative value and the current assessed and publicly announced land value. House tax is an annual tax assessed on all buildings; it ranges from 1.2% to 5% of the current assessed value of buildings, depending on the use(s) of the building(s).

Commercial properties consist of offices, stores, wholesale or retail spaces, hotels, resorts and so on. For most commercial property transactions, investors obtain finance from institutional lenders such as banks. Due to the higher risks associated with commercial properties, the loan-to-value ratios offered by commercial lenders in Taiwan are usually between 50% and 70%.

The most common form of security in Taiwan is a mortgage. A mortgage over real estate, including land and buildings, has to be registered with the land office in order to be valid. The foreclosure of a mortgage generally takes at least three months to complete.

Perspective of Taiwan real estate market

As affordable housing is on top of the government agenda, the Taiwanese government will likely introduce more measures to regulate the residential property market. As Taiwan's housing prices are expected to continue to climb, in 2011 the Legislature Yuan enacted ⁶ a series of laws and regulations to curb the rapidly soaring housing prices, address the problems of uneven supply and demand in the market, and protect the public's right to affordable housing.

⁶ Those laws and regulations include the Housing Act and the amendments to the Land Expropriation Act, the Real Estate Brokering Management Act, the Land Administration Agent Act, and the Equalisation of Land Rights Act.

Under the new laws and regulations, the central and local governments have to keep building public houses. Land must be expropriated with compensation calculated at the market value, rather than the underestimated assessed land value. Moreover, the land administration agent (also known as scrivener) of each real estate conveyancing has to register the actual transaction price with the government within 30 days after the closure of the transaction so as to increase transparency in the market. Inevitably, it is expected that the entire mechanism for levying real estate transaction tax will soon be overhauled to increase the costs of a single owner holding multiple residential properties.

On the other hand, further regulatory relaxation is expected in both the commercial property and the infrastructure sectors because of the fewer potential social problems and the desired expansion of the economic momentum Taiwan may enjoy. It is generally believed that commercial property demand, especially in the urban areas of Taiwan, will remain fairly strong because of the flooding in of foreign capital, low lending interest rates, and a higher demand driven by an increasingly greater number of tourists especially from China. In summary, it can be anticipated that all these factors will likely create a more vibrant commercial property market in the years to come.

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