



THE LEGAL PERSPECTIVE

Real estate investment in Spain

Some peculiarities of the country

The validity of the public deed transferring ownership of the property is not subject to registration in the land register, but it is advisable to carry out this formality in order to enforce the title against third parties – See 2.2 (registration).

Notarial fees can be negotiated with the notary. The party paying the fees usually chooses the notary – See section 2.3

Pre-emption rights in favor of authorities of tenants under Spanish Urban Lease Act – See section 3.4.

The annual review of the rent must be expressly stipulated by the parties in the contract to be applied – See section 6.3.

Indexation of residential rents is subject to limitations – See section 6.3.

The tenant has a statutory right of pre-emption and right of first refusal over the leased premises in the event of their sale – See section 6.8.

Tax implications under asset deal and share deal structures – See section 7.1.

Main documents to be drawn up in the context of a transaction

1. Initial phase of a sale and purchase

- Non disclosure Agreement (NDA) prepared by the seller or the seller's advisors (in Spanish and/or in English).
- LOI (Letter of Intent) or NBO (Non-Binding Offer) prepared by the purchaser or the purchaser's advisors (in Spanish and/or in English). These offers are subject to several conditions, such as due diligence phase, confirmation of title, charges, tax structure, etc.

2. Asset deal

- Private sale and purchase agreement

The draft of the private sale and purchase agreement is normally signed by the parties prior to the execution of a sale and purchase deed when there are certain conditions pending to be fulfilled by the seller or a third party (completion of urbanization, termination of construction, segregation or grouping deeds, etc) as a requirement for the completion of the acquisition deed.

- Deed of sale

The draft of the deed of sale is typically prepared by the seller or the purchaser (and their respective legal advisors) and provided to the Notary when most of the legal and commercial aspects are already negotiated by the parties. The deed of sale must be drafted in Spanish but a translation into English may be attached for information purposes.

Ownership is transferred on the day of execution of the sale and purchase public deed and the registration of this deed provides the purchaser with specific legal protection against potential title risks.

3. Share deal

The draft SPA is typically prepared by the seller's lawyer. The SPA can be drafted in Spanish and/or in English. Ownership of the shares (and underlying asset(s)) is transferred on the day the execution of the transfer sale and purchase deed or contract by means of which the shares of the company are transferred to the purchaser.

4. Lease agreement or construction agreement

- HoT (Head of Terms)

For certain agreements containing a wide range of commercial terms, such as leases or delegated development agreements, it is standard to negotiate and sign a preliminary HOT including the main commercial information to be included in private agreements (rents, terms, works milestones, guarantees, etc).

- Private lease or construction agreement

Private agreements for leases or construction are normally executed in private documents that do not require to be notarized to become valid and binding, since this is not a legal requirement. Consequently, the execution date of a private agreement is normally the effective date of the contract without any further legal requirements. Leases and delegated development agreements are normally negotiated and executed in Spanish and/or English.

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1. Ownership of real estate

1.1 Full ownership

The following full ownership rights are recognized under Spanish law:

- absolute freehold (*propiedad en pleno dominio*), which is the right to fully and exclusively enjoy and dispose of a property;
- co-ownership (*propiedad en proindiviso*), which is the right to a share in the full ownership of a property; and
- time sharing (*derecho de aprovechamiento por turnos*), which is the right to use a specified and furnished property for a certain period of time during each year (no less than a week) for a term of between 3 and 50 years.

1.2 Limited rights similar to ownership

The following limited rights, which have similar effects to ownership are recognized under Spanish law:

- a surface right (*derecho de superficie*), which is the right to build and maintain a building on (or under) land owned by a third party for a specific period of time. The maximum term of the surface right is ninety-nine (99) years, however, there is no limitation to the constitution of a new surface right at the end of this term. During the period of the surface right the holder of the surface right (*superficiario*) may transfer, encumber or lease its right as if it were a freehold owner. However, upon expiry of the surface right, the holder of the surface right shall revert the land and buildings to the owner of the land and any third party right granted on the surface right shall expire;
- a beneficial interest (*derecho de usufructo*), which is the right to use a property owned by a third party for a specific period of time in the same way as an owner would, including the right to lease and collect interest or rent, transfer the beneficial interest or even encumber it, provided that the original use is maintained. In the case of legal persons (*personas jurídicas*), there is a maximum term of thirty (30) years, however, there is no limitation on the constitution of a new right of usufruct at the end of this term; and
- an administrative concession (*concesión administrativa*), which is similar to a leasehold, but granted on land belonging to a public authority for a limited period of time, often in exchange for the payment of regular amounts (*canon administrativo*). The concession entails not only the right but the obligation to build and manage the property until the end of the concession period.

1.3 Condominium

Condominium (*propiedad horizontal*) consists of a freehold ownership on a property which shares certain common areas with neighboring properties. These common areas are held in a sort of co-ownership that is inseparable from the freehold on the individual properties.

This is the typical ownership regime in multi-story buildings, where access to each individual property requires access or use of the common areas such as stairways, lifts, halls or courtyards.

While each owner may freely use, transfer or encumber its own property, any decision pertaining to the common areas is subject to the agreement of the co-owners, which is governed by the law and by the rules of the condominium in question.

1.4 Restrictions on ownership by foreigners

Generally speaking, there are no legal restrictions on foreign ownership of Spanish property. However:

There are no blanket prohibitions on foreign ownership of US real estate, but various US laws impose restrictions and requirements applicable to foreign investors in certain cases, including:

- the General Office for Trade and Investments (*Dirección General de Comercio e Inversiones*) must be notified of all foreign investments in real estate if they are valued at more than EUR3,005,060.52 or originate from a tax haven; and
- military authorization will be required for foreign investment by non-EU citizens who purchase property in areas close to the border or rural areas of the following territories:
- the Spanish islands; and
- Spanish peninsular territory: Cartagena, Galicia, Strait of Gibraltar, The Bay of Cádiz and the borders with Portugal, France and the Spanish territories in the north of Africa.

For these territories, certain quotas of total foreign investment have been established and may not be surpassed, whether or not the individual investor owns other properties in the area.

2. Sale and purchase

2.1 Formal requirements

In Spain there is a principle of freedom of agreement between parties providing they don't contravene any law or moral code, or pose a threat to public order. It is not mandatory for a sale and purchase agreement to be made in writing, although a written contract is highly recommended for evidential purposes and should ideally be signed in front of a public notary and registered with the Land Registry.

In practice, the parties will usually sign a preliminary private sale agreement (*contrato privado*), which should at least include the main clauses of the transfer and the agreement to formalize the transfer in a public deed (*escritura pública*) at a later date. Part of the price (typically around 10%) is often paid upon signature of the private sale agreement, while the rest will be paid when the public deed is granted.

The private sale agreement is sometimes preceded or replaced by a reservation agreement (*contrato de arras*) where the buyer undertakes to purchase and the seller undertakes to sell within a certain period of time. A good faith deposit (*depósito de arras*) (up to 10% of the price) is delivered at this time by the buyer, to be considered as price paid in advance and deducted from the balance due at the time the public deed is granted. The amount of this deposit also serves as a guarantee of fulfilment and a penalty for breach of the purchase undertaking, so that the buyer will lose the amount to the seller if it decides to withdraw from the transaction before completing it, while if it is the seller who withdraws, it will have to pay the buyer twice the amount of the deposit sum (i.e. it will return the original deposit and pay the same amount again as a penalty for breach).

The transfer of property requires not only granting valid transfer of title but also delivery of the property to the buyer, which usually occurs symbolically by delivering the keys to the property or, if so agreed, by merely granting the corresponding public deed.

2.2 Registration

Once granted, it is particularly important that the public deed transferring title should be filed for registration at the relevant Land Registry. Registration is not compulsory for the valid transfer of title, but any bona fide third party (*tercero de buena fe*) is entitled to rely on the information registered at the Land Registry, and so will be protected if it acquires a property from the registered owner and registers its acquisition, even if it later turns out that the registered seller was no longer the actual owner of the property. Registration usually takes place within one or two weeks after the document has been submitted to the Land Registry.

2.3 Asset deals

Direct investment through an asset deal is the most common way of acquiring property in Spain and is carried out by following the formal requirements mentioned above.

Under the Spanish Civil Code, the seller of a property is liable for:

1. the non-existence of third party preferential rights on the property that may result in the buyer being deprived of all or part of the property (*saneamiento por evicción*); and
2. any hidden defects in the property (*saneamiento por vicios ocultos*).

2.3.1 PREFERENTIAL THIRD PARTY RIGHTS

Any claim that might result in deprivation of property must be reported to the seller, who is entitled to be a party to the proceedings. If the seller is not notified and therefore not given the chance to take part in the proceedings, there will be no liability. Liability only arises once there is a final ruling that deprives the buyer of all or part of the property and will entail the seller having to repay the buyer for:

(i) the price of the property at the time of the deprivation (not at the time of the original purchase); plus

(ii) income derived from the property, if the buyer had to deliver it to the third party; plus

(iii) legal expenses related to the deprivation and seller liability lawsuits; plus

(iv) expenses related to the original purchase, if they were paid by the buyer; and

(v) damages, interest and reimbursement of expenses voluntarily incurred by the buyer in connection with the property, if the sale was carried out by the seller in bad faith.

The parties are free to waive or amend this liability regime (although the waiver will be void if the seller was acting in bad faith), in which case the seller will only be obliged to reimburse the value of the property at the time of the deprivation of property.

2.3.2 HIDDEN DEFECTS

This refers to defects that render the property unfit for the intended use or which diminish the possible use in such a way that the buyer wouldn't have completed the transaction if the latter had known of the defect. There is no liability for defects that are manifest or apparent to the naked eye, or for defects which aren't apparent but which should have been known by the buyer when the buyer is an expert in the field. The seller is liable even for defects which were unknown to it, unless otherwise agreed by the parties.

As a result, if the seller was aware of the defects that caused the liability it would be liable to repay the price and expenses associated with the transfer as well as damages to the buyer. When the seller was unaware of the defects, there would be no obligation to pay damages.

While the parties may freely amend or waive the legal liability regime and agree specific liability events, it is important that the buyer carries out a certain amount of legal, technical and, if applicable, environmental due diligence before completing the purchase, especially when the buyer is a professional real estate investor.

(i) Legal due diligence should cover, at least, the following aspects:

(ii) title and encumbrances;

(iii) leases and other third-party rights;

(iv) existing financing, if any (when the buyer means to subrogate in the borrower's position);

(v) licenses and zoning aspects;

(vi) payment of taxes affecting the property;

(vii) condominium issues; and

(viii) litigation, if applicable.


Under the Spanish Civil Code, the seller pays the notarial fees relating to the public deed that formalizes the transfer, while the buyer is responsible for those relating to the issuance of copies of the deed (this means that, in practice, the seller would pay around 90% of the notarial fee and the buyer pays the remaining 10%). However, it is common practice for the buyer to pay all notarial fees. Since notarial fees can be negotiated with the notary, the party that will pay the fees is generally the one to choose the notary.

2.4 Share deals

Acquisition of property may also take place indirectly through the purchase of shares of the company that owns the relevant property.

The formal requirements for the acquisition of shares depend on the type of company and the type of shares. Shares in the capital of a Spanish limited liability company (*sociedad limitada*) must be transferred by means of a public deed and the transfer reported to the company so that the new shareholder can be registered in the company's shareholder book (*libro registro de socios*). On the other hand, shares in a public limited company (*sociedad anónima*) may require a public deed (if the shares are not issued as physical titles, or if they are issued as bearer shares (*acciones al portador*)), endorsement of physical share certificates (when the shares are represented as nominative shares (*acciones nominativas*)), or transfer via a securities broker and recording in the relevant electronic system (when the shares are issued as electronic shares (*anotaciones en cuenta*)).

In any event, it is advisable to have a proper written agreement with a complete set of representations and warranties covering the state of the property, the state of the business (if any) with which the property is associated and the state of the target company.



In share deals it is just as important as in asset deals that the buyer carry out due diligence. In this case, due diligence will no longer be limited to the property but also to the company, in particular as regards corporate matters, tax compliance, employment issues, intellectual property, and contracts with clients and suppliers. Commercial and financial due diligence on the company should also be undertaken, as well as technical and environmental due diligence on the property.

It is particularly important to check for third-party rights in connection with the shares to be transferred, as limited liability company shareholders have legal pre-emption and preferential purchase rights. Transfers may be further restricted by the company by-laws, and joint venture companies often have complex share transfer regimes built into their joint venture agreements including drag-along or tag-along clauses, put and call options, etc.

2.5 Public auctions

Acquiring a property by public auction is becoming more frequent, as in the last few years auctions have multiplied in the context of both mortgage enforcement proceedings and insolvency proceedings. These auctions are carried out by a notary or, more often, by a court.

Public auctions are a necessary tool in enforcement because Spanish law forbids the creditor from directly appropriating the collateral, unless it is cash. A secured creditor, however, has the right to match the bid or take ownership of the auctioned property at a fixed value if no bidders come forward or if the maximum bid is lower than the minimum auction value agreed by the parties in the mortgage.

It should be noted that other third parties such as tenants or co-owners may also have preferential rights to match the best bid in an auction when they hold legal pre-emption rights (see section 3.4 for further details on pre-emption rights).

The main disadvantage of buying a property at auction is that there is often only limited information available on the property and it is not possible to carry out a comprehensive due diligence prior to the purchase. It is important, therefore, to check the Land Registry for information on third-party rights that may have been recorded prior to the event giving rise to the auction (e.g. prior ranking mortgages), since such third-party rights will remain encumbering the property after the auction and until the relevant debts are paid. Such encumbrances will tend to drive the auction prices down, as the new owner will generally attempt to remove them by paying off the relevant creditors.

It should be noted that acquiring a property encumbered by a prior ranking mortgage does not automatically make the new owner the borrower or debtor of the debt secured by that mortgage. Subrogation in the debtor's position requires the creditor's consent and, if not granted, the new owner would become a third-party guarantor (through the mortgage) of the existing borrower.

3. Encumbrances

3.1 Mortgages as encumbrances

Mortgages are the most common type of security encumbrance on a property. A mortgage must be created by means of a public deed (*escritura pública*) granted before a public notary and must be registered at the Land Registry to be validly constituted.

Only the creditor registered as mortgagee may enforce a mortgage.

A mortgage depends on the existence of an underlying claim and can only be enforced as long as a repayment obligation for the secured claim still exists. The mortgage can only be assigned to a third party together with the underlying claim.

The different types of underlying claim give rise to several types of mortgage which have slightly different rules under Spanish Mortgage Law (*Ley Hipotecaria*):

- ordinary mortgage (*hipoteca ordinaria*): this is created to secure a debt with a fixed amount (such as a loan);
- credit account mortgage (*hipoteca de máximo*): This type of mortgage is regulated by article 153 of Spanish Mortgage Law. The debt corresponds to the amount recorded in the bookkeeping account of the lender and borrower, and so there is a specific procedure to set the actual amount of the claim. This type of mortgage is often used to secure credit facilities (where the amount that will actually be drawn is not known from the beginning). The amount secured by this type of mortgage will be considered as a cap;
- floating mortgage (*hipoteca flotante*): This type of mortgage is regulated by article 153. bis of Spanish Mortgage Law. This mortgage secures a basket of different debts, whether existing or future, which may vary over time and therefore are not defined in detail as in the other types of mortgage. This mortgage may only be granted in favor of financial entities, tax authorities or social security authorities and is often used to secure derivatives, or facilities with diverse tranches;
- securities mortgage (*hipoteca cambiaria*): This type of mortgage is regulated by article 154 of Spanish Mortgage Law, and is meant specifically to secure bearer securities or securities transferable through endorsement notes; and
- reverse mortgage (*hipoteca inversa*): this type of mortgage is reserved for residential properties mortgaged by senior or disabled citizens in favor of financial or insurance entities, in exchange for a loan that is disbursed in the form of an annuity; the debt becomes due and payable (by the heirs) upon the death of the mortgagor.

3.2 Charges and earmarks

When an area is first developed, depending on the development system chosen by the relevant public authorities, owners of plots included in the development will have the legal obligation to contribute financially to the construction of the necessary infrastructure to transform the land into an urban area (e.g. roads, sewage, water and electricity supply lines, etc.). Such measures lead to the imposition of charges which are payable by the owners, but which are attached to the plots. Plots are subject to a legal endorsement for payment of these charges.

Additionally, a property is charged and legally earmarked for the payment of (i) certain taxes associated with the property, such as real estate tax (IBI), stamp duty (AJD), transfer tax (ITP) or inheritance tax (*Impuesto de Sucesiones*) incurred by acts related to the property (transfers, inheritance, mortgages, etc.); and (ii) service charges owed to the condominium in which the property is included.

3.3 Easements

Properties may be encumbered in favor of a neighboring property or a third party by establishing rights of way, certain rights of use, prevention of construction, allowance of construction, etc. Such rights or easements (*servidumbres reales*) are widely used to create rights of way, rights to erect and maintain electrical or other supply lines, and to prevent or control development on certain land. Easements must be registered at the Land Registry to be enforceable against bona fide third parties.

3.4 Pre-emption rights

Public authorities have pre-emption rights over properties of historical, architectural, environmental significance public protection dwellings or dwellings located in areas of housing need (*áreas con necesidad de vivienda*) (the latter applies in certain autonomous communities, such as Valencia or Catalonia).

Most pre-emption rights are regulated by the Spanish Civil Code. Neighboring landowners have a pre-emption right over rural land of less than one hectare, and co-owners of jointly owned land have a pre-emption right over the other owners' shares.

Additionally, under the Urban Leases Act (*Ley de Arrendamientos Urbanos*), tenants have a mandatory first refusal and pre-emption right in respect of the property they lease; however, these rights can be waived contractually. This pre-emption right does not need to be registered (see more on this right in Section 6.8 below).

Additionally, an owner may grant contractual pre-emption rights over a property to any third party. Such rights are only enforceable against bona fide third parties when registered at the Land Registry.

3.5 Purchase option

A purchase option is defined as a unilateral agreement under which one party (grantor) grants the other (beneficiary) the discretionary right to purchase a property. Granting the option may be subject to the payment of a premium by the beneficiary. The premium is often (but not always) later applied to the purchase price, but in the case of non-exercise of the purchase option, the premium remains in possession of the grantor.

Purchase options must be registered at the Land Registry to be enforceable against bona fide third parties (otherwise they are only binding on the signatory parties). However, in order to be registered, the purchase option must comply with the following requirements: (i) express agreement between the parties to have it registered; (ii) specified strike price for the property's acquisition, and if relevant, premium amount for granting the option; and (iii) an end date for the option, which may not exceed four (4) years. Options granted for more than four years will be valid between the parties, but won't be registered by the Land Registry.

Purchase options are sometimes agreed in connection with leases as an addition to the legal pre-emption right. This is especially the case for leases of certain types of social housing units. In such cases, a part of the rent paid in relation to the lease may be applied to the purchase price as well.

3.6 Others

A right of use (*derecho de uso*) entitles its holder to receive, out of the outcomes of another person's property, whatever may be needed to satisfy the holder's own needs, as well as the needs of the holder's family.

On the other hand, the right of habitation (*derecho de habitación*) entitles its holder to occupy, in another person's house, the apartments necessary for the holder and members of their family.

These rights are regulated by agreement between the parties and by the Spanish Civil Code. They exist as personal and unalienable, meaning that these rights may not be leased nor transferred to another person by any title whatsoever.

4. Permits

Permits required for real estate properties are governed by local regulations approved by every city council and vary depending on the activity to be carried out and the location of the property. Typically, a building will require the following licences:

- A building permit (*licencia de obras*) is required to develop a project or significantly alter an existing property. The building permit may not be granted or be conditional on certain requirements or restrictions if the planning regulations restrict the type of construction allowed in that area (effective footprint, maximum number of floors, buildable surface, etc.).
- A first occupation permit (*licencia de primera ocupación*) is delivered at the end of building works. Its granting implies that the works carried out match those authorized in the building permit, and its issuance allows the effective occupation of the premises.
- A *cédula de habitabilidad* is required in some regions (notably Catalonia) for residential units. Its issuance certifies that the unit is fit for human habitation.

- An activity license (*licencia de actividad*) is required to authorize *a priori* the use of specific premises for a business activity, and sets out requirements that will need to be implemented or complied with in order to effectively operate the business. The activity license may not be granted if the planning regulations place restrictions on the type of activity to be carried out in the area.
- An opening license (*licencia de apertura*) certifies that the requirements set out in the activity license have been complied with and that the premises are suitable for the activity.

Some city councils replace the need for a specific permit with a simple responsible statement (*declaración responsable*) or a prior communication (*comunicación previa*) from the owner certifying that the building complies with all the necessary requirements. The building may be inspected by the authorities at any time to check effective compliance, and breach of the terms of any permit may result in fines, closure of the premises or even its demolition.



5. Environmental liability

The buyer of a property in Spain becomes liable for soil pollution or contamination of the building, even if it didn't cause the pollution or contamination. A buyer should identify any potential or actual contamination of the soil resulting from previous use of the land. The law requires that remedial action is taken in the case of soil pollution. The party responsible for the contamination is normally responsible for carrying this out, but the owner or occupier of the property is also liable, unless they can prove that the contamination was caused prior to the acquisition/occupation of the property and can ensure that the person responsible carries out the clean-up.

A holder of security over land is not liable for environmental damage provided it doesn't take possession of the land and doesn't itself cause, or knowingly permit, environmental damage.

Great care must be taken if the security is enforced, as owners of land can be liable for environmental damage occurring on, or arising from, the land, even if they didn't cause the damage. A mortgagee shouldn't enter into possession of land without carefully considering the implications of potential environmental liability.

As a result, it is particularly important to carry out a technical environmental due diligence exercise before purchasing or bidding on a property if there is the slightest suspicion of contamination.



6. Leases

Spain has generated several Urban Lease Acts (each of them known as *Ley de Arrendamientos Urbanos*) over the decades. Each Act creates its own lease regime that governs leases that complete during the period that it is in force. The regimes created in these different acts coexist in daily life since the regime applicable to a particular lease is the one that was in force when the lease was signed, although transitional provisions in more recent acts may imply amendments to previous regimes.

The Urban Lease Acts applicable to existing leases are:

- Decree 4101/1964, of December 23, 1964 (the Urban Lease Act 1964), modified or complemented by certain special transitory provisions established by Urban Lease Act 1994;
- Royal Decree-Law 2/1985, dated April 30, 1985 (Urban Lease Act 1985, often known in Spanish as *Decreto Boyer*); and
- Law 29/1994, dated November 24, 1994 (Urban Lease Act 1994, as amended by Law 4/2013 of June 4, 2013 and recent Law 2/2015, dated March 30, 2015 (the Reforms)).

Each Act establishes two different regimes; one for residential leases and one for non-residential leases.

Some types of leases (such as agrarian land, military housing, seasonal or short-term leases, leases on parking spaces) are excluded from the urban lease regime and ruled by specific laws or, failing a specific regime, by the Spanish Civil Code. Notwithstanding the foregoing, in practice the parties may freely agree to subject the lease agreement for non-residential purposes to the Spanish Civil Code.

The statutory regime that governs a Lease Agreement depends on the date of its execution. Statutory provisions largely provide for stronger rights of the tenants of residential leases (e.g. in relation to termination, rent including operating expenses, maintenance and repair obligations).

6.1 Duration

There is no minimum length laid down for commercial or residential leases. However, in residential leases executed after March 5, 2019, the landlord must allow extensions to the term up to a minimum of five years or seven years if the landlord is a legal person.

Most leases provide for a mandatory period for both parties, followed by the option to extend or terminate the lease at the tenant's discretion. Once the agreed extensions are over, if the tenant stays, the Spanish Civil Code provision for tacit extensions (*tácita reconducción*) applies, with further extensions by the same term in which the rent is denominated (daily/monthly/yearly).

The Urban Lease Act 1994, as redrafted by the Reforms, provides that the tenant may terminate the lease unilaterally at any point after the first 6 months of the lease by giving the landlord 30 days' notice. An indemnification of up to one month's rent per outstanding year of lease may be payable by the tenant in case of unilateral termination if explicitly agreed in the lease.

6.2 Rent

Rent is usually calculated on the basis of a figure per sq. m. (m²) of usable space. While rental figures are given as an annual rent, usually rental payments are due on a monthly basis and are paid in advance.

Residential rental payments are exempt from value added tax, which is, however, applicable for non-residential leases and treated as additional to the rent.

The measures adopted by the Spanish Government in response to COVID-19 have had a particular impact on leases agreements. Regarding residential leases, the measures have provided different solutions and relative certainty to disputes between landlords and tenants. By contrast, less legislative measures have been adopted regarding non-residential and commercial lease agreements.

The latest legislative measure was available until 31 January 2021. Self-employed workers and SMEs meeting certain requirements, whose landlords are public entities or private "large real estate holders" (*gran tenedor*), had a right of i) a 50% rent reduction or ii) a moratorium during the State of Alarm (which ended on 9 May 2021) and four months from then on. The deferred payment may be made during two years after the end of the moratorium, and always within the period during which the lease continues in force, with a proportional distribution in payments of the rent. In addition, in the event that the landlord was not a public entity or private "large real estate holder", the tenant could request a moratorium, provided that such deferment or reduction had not been agreed.

In addition, some Spanish regions have issued regulations in this regard. In this sense, Catalonia approved measures in connection with the possibility to amend the terms and conditions of commercial leases and the rules applicable in the event of disagreement between the parties (e.g. Decree-Law 34/2020, of 20 October on urgent measures to support the economic activity developed in leased business premises – *Decreto-ley 34/2020, de 20 de octubre, de medidas urgentes de apoyo a la actividad económica desarrollada en locales de negocio arrendados*-).

Following these measures, some tenants have attempted to balance the obligations under their lease agreements by negotiating with landlords. Nevertheless, some others who haven't reached an agreement have decided to go to court alleging the application of other more general contract law remedies, such as, in particular, the *rebus sic stantibus* clause.

In the Spanish legal system, besides the measures that the legislator has adopted ad hoc (see above), there is an exceptional rule, arising from case law, which may allow the concerned party to amend (not to terminate) an agreement when supervened and unpredictable circumstances that, breaking the balance of obligations, affect the economic rationale of the agreement take place. This rule is known as the *rebus sic stantibus* clause.

Some tenants have decided to seek remedies in courts alleging the application of this clause, to try to modify the conditions agreed prior to the COVID-19 pandemic in non-residential leases. However, the lack of legal regulation of the *rebus sic stantibus* figure is leading to disparities in its application and effects, from the prohibition to execute guarantees or filling an eviction suit to payment deferrals or reductions of the rent.

On a different note, it should be noted that, in Spanish contract law, *force majeure* refers to an unforeseeable and unavoidable event that prevents the performance of an obligation. Most scholars support that this instrument wouldn't be suitable to protect the obligations of tenants in a COVID-19 scenario. However, this is a discussed topic by academic opinion on which there is no post-covid jurisprudence.

6.3 Rent review

The Urban Lease Act 1994, as redrafted by the Reforms, currently rules that the parties must specifically agree in the lease agreement that the rent will be subject to annual reviews. If no such agreement is included, no rent review will be allowed. This is a new feature of the regime as of 2015, as under all previous lease regimes rent reviews were automatic and carried out in accordance with the change of the consumer price index (IPC or *Indice de Precios al Consumo*).

New leases subject to the Reforms also require determination in the lease of the rent review system to be followed. By default, the index to be applied will be the Guarantee of Competitiveness Index (*Indice de Garantía de Competitividad*) rather than the traditionally used consumer price index.

Rent reviews need to be notified to the tenant, and the calculation justified if the tenant so requests.

Since the new rent review system is very recent, most existing leases are still subject to the automatic review system using the consumer price index. However, since the

consumer price index does not necessarily move in line with market rents, in long-term non-residential leases it is not unusual for the parties to agree a rent adjustment in line with market rents after the third year (fifth year for leases governed by the Urban Lease Act 1994 prior to the Reforms).

For residential leases, Spanish Housing Law (Ley de Vivienda) has introduced significant limitations on maximum rent indexation that landlords may apply. These restrictions only apply from 1 January 2025 and affect lease agreements executed from 26 May 2023.

From 1 January 2025, the Reference Index for Rent Updates (*Índice de Referencia de Arrendamientos de Vivienda*), which is published on a monthly basis by the National Statistics Institute (INE), will apply as the new maximum limit to be applied for residential rent increases, regardless of whether the landlord is considered as a large property owner or whether the property is located in a tense market area or not.

On 2 January 2025, the first IRAV results were published on the INE's website, setting the index at 2.28%.

6.4 Operating expenses

In non-residential leases, the tenant is generally obliged to pay all operating expenses relating to the property including costs of maintaining common areas, real estate tax and waste collection tax or private driveway tax where applicable. This is less usual in residential leases, although it is common practice in the market to pass on the cost of Real Estate Tax to the tenant.

6.5 Maintenance, repair and renovation at end of lease

Under all legal regimes, tenants bear all costs for ordinary repairs and maintenance of the premises. By law, the landlord generally remains responsible for structural and major repairs unless otherwise agreed.

The landlord may carry out improvement works to the premises during the course of the lease if they cannot reasonably be delayed, but a rent reduction may be applied if the works temporarily prevent the tenant from using a part of the property. At the end of the works, unless otherwise agreed, the landlord may increase the rent in proportion to the cost of the works.

The tenant is not supposed to renovate the property at the end of the lease, but rather to hand it over to the landlord in its original state, except for normal wear and tear.

6.6 Assignments/transfers and subleases

A residential tenant may not assign or sublease without landlord's consent.

Non-residential tenants are entitled to assign or sublease without consent, but the landlord retains the possibility to increase the rent by 10% in case of partial sublease and 20% in case of total sublease or assignment of the lease. However, most leases tend to waive this legal regime and either exclude the possibility to sublease or assign, restrict it to group companies of the tenant, or require landlord consent for the assignment or sublease.

6.7 Termination

Breach of the lease agreement obligations by one party entitles the other party to terminate the agreement.

Furthermore, the landlord is entitled to terminate the lease agreement for the following reasons:

- non-payment of rent or of any other amount assumed by the tenant;
- non-payment of the deposit or of its consideration balance;
- sublease or assignment without the prior consent of the landlord;
- the tenant inflicting malicious damage on the property or the performance of works without the consent of the landlord when the landlord's consent is necessary;
- the tenant committing irritating, unhealthy, harmful, dangerous or unlawful activities in the house; and
- when the property won't satisfy the tenant's needs for a permanent residence.

The tenant, on the other hand, is entitled to terminate the lease agreement for the following reasons:

- the landlord doesn't carry out the necessary repairs to preserve the property in habitable conditions;
- the landlord carries out improvement works against the will of the tenant;

- the landlord disrupts the use of the property by the tenant; and
- unilateral termination by giving advance notice to the landlord.

The lease agreement will also expire for the following reasons:

- loss of the property not caused by the landlord;
- the property being declared in a state of ruin by the competent authority;
- expiry of the term agreed by the parties in the lease agreement with its corresponding extension periods;
- joint decision of both parties to terminate the lease; and
- tenant's death, when the heirs have no legal right to subrogate into the lease.

Finally, the Urban Lease Act 1994, as redrafted by the Reforms, currently rules that the lease agreement may be terminated if the landlord's right expires due to certain legal circumstances (such as the exercise of a repurchase right (*retracto convencional*) or a call option on the property, or forced sale through mortgage enforcement proceedings) unless the lease had been registered prior to the existence of the circumstances which eventually deprived the landlord of title.

6.8 Sale of a leased property

The law grants the tenant a right of pre-emption and first refusal on the leased premises; therefore, no transfer of the property may be carried out without notifying the tenant of the terms of the transaction so that they can decide whether to match the offer. If the transfer is carried out without complying with this formality, the tenant will have a repurchase right in the same terms once it finds out about the transfer.

This pre-emption right is typically waived in non-residential leases and in most residential leases.

The pre-emption right doesn't apply when the landlord sells either a complete building or all the sections it owns in a particular building.



7. Tax considerations

7.1 Asset deal v share deal

Real estate investments can be made either by acquiring the property directly (asset deal) or by acquiring the shares of the entity owning the property (share deal). Usually the choice between asset deal or share deal will be driven mainly by the tax consequences. In most cases, the buyer will not have the option to choose because the seller will impose the structure taking into account its own taxation.

7.1.1 ASSET DEAL

A. VALUE ADDED TAX AND TRANSFER TAX

The acquisition of properties through an asset deal is subject to (i) VAT (*Impuesto sobre el Valor Añadido, IVA*) or (ii) Transfer Tax (*Impuesto sobre Transmisiones Patrimoniales Onerosas*). The VAT or Transfer Tax is payable by the buyer.

The possible scenarios here are very diverse:

- Transfer of the property by non-VAT taxpayers is subject to Transfer Tax at a rate of 6% to 11% (depending on the autonomous community where the property is located).
- Transfer of the property by VAT taxpayers is taxed as follows:
 - The transfer of land, both land for development and developed land, is subject to VAT at a rate of 21%.
 - The transfer of rural land and land which cannot be developed is exempt from VAT and subject to Transfer Tax at a rate of 6% to 11%, unless the acquirer is a VAT taxpayer entitled to full or part deduction of the VAT accrued on the transaction, in which case the transferor may waive the VAT exemption, so that the transaction becomes subject to VAT at a rate of 21%.
 - First transfer of buildings is subject to VAT at a rate of 21%. For residential properties, the applicable VAT rate is 10%, except in the case of social housing under a special scheme or public development (*viviendas de protección oficial de régimen especial o de promoción pública*), where the applicable VAT rate is 4%.
 - First transfer of buildings that has been in continuous use for a period of over two years (under a lease agreement) and second and subsequent transfers of buildings are exempt from VAT and subject to Transfer Tax at a rate of 6% to 11%, unless the acquirer is a VAT taxpayer entitled to a full or part deduction of VAT accrued on the transaction, so that the transaction

becomes subject to VAT at the rate of 21%. For residential properties, the applicable VAT rate is 10% except in the case of social housing under a special scheme or public development, where the applicable VAT rate is 4%.

- Second and subsequent transfers of buildings with a view to them being substantially refurbished are subject to VAT at a rate of 21%.
- Transfers of buildings resulting from the exercise of a call option by a tenant in a financial lease contract are all subject to VAT at the rate of 21%.
- The transfer of a group of assets that represent the transfer of a business or part of a business as a going concern is not subject to VAT, with any building included in the transferred assets being subject to Transfer Tax at a rate of 6% to 11%. In these particular transactions, it is not possible to waive the VAT exemption.

B. STAMP DUTY

Notarial deeds that record land and building transactions subject to VAT are subject to stamp duty (*Impuesto sobre Actos Jurídicos Documentados*). Rates vary from 0.5% to 3% depending on the location and type of transaction. The tax is payable by the buyer.

C. TAX ON THE INCREASE IN VALUE OF URBAN LAND

The transfer of property other than rural land is generally subject to the Tax on any Increase in Value of Urban Land (*Impuesto sobre el Incremento de Valor de los Terrenos de Naturaleza Urbana*), calculated by the relevant city council at the time of the sale. The tax is payable by the transferor.

7.1.2 SHARE DEAL

The acquisition of properties through a share deal is exempt from Transfer Tax and VAT.

A legal exception to this rule exists for transactions where the transfer of the shares is made with the purpose of avoiding the payment of the Transfer Tax or VAT that would have been paid in case of transfer of the real estate. The law considers that there are tax avoidance reasons when at least 50% of the transferred assets consist of real estate located in Spain and aren't used for business activities, provided that as a result of the purchase, the recipient of the shares acquires control or increases control over the entity. In this case, the transaction is subject to Transfer Tax at a rate of 6% to 11% or VAT at a rate of 21% or 10% of the value of the underlying real estate assets at the time of the transfer.

7.2 Value added tax

VAT is payable by the buyer on completion of the acquisition of the property. In certain cases, the so-called reverse charge mechanism applies. Under this mechanism, instead of VAT being charged by the transferor, it is self-charged by the buyer (output VAT). At the same time, the buyer is entitled to deduct such VAT (as input VAT). The practical effect of the reverse charge mechanism is that, where the buyer qualifies to deduct 100% of the VAT from the acquisition, there is no VAT payable by the buyer to either the transferor or the Spanish tax authorities.

7.3 Other real estate taxes

7.3.1 REAL ESTATE TAX

Owners of real estate must pay Real Estate Tax (*Impuesto sobre Bienes Inmuebles*). This is a local tax payable annually by owners of real estate and the holders of certain other property rights. Real estate tax is calculated on the basis of the cadastral value (*valor catastral*). This is set by the municipality in which the property is located on the basis of certain criteria established by law. The tax is calculated by applying a multiplier to the cadastral value as recorded in the cadastral register. This tax cannot be reduced or offset in any way.

7.3.2 SPECIAL TAX ON REAL ESTATE OF NON-RESIDENT ENTITIES

Entities resident in a tax haven jurisdiction owning real estate or rights over property located in Spain are subject to a special tax on real estate owned by non-resident entities (*Gravamen Especial sobre Bienes Inmuebles de Entidades No Residentes*) at a rate of 3% of the cadastral value (*valor catastral*) of the property. This tax accrues at 31 December each year and must be paid within the following January.

In the case of transfers of real property situated in Spanish territory by entities subject to the special tax, the assets transferred will be subject to the payment of this special tax.

This special tax is not payable if the real estate properties are continuously or habitually linked to a business activity in Spain other than the mere holding or leasing of the properties.

7.4 Taxation of rental income from real estate

7.4.1 DIRECT INVESTMENT THROUGH A PERMANENT ESTABLISHMENT

Rental income derived from the property owned by a permanent establishment in Spain is subject to Spanish non-resident income tax (*Impuesto sobre la Renta de No Residentes*) at a rate of 25%.

The taxable income is the net profit after deducting costs, as shown in the annual profit and loss account. With some minor exceptions, all costs relating to the activities of the permanent establishment are tax deductible, apart from interest, royalties or commission paid to the head office in exchange for technical assistance or for the use of other goods or rights.

Many of the management and general administration expenses are deductible.

Depreciation of property is tax deductible to the extent permitted under the relevant regulations.

7.4.2 DIRECT INVESTMENT WITHOUT A PERMANENT ESTABLISHMENT

If the investor does not have a permanent establishment in Spain, rental income is subject to Spanish non-resident income tax (*Impuesto sobre la Renta de No Residentes*) at the standard rate of 24%. The tax rate is reduced to 19% for taxpayers resident in the EU or in the European Economic Area. The basis for calculating taxable income is the gross income received, save for taxpayers resident in the EU, for which the net profit after deduction of expenses directly related to the real estate is used as basis of the tax.

Note that investment in real estate, in itself, is likely to create a permanent establishment, in which case rental income is taxed as above.

7.4.3 INDIRECT INVESTMENT THROUGH A SPANISH CORPORATE ENTITY

Rental income is subject to Spanish Corporate Income Tax (*Impuesto sobre Sociedades*) at the rate of 25%. Taxable income is the net income after the deduction of expenses, as shown in the annual profit and loss account.

7.4.4 INDIRECT INVESTMENT THROUGH A SPANISH PARTNERSHIP

Since a partnership (*entidad en atribución de rentas*) is deemed to be transparent for tax purposes, any profits generated by the partnership are attributed to the individual partners.

Rental income is taxed as above, depending on whether or not the property is deemed to constitute a permanent establishment in Spain.

7.5 Taxation of dividends from a company owning real estate

The distribution of dividends to shareholders is subject to Spanish non-resident income tax at the rate of 19%, unless:

- the EU Parent-Subsidiary Directive applies, in which case no tax is payable; or
- an applicable tax treaty reduces the tax to a lower level, in which case an equivalent tax credit will be received in the shareholder's country of residence.

Branch tax

- Income obtained by a permanent establishment that is transferred abroad is subject to a supplementary tax at the rate of 19%.
- The tax doesn't apply to income obtained in Spain through a permanent establishment by an entity which is tax-resident in another EU Member State or in a state with which Spain has signed a tax treaty (unless otherwise provided in the tax treaty).

7.6 Taxation of capital gains on real estate

Capital gains from the sale of real estate assets in Spain are taxed as follows:

- Capital gains realized by foreign investors with a permanent establishment in Spain are subject to Spanish non-resident income tax at a rate of 25%.
- Capital gains realized by foreign investors without a permanent establishment are subject to Spanish non-resident income tax at a rate of 19%, unless an applicable tax treaty provides otherwise.

In this case, the buyer is obliged to withhold tax at 3% of the agreed price, or make an equivalent payment on account, as part payment of the tax. This doesn't apply to contributions of real estate made to companies resident in Spain when they are incorporated or if they increase their capital.

7.7 Taxation of capital gains from the disposal of shares in a company owning real estate

Capital gains from the disposal of shares in a Spanish company are subject to Spanish non-resident income tax at a rate of 19%, unless an applicable tax treaty provides otherwise.

7.8 Taxation of gain on disposal of partnership interest in a partnership owning real estate

The partnership (*entidad en atribución de rentas*) is regarded transparent for tax purposes and any gain generated by the partnership are attributed to the individual partners and taxed as indicated above.

7.9 Real estate investment trusts

Spanish REITs (so-called SOCIMI, *Sociedad Anónima Cotizada de Inversión en el Mercado Inmobiliario*) are taxed at a 0% corporate income tax rate provided that the shareholders owning at least 5% of the SOCIMI are taxed on the dividends received at a minimum rate of 10%. Where shareholders do not meet this requirement, SOCIMIs are taxed at 19% corporate income tax rate on the dividends distributed to those shareholders (this 19% is a tax to be paid by the SOCIMI and not a withholding tax on the dividends distributed).

The SOCIMI is required to distribute 80% of profits arising from rental income and ancillary activities, 50% of profit from the disposal of qualifying assets or shares and 100% of profits arising from qualifying shares.

On 11 July 2021, the amendment to Law 11/2009, of 26 October, which regulates Listed Real Estate Investment Companies (*Modificación de la Ley 11/2009, de 26 de octubre, por la que se regulan las Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario*), came into force. By virtue of this amendment, SOCIMIs will be subject to a special tax of 15 per cent (15%) on the amount of the profits obtained in the year that are not distributed, in the part that comes from income that has not been taxed at the Spanish Corporate Income Tax and is not income subject to the reinvestment period regulated in the aforementioned law.

7.10 Real estate funds

Spanish real estate funds (so-called FIIs, *Fondos de Inversión Inmobiliaria* and SII *Sociedades de Inversión Inmobiliaria*) are taxed at 1% corporate income tax rate, with no dividend distribution obligations.

FIIs and SII are very efficient tax deferral vehicles as the shareholder is only taxed when they receive a dividend or when they redeem/transfer their participation in the SII or FII.



8. Real estate finance

It is common in Spain to obtain finance in connection with real estate transactions, whether for acquisition, construction or merely as leverage.

Acquisition and investment financing is generally configured as a loan disbursed in one single drawdown. The debt will be serviced by the income produced by the property, while the principal will be secured with a security package featuring, notably, a mortgage on the property and pledges on the income-producing contracts.

On the other hand, development financing will generally take the shape of a credit facility, from which amounts may be drawn down as necessary to pay contractors as construction progresses. Since during the construction phase the property will not typically be producing income, it is common for interest to be capitalized during the construction, actual debt service starting only upon completion of the property. A mortgage will exist from day one on the land and extend automatically to any new constructions, but pledges will evolve as the contracts related to the property vary with its development.

8.1 Interest rate risks

Although it is now possible to obtain loans at fixed interest rates, it has always been the practice of Spanish banks to grant variable interest financing, and financing on large scale projects remains overwhelmingly subject to variable rates.

A borrower wishing to control interest rate risk is therefore obliged to enter into a financial hedging agreement of some kind reducing the volatility, such as a swap, cap or collar derivative. While ISDA master agreements are not unknown in the Spanish market, the Spanish Banking Association (AEB or *Asociación Española de Banca*) has issued its own model derivative agreement, known as CMOF (*Contrato Marco de Operaciones Financieras*), which in the Spanish market plays substantially the role of the ISDA master agreements. Special terms and conditions of the relevant type of derivative and a trade confirmation for each particular transaction complement the general CMOF entered into with a financial counterparty.

When the counterparty of the derivative is the same entity that provides the main financing (or a member of the financing syndicate, in the case of syndicated loans), it is common for the hedging agreement to be secured *pari passu* with the underlying financing or by a second-ranking mortgage on the property.

8.2 Mortgages as security

Real estate security may be granted on the land, buildings constructed on it and fixtures which form part of those buildings. It is also possible to take security over the bare ownership (as distinct from the use), the right to build on the site (*derecho de superficie*), the beneficial ownership (*usufructo*) or an administrative concession (*concesión*).

When extending over several properties (e.g. a portfolio of assets, or a single building which has been divided horizontally into several plots forming a condominium), the parties will need to determine the maximum liability secured by each property.

Liability secured by a property is usually broken down into several concepts: repayment of principal, ordinary interest, default interest, and enforcement costs and expenses. A mortgage may not secure more than five years' interest, whether ordinary or default interest. The amount allotted to each concept acts as a cap, and the property is only liable to the maximum of the secured liability stated in the mortgage deed. Any amount due by the debtor which exceeds this maximum secured liability will need to be claimed separately by the creditor as an unsecured claim (or secured by security other than the real estate mortgage).

When creating a mortgage, the parties are obliged to estimate a value for the property that will act as reference value for the auction (*valor de tasación*) in case of enforcement of the mortgage. The value must be supported by a third-party market price valuation at the time of granting of the mortgage deed, but doesn't need to be updated later (bear in mind that any later update of such value may trigger payment of stamp duty on the whole mortgage secured amount).

The market price valuation to be carried out before the granting of the mortgage has a second purpose, which is to set the maximum amount of the financing. In order to be eligible for securitization in Spain, a loan cannot have been granted for an amount higher than 80% of the market price of the property, so Spanish financial entities are often unwilling to finance beyond this threshold.

8.3 Further collateral agreements

Other than the mortgage, the regular security package of a real estate finance transaction would typically comprise:

- a pledge on the shares in the relevant company, which may or may not include the right for the pledgee to exercise voting rights in the company;
- a pledge on the company's bank accounts, which may or may not involve blocking the balance on the accounts or forbidding disposals without the financing entity's consent or subject to certain restrictions; and which will in any event allow the financing entity to enforce the pledge through a direct cash sweep on any monies; and
- a pledge of credit rights arising from contracts related to the property. These can be rather varied depending on the state of development of the property, and might include, inter alia, the purchase agreement over the property, the agreement with the general contractor for the construction works, any lease or similar agreements producing regular income, management or operational agreements, and even any hedging agreements related to the financing itself. In the event of enforcement of such pledges, the creditor will notify the counterparties of the pledged agreements so that they will start paying any due amounts (e.g. rents) directly to the creditor.

Regarding insurance policies on the property, three courses of action are possible in order to establish a security, and it is not uncommon for several of them to be put in place simultaneously: (i) the mortgage can be made to extend automatically to payments made by the insurance company due to loss or total or partial destruction of the property; (ii) the creditor may be appointed as an additional beneficiary or loss payee of the insurance policy; and/or (iii) a pledge can be granted on the credit rights arising from the insurance policy.

Less usual in transactions with Spanish financial entities, but de rigueur with international finance providers, are duty of care agreements with managers of the property.

Also common are the execution of subordination agreements with entities providing equity or shareholder finance to the company.

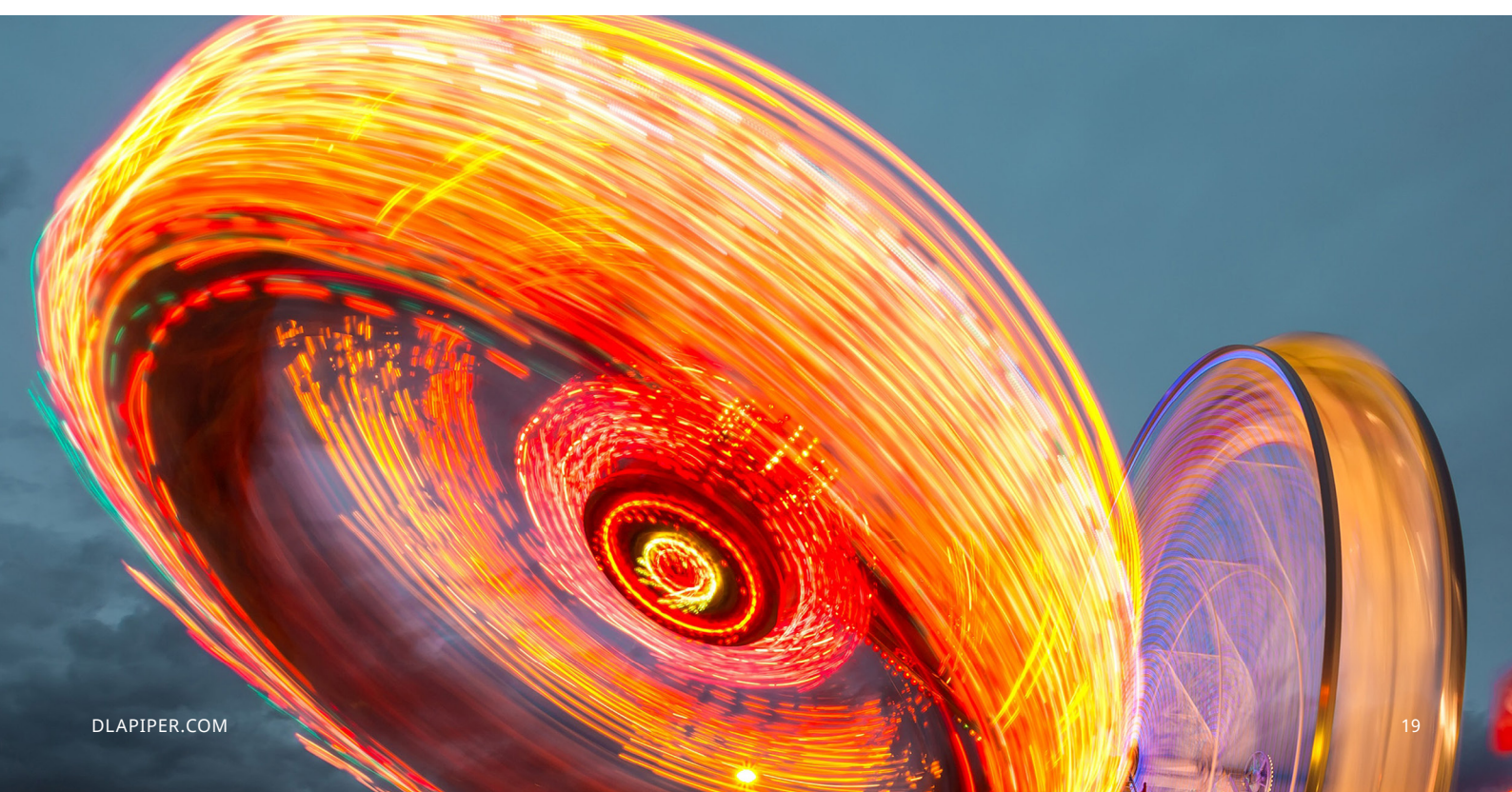
8.4 Taxation on the creation of security

The execution of the mortgage deed is subject to stamp duty (*Impuesto sobre Actos Jurídicos Documentados*) at rates which depend on the autonomous community where the property is located (0.5% to 2%). The rate of stamp duty is calculated over the total liability secured by the mortgage (principal, interest, default interest and enforcement costs and fees).

Pledges of shares are not subject to stamp duty, but the grant of a pledge involves payment of notary fees, as a public document is required.

A pledge of credit rights and moveable assets must also be created pursuant to a public document to benefit from priority over other creditors, so notary's fees are involved. A pledge of moveable assets must be registered at the Moveable Assets Registry (*Registro de Hipoteca Mobiliaria y Prenda sin Desplazamiento*), and registry fees and (if granted as a public deed (*escritura publica*)) stamp duty must be paid.

Pledges over credit rights may be registered at the Moveable Assets Registry if they are granted as pledges without dispossession of the pledged assets, in which case registry fees and (if granted as a public deed (*escritura publica*)) stamp duty are payable.



Glossary

TERM	EQUIVALENT
Acciones al portador	Bearer shares
Acciones nominativas	Nominative shares
AJD or Impuesto sobre actos jurídicos documentados	Stamp duty
Anotaciones en cuenta	Electronic shares
Arras	Good faith deposit (in property purchases)
AEB or Asociación española de banca	Spanish banking association
Cédula de habitabilidad	Certificate of fitness for occupation required for residential properties in some regions of Spain, notably in Catalonia
Código civil	Spanish civil code
Concesión administrativa	Administrative concession
Contrato de arras	Reservation agreement
Derecho de aprovechamiento por turnos	Time sharing
Derecho de habitación	Right of habitation
Derecho de superficie	Right of Surface
Derecho de uso	Right of use
Derecho de usufructo	Beneficial interest
Dirección general de comercio e inversiones	The general office for trade and investments
Escritura pública	Public deed
Entidad en atribución de rentas	Corporate entity where profits are attributed directly to the individual partners
FIIIs, fondos de inversión inmobiliaria and sIIs sociedades de inversión inmobiliaria	Spanish real estate funds
Gravamen especial sobre bienes inmuebles de entidades no residentes	Special tax on real estate owned by non-resident entities
Hipoteca cambiaria	Securities mortgage
Hipoteca de máximo	Credit account mortgage
Hipoteca flotante	Floating mortgage
Hipoteca inversa	Reverse mortgage
Hipoteca ordinaria	Ordinary mortgage

TERM	EQUIVALENT
IBI or Impuesto de Bienes Inmuebles	Real estate tax
Impuesto sobre el Incremento de Valor de los Terrenos de Naturaleza Urbana	Tax on any increase in value of urban land
IVA or Impuesto sobre el Valor Añadido	VAT or Value Added Tax
Impuesto sobre la Renta de No Residentes	Spanish non-resident income tax
Impuesto sobre Sociedades	Spanish corporate income tax
ITP or Impuesto sobre Transmisiones Patrimoniales Onerosas	Transfer tax
Índice de Garantía de Competitividad	Guarantee of competitiveness index
IPC or Índice de Precios al Consumo	Consumer
Impuesto de Sucesiones	Inheritance tax
LAU or Ley de Arrendamientos Urbanos	Urban Lease Act
Ley Hipotecaria	Spanish Mortgage Law
Licencia de actividad	Activity license
Licencia de apertura	Opening license
Licencia de obras	Works permit
Licencia de primera ocupación	First occupation permit
Propiedad en pleno dominio	Absolute freehold
Propiedad en proindiviso	Co-ownership
Propiedad horizontal	Condominium
Registro de Hipoteca Mobiliaria y Prenda sin Desplazamiento	Moveable assets registry
Retracto convencional	Contractual repurchase right
Saneamiento por evicción	Seller's liability for the buyer being deprived of the property because of prior third-party rights
Saneamiento por vicios ocultos	Seller's liability for any hidden defects of the property
Servidumbre real	Easement
Sociedad anónima	Public limited company
Sociedad limitada	Spanish limited liability company

TERM	EQUIVALENT
SOCIMI or Sociedad Anónima Cotizada de Inversión en el Mercado Inmobiliario	Spanish REIT
Superficialario	Surface right holder
Tácita reconducción	Tacit extension (in leases)
Valor catastral	Cadastral value
Valor de tasación	Reference value for the auction in case of enforcement of the mortgage



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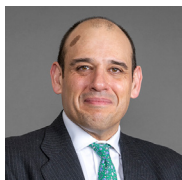
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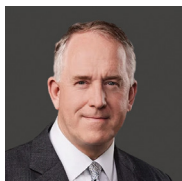


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About DLA Piper

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We are recognised as a market leading firm in Chambers for our experience in advising on multi-jurisdictional deals and trusted by clients to handle multi-billion Euro deals.

Currently more than 90 highly qualified lawyers, including 17 partners, we offer a full service, locally led law firm with international capability. Our lawyers specialise in all aspects of business law and regularly advise on cross-border transactions. Many of the senior individuals within the team are recognised as leading practitioners in the editions of The Legal 500 and Chambers and Partners.

Our Spanish Real Estate practice has broad experience in designing complex investment or divestment structures and developing unique projects in the housing, hospitality, industrial and retail sectors. Combined with our experience in tax structuring, we deliver the most efficient real estate deals to support your investment aims in Spain.

Whether we provide support to local and international companies, you can expect a creative and business-like approach, practical yet flexible. We invest in our clients to understand what their needs really are and how we can add value to their business.

This guide was written predominantly by Orson Alcocer of our Real Estate practice group and Maria Alonso of our Tax practice group.

This guide was updated in February 2024. Subsequent changes in law are therefore not taken into account. This guide cannot be considered as a substitute for obtaining specific legal advice in individual cases. DLA Piper does not assume any liability in connection with this guide.

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