The Real Estate Law Review

Fifth Edition

Editor
John Nevin

Law Business Research

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EDITOR'S PREFACE

I am honoured to have been invited to take over from David Waterfield as editor of *The Real Estate Law Review* and I would like to take this opportunity to personally thank David for his invaluable help and support over the years and, on behalf of *The Real Estate Law Review*, for his vital role in its success since the first edition back in 2012.

Building on the success of the previous editions of the *Review*, the fifth edition now extends to some 38 jurisdictions, and we are delighted to welcome new contributors from important jurisdictions around the world. Each contributor is a distinguished legal practitioner in his or her jurisdiction with an in-depth understanding of both his or her own domestic market and the wider global real estate market. Each chapter offers an essential guide to real estate practice in the relevant jurisdiction together with an invaluable focus on market activity, important legal and practical developments over the preceding 12 months and the outlook for 2016. Together, the chapters offer real estate practitioners and their clients an immediate and accessible overview of international real estate.

Real estate is a truly global industry and it is no longer possible to look at domestic markets in isolation. It has become essential to develop an understanding of the needs and expectations of overseas investors, and of how domestic markets are affected by legal, economic, political and social events and trends throughout the world. International economic and political instability continue to have a significant effect on the international real estate market and this is reflected in investors' pursuit of value and security. The United Kingdom (and London in particular) continues to be seen as a safe haven for capital from around the world, and the outlook here remains buoyant in both the commercial and residential sectors.

I wish to express my gratitude to all the distinguished practitioners from across the globe who have contributed to this fifth edition, and thereby to the continued success of *The Real Estate Law Review*. I would also like to take this opportunity to thank Gideon Roberton and his team for their sterling efforts in coordinating the contributions and compiling this edition.

John Nevin
Slaughter and May
London
February 2016

Chapter 35

TAIWAN

Yi-Jiun Su and Yi-Li Kuo[1]

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

Under Taiwan law,[2] an individual or an entity may, individually or jointly with others, own freehold title to real property; however, certain categories of land can only be owned by the government, including:

a land lying within a certain distance of the coast;
b naturally formed lakes that are needed for public use and the land within a certain distance of those lakes;
c navigable waterways and the land within a certain distance of these waterways;
d waterways and lakes within city and town areas, and the land within a certain distance of the waterway banks or lake shores;
e public thoroughfares;
f land with mineral springs;
g land with waterfalls;
h land with water sources for public use; and
i scenic spots and historic remains.

Strata titles are fairly common in residential and commercial buildings in urban areas. Taiwan has a strata title system consisting of individual lots and common property. By and large, a person may own a building but only have proportionate ownership of the land jointly with others, and may transfer his or her strata title to a third party without the consent of the other co-owners of the land.

1 Yi-Jiun Su is a partner and Yi-Li Kuo is a senior attorney at Lee and Li, Attorneys-at-Law.
2 An English translation of the Land Act and other relevant laws can be found on the online database of the Ministry of Justice at http://law.moj.gov.tw/Eng.

ii System of registration

Registration is required to establish title to real property.[3] To obtain a lawful title to a newly constructed building, the owner must file an application with the land office for an inspection of the building before obtaining an occupancy permit. After (1) the inspection is completed, (2) the occupancy permit is obtained and (3) a survey map is issued, the owner must register its ownership with the land office,[4] which will then issue a title deed (i.e., ownership certificate) of the building to the owner.

Changes in ownership of real property in Taiwan will not take effect until the changes are registered with the land office, and a purchaser will not be the legal owner of the real property until the registration with the land office is completed. Upon application for title transfer jointly filed by the seller and the purchaser, the land office will retrieve the title deed held by the seller. Upon completion of registration, the land office will issue a new title deed to the new owner. Encumbrances (e.g., mortgages) created over real property will not take effect unless they are registered with the land office, in which case relevant documents, including the title deed of the mortgaged property, must be submitted. All registered particulars (except for protected identifiable personal information) are accessible to the public on the online database of the land office. To make transaction prices of real estate more transparent and accessible to the public, effective on 1 August 2012, the Ministry of the Interior (MOI) established a registration system under which the purchaser, land administration agent (i.e., scrivener) or broker of a given real property transaction must register the actual transaction price of real estate within 30 days of the completion of the title transfer.

iii Choice of law

Theoretically, Taiwanese courts will uphold the foreign law chosen to govern transactions involving real property in Taiwan, provided that the application of such a foreign law does not contravene the public policy or good morals of Taiwan. Nonetheless, as Taiwan law requires all matters related to rights and interest in, or partition or division of, real property to be subject to the jurisdiction of the court where the real property is located, to avoid any conflict-of-law issues it would be advisable for parties to such transactions to adopt Taiwan law as the governing law of their contracts.

II OVERVIEW OF REAL ESTATE ACTIVITY

Although property ownership in Taiwan is mainly freehold, long-term leaseholds are becoming more common, particularly in Taipei City and for government build-operate-transfer infrastructure projects, where a right of *superficies* is 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 in infrastructure projects. In addition, under the PPP Act, the government may assist investors in acquiring land necessary for infrastructure projects.

3 Article 758 of the Civil Code.

4 Articles 78 and 79 of the Regulations of Land Registration.

Generally, leasehold titles, except for leasehold of land for constructing buildings, are valid for up to 20 years; however, rights of *superficies* over state-owned land can be valid for up to 70 years.[5] Renewal options depend on the contract terms.

Taiwan's real property market, whether commercial or residential, has been booming for the past few years, primarily as a result of the improved relations between Taiwan and mainland China,[6] low interest rates and increased loan availability. Despite the introduction of a special tax (discussed in detail in Section IV, *infra*) and other anti-speculative measures, particularly the compulsory registration of and public access to the actual transaction prices of real property implemented by the MOI starting from 1 August 2012 (see Section I, *supra*) to cool down the residential property market, housing prices continue to surge. Addressing the problems arising from uneven supply and demand in the real property market has thus become a major challenge for the government.

III FOREIGN INVESTMENT

In Taiwan, foreign investment is mainly regulated by the Statute for Investment by Foreign Nationals and the Statute for Investment by Overseas Chinese. Both statutes allow foreign-invested entities and foreign individuals to receive the same regulatory treatment as local companies and individuals. Compared with 10 years ago, foreign investors now face fewer restrictions investing in real property in Taiwan;[7] nowadays, they can buy real property in Taiwan subject to prior government approval, which is granted in most cases as long as the foreign investor meets the following conditions to qualify to purchase real property in Taiwan:

a the jurisdiction where the foreign entity was incorporated or the jurisdiction in which the foreign individual is a national, as the case may be, allows Taiwanese entities and individuals to own real property there (reciprocal treatment);

b the real property to be purchased is not restricted land;[8]

c the real property is purchased for the entity's or individual's own use, investment or public interest, and is used as:
- a residence;
- a place of business, office building, shop or factory;

5 Article 5 of the Measures on Creation of Superficies over State-Owned Not for Public Use Land, last amended on 30 September 2013.

6 The Economic Cooperation Framework Agreement was signed on 29 June 2010. The agreement is seen as a historic breakthrough in the relations between Taiwan and mainland China.

7 On 15 November 2001, the Measures Governing Foreigners' Procurement of Rights in Domestic Land were substantially amended to relax restrictions on foreign investment in real property.

8 The term 'restricted land' covers the following: forest land, fishing grounds, hunting grounds, salt fields, land with mineral deposits, sources of water supply, land with fortresses or other military establishments, or land adjacent to national frontiers.

- a church;
- a hospital;
- a school for children of foreign nationals;
- a diplomatic and consular building or office buildings of organisations for the promotion of public welfare;
- a cemetery; or
- a construction recognised and approved by the authorities as important to Taiwan's major infrastructure, economy, or agricultural or husbandry industry; and

d the prior approval of the city or county government with jurisdiction over the real property has been obtained.

In general, the approval mentioned in condition (d) can be obtained within around 14 days of the government's receipt of the application, as long as conditions (a) to (c) have been met. Any subsequent change in the ownership or use of the real property purchased under the second of these options requires prior approval from the city or county government.

Regarding Chinese investors,[9] because of the political tensions across the Taiwan Strait, Chinese investment in Taiwan's real property market was prohibited prior to 2002. Although most regulatory restrictions were relaxed in 2010, Chinese investors are still subject to more legal hurdles than their foreign counterparts. For example, Chinese individuals can only obtain the ownership of real property for the purpose of residence and, in principle, cannot transfer the ownership within three years of being registered as the owner. Chinese-entity investors may obtain the ownership of real property only for business needs permitted under the relevant regulations. On 26 November 2013, the MOI promulgated certain control measures aimed at controlling the total volume of Chinese individuals' investment in real estate, which took effect from 2014. For Chinese individuals intending to purchase real estate in Taiwan, such individuals as a whole (i.e., in total) may purchase land of up to a total area of 13 hectares and up to a total of 400 units of the buildings per year, and the unused quota of a particular year cannot be used the next year. In addition, the total overall purchases made by Chinese individuals shall not, at any given time, exceed a land area of 1,300 hectares and 20,000 units of the buildings. Furthermore, to prevent Chinese individuals from driving up the purchase price of real property in particular areas, the MOI also introduced a new control measure on 1 July 2015 that capped the number of units that Chinese individuals can own in a single building or community (i.e., no more than 10 per cent of the total units in the same building or community; if the number of the total units is less than 10, Chinese individuals may not own more than one unit). According to statistics published by the MOI, as of 9 November 2015, the overall purchases made by Chinese individuals amounted to 0.8621 hectares and 242 units of the buildings. Although the aforementioned

9 Legal entities in which Chinese investors hold 30 per cent or more of the total shares, or that are controlled directly or indirectly by Chinese individuals or entities, are considered Chinese entities. Investments by these entities in Taiwan are limited to certain businesses.

control measures do not apply to Chinese-entity investors, there has been speculation that the MOI may soon limit the volume of real property in Taiwan that may be owned by Chinese-entity investors engaging in tourism or industrial businesses, which are the most bullish industries in Taiwan and awash with Chinese investment.

IV STRUCTURING THE INVESTMENT

The available investment structures have evolved over the years, with many forms of ownership, such as sole ownership, co-ownership, ownership through a sale and leaseback, and investment trust, to name a few. The investment structure adopted will vary from investor to investor depending on their business needs, tax planning and investment objectives. There are three major groups of foreign investors in the real property market: individual investors, corporate investors and institutional investors. Corporate investors purchase real property mainly to meet their operational needs, while institutional investors purchase real property for capital gains and rental income. Both can invest in real property in Taiwan in one of two ways.

First, in a case of ownership through a subsidiary, a foreign entity may purchase real property in Taiwan through a Taiwanese subsidiary. By so doing, the foreign entity may indirectly own real property in Taiwan through holding equity interest in a Taiwanese company that directly owns the real property. As the subsidiary is regarded as a Taiwanese entity, it can avoid the legal requirements applicable to a foreign entity when purchasing real property in Taiwan.

Second, in a case of ownership through a branch, a foreign entity may purchase real property in Taiwan through its branch. Unlike a subsidiary, however, a branch, as an extension of the foreign entity's head office, is not considered to be a Taiwanese entity; as such, the foreign entity, despite having established a branch, must meet the conditions described in Section III, *supra*, to qualify to purchase real property in Taiwan.

Either of these options may enable a foreign entity to hold real property in Taiwan; however, as the two options have different tax implications, most foreign investors seek advice from local counsel and tax advisers to carefully weigh their choice of investment structure.

i Subsidiary versus branch

While the time, money and procedure required to establish a subsidiary are similar to those for establishing a branch, these two investment structures may differ in many ways.

Limit on liability

The liability of a subsidiary is limited to the amount of capital contributed by the shareholders, while that of a branch will be extended to the foreign head office.

Tax implications

A subsidiary must set aside 10 per cent of its annual after-tax profit as legal reserve prior to a distribution of profit. In addition, any expatriation of dividends to foreign shareholders is subject to a 20 per cent withholding income tax (unless a tax treaty provides a lower withholding rate). Neither of these two requirements applies to a branch.

Corporate governance

A subsidiary must hold a shareholders' meeting at least once a year (or a board meeting if it is a single-shareholder company); a branch need not do so.

Eligibility to purchase real property

As discussed in Section III, *supra*, a subsidiary, being considered a local entity, need not meet the four conditions required for ownership through a branch.

Disposal of real property

Owning real property through a subsidiary may have more flexibility in terms of disposal, because the foreign parent company may choose to have the Taiwanese subsidiary sell the real property, or sell its shares in the Taiwanese subsidiary. There is also a third disposal method for institutional investors who indirectly own a Taiwanese subsidiary through a holding company set up in a third jurisdiction. These institutional investors can dispose of their real property in Taiwan by selling the shares in the holding company; for a branch, the foreign entity may only sell the real property.

As tax implications are usually a major concern of foreign investors, ownership through a branch is a more popular investment structure, in particular, for institutional investors whose investment objectives are for capital gains and rental income, despite the limited choices on how to dispose of the real property.

ii Property transfer versus share transfer

As discussed above, to dispose of the real property, foreign entities may have the owner of the property sell the real property (a property transfer) or sell the shares in the owner (a share transfer). These two transactions carry different tax implications.

Property transfer

For a property transfer, certain transfer taxes, including corporate income tax on buildings (17 per cent of the net income; capital gains from the sale of land are generally exempt from income tax), land value incremental tax (LVIT) (ranging from 20 to 40 per cent based on the increase in the land value during the period from the purchase to the subsequent sale), deed tax on buildings, VAT on buildings and stamp duty, will be incurred. In practice, the seller and the purchaser would retain a scrivener to calculate the relevant transfer taxes and fees to ascertain the possible transaction costs before signing a formal agreement.

In addition to transfer taxes, a special property tax will be incurred, which is payable by the seller according to the Statute for Selective Commodities and Services Tax, which took effect on 1 June 2011. This special tax, which is better known as the luxury tax, is levied on a transfer of real property (including a building and the land on which the building is located; and urban land for which a building permit can be issued) at 15 per cent of the sale price if the property is sold within the first year of purchase, and at 10 per cent if the property is sold in the second year of purchase.

Despite the foregoing, it is worth noting that the Taiwan government has introduced a new tax system in Taiwan, which came into effect on 1 January 2016. Under the new tax system, the seller's total capital gains from the sale of the following land or building are subject to income tax: (1) buildings or land acquired after 1 January 2016; or (2) buildings or land acquired after 1 January 2014, and owned for no more than two years prior to sale. In addition, the tax rates that apply to non-Taiwan residents or foreign entities are different from those that apply to Taiwan residents or entities headquartered in Taiwan. For non-Taiwan residents or foreign entities, the tax rates would be (1) 45 per cent for buildings or land owned for no more than one year prior to the sale; and (2) 35 per cent for buildings or land owned for more than one year prior to the sale. In addition, as a consequence of the introduction of the new tax system, the aforesaid special property tax was abolished as of 1 January 2016.

Share transfer

The tax implications of a share transfer are less complicated. For a subsidiary of a foreign parent company, the transaction is only subject to a securities transaction tax at a rate of 0.3 per cent of the sale price, and any capital gains generated from the transaction are not taxable; however, the capital gains, if any, will be included in the calculation of the basic income and may be subject to an alternative minimum tax under the Income Basic Tax Act. The threshold and tax rate for 2015 are NT$500,000 and 12 per cent of net income, respectively. If the alternative minimum tax exceeds the regular income tax calculated in accordance with the Income Tax Act, the difference will be payable as tax.

Generally speaking, a transfer of the shares in a foreign entity will not trigger any tax liability in Taiwan. However, following the enforcement of the new tax system described above, for a non-Taiwan entity that directly or indirectly holds more than 50 per cent of the shares or capital of another non-Taiwan entity and no less than 50 per cent of the latter's share value is composed of the buildings or land in Taiwan, the capital gains that the former obtains from the sale of the shares or capital in the latter are subject to the applicable tax rates (i.e., 45 per cent or 35 per cent) under the new tax system.

V REAL ESTATE OWNERSHIP

i Planning

The use of land is subject to applicable zoning rules. In addition, a developer must obtain a building permit before constructing buildings, and an occupancy permit before occupying or using the buildings. The permitted uses of each unit of the building will be stated on the occupancy permit, and any change to such permitted uses requires prior written approval from the authorities unless the size of the building is under the threshold stipulated by the relevant authorities. Therefore, an investor should check the zoning of the land it plans to purchase and the permitted uses of the building located thereon to confirm whether the target real property can be used for the intended purposes. The zoning information can be obtained as long as the lot number of the land is available to the investor. The owner can be asked to provide the occupancy permit. Furthermore, the remodelling or expansion of the building may also require prior written approval from the authorities. As such, an investor will sometimes engage an architect to conduct an engineering due diligence to check the real property's compliance with the building-related regulations.

ii Environment

The use of 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 (usually relating to those industries that have the potential to and are most likely to cause pollution) 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, remedial actions must be taken, and any party suffering damage from the pollution may seek compensation from the polluter and 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 due diligence on soil or groundwater pollution usually have a significant role in foreign investors' decisions on whether to purchase a specific piece of real property.

iii Tax

In addition to the transfer taxes and special tax explained above, a land or building owner must pay land value tax or house tax, as the case may be. Land value tax is payable on an annual basis to the city or county; it ranges roughly from 1 to 5.5 per cent 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 per cent of the current assessed value of buildings, depending on their use.

iv Finance and security

Commercial properties include multi-family apartments, office buildings, retail space, hotels and resorts, warehouses and other commercial properties. For most commercial property transactions, foreign investors get financing from commercial lenders such as banks or other financial institutions; however, because of the higher risks associated with commercial properties, the loan-to-value (LTV) ratios offered by commercial lenders in Taiwan are usually between 50 and 70 per cent.

The most common form of security in Taiwan is a mortgage. A mortgage over real property, including land and buildings, must be registered with the land office to be valid. The foreclosure of a mortgage generally takes around three months to complete. In addition, if a lease is entered into after a mortgage is created over the leased property, in the event that the leased property undergoes a court auction proceeding owing to the debtor's default, the court may decide to terminate the lease if it finds that the lease affects the auction of the leased property.

VI LEASES OF BUSINESS PREMISES

The Civil Code and the Land Act are the two major laws that regulate leases in Taiwan. While the Civil Code contains provisions on lease agreements in general, the Land Act contains provisions on, *inter alia*, administrative matters such as cadastration, land registration, land use, land tax and land expropriation; lease of houses, building sites and farmland; and tenants' rights, such as restrictions on the termination of leases by landlords, and maximum rental rates 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).

In Taiwan, the market for leasing commercial and residential properties is fairly active. Lease terms, except for leases for the construction of buildings, cannot be longer than 20 years,[10] and are generally for five years or longer for commercial properties such as multistorey retail stores and offices, and one year or longer for residential properties. In addition, any real property lease for a period of more than one year must be in writing;[11] otherwise, the lease will be deemed a lease for an indefinite term, which both parties may terminate at will by prior notice. If, after the expiry 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.[12]

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. This rule does not, however, apply to leases of over five years or of indefinite duration unless the leases concerned have been notarised.[13]

In Taiwan, most landlords require a security deposit equivalent to two months' rent or more. For residential properties, the maximum security deposit that landlords may demand by law is equivalent to two months' rent.[14]

Should the parties to an indefinite-term lease have 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,[15] unless the lease agreement already provides a rent adjustment mechanism.[16] For commercial properties, it is common for the landlord and the tenant to stipulate in their lease agreement a provision on the adjustment of rent every two to three years based on a fixed percentage or on a floating index to be announced by the government. It is also common for the operator of a department store or a shopping centre to require that the shop tenant pay rent consisting of a fixed monthly rent or a turnover monthly rent, or both.

The Civil Code requires a tenant to return the leased premises to the landlord upon the expiry of a lease without indicating whether the returned leased premises should be restored to their original state; however, tenants that remove the fixtures attached by them to the leased premises should restore the leased premises to their original state.[17] In

10 Article 449 of the Civil Code.

11 Article 422 of the Civil Code.

12 Article 451 of the Civil Code.

13 Article 425 of the Civil Code.

14 Article 99 of the Land Act.

15 Article 442 of the Civil Code.

16 Supreme Court judgments No. 86 *Tai-Shang-Zi-Di-1613* (1997) and No. 88 *Tai-Shang-Zi-Di-287* (1999).

17 Paragraph 2, Article 431 of the Civil Code.

Taiwan, most lease agreements contain a provision on the return of the leased property, which is negotiable. The tenant would usually be required to return the leased premises either in their original state, except for normal wear and tear, or on an 'as is' basis.

For a master lease, landlords generally procure fire insurance to cover the replacement cost of the entire leased building. Master tenants are usually required to purchase all-risk construction and installation insurance to cover the full cost of construction with limits customary for such activities on the leased premises; general commercial liability insurance against liabilities such as bodily injury, death and property damage; and fire insurance covering the full replacement cost of the leasehold improvements and their personal property on the leased premises. Sub-tenants are commonly required to purchase similar types of insurance for their leased premises.

In practice, most master tenants usually choose to sign a memorandum of understanding (MOU) or letter of intent (LOI) with their landlords to lay out the major lease terms and conditions (although neither the MOU nor the LOI may necessarily be binding), even if a definitive lease agreement is signed later.

VII DEVELOPMENTS IN PRACTICE

i Residential property market

In terms of the residential property market, Taiwan has one of the highest housing ownership rates in the world, while social housing accounts for less than 10 per cent of households. Housing ownership – especially in urban areas of Taipei – is currently increasing. As housing supply has fallen short of demand over the years, residential property prices have been rising since the SARS epidemic ended in 2003. In light of housing price hikes in certain rural areas of Taiwan, the Central Bank of the Republic of China (Taiwan) has undertaken a series of targeted precautionary measures since June 2010 to safeguard financial stability, including promulgating regulations related to land collateralised loans and housing loans in areas overheated with real estate-related transactions. On 27 June 2014, the Regulations Governing Home Mortgage Loans and Land Loans extended by Financial Institutions were amended. Under the amended Regulations, the LTV ratio ceiling on housing loans has been extended to corporate entities, as has the LTV ceiling on new housing loans offered to individual borrowers who own more than two houses, which was lowered to 50 per cent.

ii Commercial property market

Compared with other Asian countries, Taiwan has had one of the most vibrant commercial property markets over the years, with insurance companies, developers and foreign equity funds being the major 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. The most direct way for insurance companies or foreign equity funds to invest in the commercial property market would be by acquiring commercial property (with financing from local syndicated banks), receiving stable rental yields by succeeding the existing lease (if any) and realising considerable capital gains by selling the property within a certain number of years of acquisition.

As insurance companies are active participants in Taiwan's commercial real property market, to enhance the supervisory controls over insurance companies' real property investments and the internal regulation of the insurance industry, the Financial Supervisory Commission amended the Criteria and Principles for Determining Instant Utilisation and Profitability from Real Property Investments of Insurance Companies, effective on 19 November 2012. While the amended criteria help maintain insurance companies' operational stability, the criteria to be met by insurance companies to be able to participate in real property investment have become more rigid.

VIII OUTLOOK AND CONCLUSIONS

According to recent government research, the average housing price in Taiwan is around 7.44 to 8.95 times the average annual income. To curb soaring housing prices, address the problems arising from uneven supply and demand in the market, and protect the public's right to affordable housing, after the introduction of the luxury tax in 2011, the House Tax Act was amended on 4 June 2014. The new Act raised the house tax rate for non-owner occupied residential property to between 1.5 and 3.6 per cent from the original tax rate, which ranged from 1.2 to 2 per cent.

In addition, under the current tax regulations, capital gains from the sale of land are generally exempt from income tax, but are subject to LVIT. However, LVIT has long been underestimated, as the government-assessed value used for calculating LVIT is usually much lower than the actual transaction price. In addition, given that the government-assessed value is adjusted once a year, if the purchase and the subsequent sale both occur in the same year, the amount of LVIT would be zero. Therefore, as explained above, the Taiwan government introduced a new tax system, with effect from 1 January 2016, to combine the tax treatment relating to the sale of buildings and the sale of land by imposing income tax on the total amount of gains as a tax reform to curb speculation in real property.

By and large, under the new tax system, the capital gains from the sale of the buildings and the sale of land, after deducting the increase in the land value (for the purpose of avoiding double taxation) and the relevant cost and expense, are subject to income tax unless any of the statutory benefits apply.[18] As a result, the tax to be borne by the seller under the new tax system is substantially higher than that under the old tax scheme. It is generally believed that the new tax system will, to some extent, impact the development of the Taiwan real estate market. Nevertheless, whether the new tax system can actually suppress soaring housing prices or curb speculation on investment in the Taiwan real estate market remains to be seen. In addition, as the new tax system

18 For instance, with regard to the sale of land and buildings that are the registered residence of an individual, his or her spouse or minor children (provided that they actually live in the building for at least six consecutive years and the properties have never been provided for business use or for rent), the net gains under NT$4 million can be exempt from the consolidated land and building sales tax; for the portion of the net gains over NT$4 million, the tax rate is only 10 per cent.

imposes a much higher rate than before on the capital gain from the sale of real estate by foreign companies, it is expected that most of such companies interested in investing in real estate in Taiwan will, in light of the tax implications, choose to do so by establishing companies in Taiwan (with 'foreign investment approved' status) in the long run.

As affordable housing is at the top of its agenda, the government will in all likelihood introduce more measures to regulate the residential property market, which as a result would remain a highly restricted sector for foreign investment. On the other hand, further regulatory relaxation is expected in both the commercial property and the infrastructure sectors because of the economic momentum the country enjoys and the low level of potential social problems. In fact, the government has welcomed foreign investment in commercial properties and infrastructure projects in recent years.

In terms of possible political risks, the Taiwan political environment should remain stable in coming years in view of the efforts of the government to maintain peaceful ties with mainland China and to spur economic growth.

The risk of the property bubble bursting is fairly low, because the government has pledged to control price hikes in the residential property sector, and property prices in Taiwan are moderate compared with those in other major Asian countries. Despite the recent global economic downturn caused by the sovereign debt crisis in Europe and the fiscal crash in the United States, it is generally believed that commercial property demand, especially in urban areas of Taiwan, will remain strong because of the influx of foreign capital, low lending interest rates, moderate property prices and a higher demand driven by increasing numbers of tourists from mainland China. All these factors could create a more vibrant and dynamic real property market in the next few years.

Appendix 1

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Yi-Jiun Su, a partner at Lee and Li, Attorneys-at-Law, is licensed to practise law in Taiwan and New York. Ms Su specialises in the areas of real property, construction and infrastructure, corporate investment, government procurement and dispute resolution. Apart from extensive experience in handling conveyancing, international engineering and construction works for a wide range of clients from different jurisdictions, she has also represented investors, developers, equity funds, retailers and wholesalers, hotel and resort operators, contractors and consortia in matters involving conveyancing, leasebacks, big-box and retail store openings, public auctions of large properties, government procurement, and investments in and construction of power plants and other worldwide infrastructure projects. Ms Su has also represented several multinational companies in international construction disputes.

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Yi-Li Kuo, a senior attorney at Lee and Li, Attorneys-at-Law, is licensed to practise law in Taiwan and has been admitted to the New York Bar. Her expertise lies in real estate and construction, mergers and acquisitions, corporate regulatory compliance and electronic payment services. Ms Kuo regularly assists domestic and international clients with complex real estate deals (including the purchase and sale of real property, investments in real property and hotel management) and M&A transactions. She has also represented foreign clients in disputes arising from large-scale constructions.

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