

Commercial real estate in Argentina: overview

- **Resource type: Country Q&A**
- **Status: Law stated as at 01-May-2015**
- **Jurisdiction: Argentina**

A Q&A guide to corporate real estate law in Argentina.

The Q&A gives a high level overview of the corporate real estate market trends; real estate investment structures, including REITs; legislation; title and public registers of title; confidential information; state guarantee of title; tenure; sale of real estate; seller's liability; due diligence; warranties; cost; taxes and mitigation, including VAT and stamp duty/transfer tax; climate change targets; third party outsourcing; restrictions on foreign ownership or occupation; finance; leases; planning law and consents; and proposals for reform.

To compare answers across multiple jurisdictions, visit the *Corporate Real Estate Country Q&A tool*.

This Q&A is part of the global guide to corporate real estate law. For a full list of jurisdictional Q&As visit www.practicallaw.com/realestate-guide.

Pedro Nicholson, Estudio Beccar Varela

Contents

- The corporate real estate market
- Real estate investment
 - Restrictions on foreign ownership or occupation
- Title to real estate
 - State guarantee of title
- Sale of real estate
 - Preliminary agreements
 - Sale contract
 - Due diligence
 - Sellers' warranties
 - Liability
 - Completion arrangements
- Real estate tax
- Climate change issues
- Real estate finance
 - Secured lending involving real estate
 - Other real estate financing techniques
- Real estate leases
 - Negotiation and execution of leases
 - Rent payments
 - Length of term and security of occupation
 - Disposal

- Repair and insurance
 - Landlord's remedies and termination
 - Planning and development controls
 - Reform
 - Online resources
 - Ministry of Economy and Finance
 - Contributor profile
 - Pedro Nicholson
-

The corporate real estate market

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Trends

The main trends in the real estate market include:

- **Residential sector.** The residential sector, which had boomed in recent years, has suffered from certain foreign exchange currency restrictions in force in Argentina during the last 36 months, as well as from the high inflation currently existing in the country. Inflation in particular is increasingly becoming the main concern for developers facing new real estate projects. As a result of an increase in the price of land and in the cost of construction, investment in the residential sector has considerably decreased over the last months.
- **Commercial office sector.** Interest in the construction of new office buildings has also decreased for the same reasons as in the residential sector. In addition, business activity is also currently slow in Argentina, which further weakens the office market because it is directly linked to business activity.
- **Hotel sector.** Tourism has boomed in Argentina in recent years, making Argentina one of the top tourist destinations in Latin America. For this reason, there is a huge interest in the development of hotels, despite the economic problems described above. The largest projects are located in Buenos Aires (one of South America's most visited cities) and in other main tourist destinations. Over the last few years, condo hotels have become one of the most preferred structures among investors.
- **Rural sector.** Traditionally a very active sector in Argentina, as a result of government intervention restricting meat exports and affecting wheat and soya prices, the expansion of real estate in the rural sector has recently declined. In addition, following the enactment of Law No. 26,737 of 2012, the ownership and possession of rural lands by foreign persons has been restricted, which will negatively affect foreign real estate investment.
- **Shopping centres.** There are many opportunities for shopping centre developments, especially in medium-sized towns in the provinces.

Deals

The most significant recent deals are:

- High-rise office space in Catalinas Norte. Catalinas Norte is the key office space area in Buenos Aires. Constantini Group is constructing what is meant to be the tallest building in the city.
- Al Río Project in Vicente López. This project will comprise 500,000 square metres of construction of residential buildings, office space and a shopping mall.

Real estate investment

2. What structures do investors typically use for real estate investment in your jurisdiction and what are the main advantages and disadvantages of each (for example, flexibility and tax transparency)?

Common structures

There are three major business structures through which an investor (either a physical person or a legal entity) can participate in the real estate market:

- Direct acquisition of real estate.
- Participation as a shareholder in a company that owns real estate.
- Participation in a real estate trust that invests in Argentinean real estate.

REITs

Real estate investment trusts (REITs) do not exist in Argentina, at least, not in the same way as they are known in other countries (for example, offering tax benefits). One of the main inconveniences in the Argentine market is that there is no banking finance. As a result, local projects are generally financed with equity contributed by investors. In this scenario, the trust (*fideicomiso*) is the most common structure used for local and international projects.

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

Institutional investors

Institutional investors are essentially trust managers and investment companies. They are involved in the real estate market as developers of:

- Residential buildings.
- Office buildings.
- Shopping centres.
- Developments in rural areas.

Private investors

The role of private investors is often limited to residential and office markets. However, interest in hotel investments and shopping centres has increased in recent years. Investors willing to take part in these projects generally:

- Provide the necessary funds to finance the construction.
- Receive units of apartments, offices or hotel rooms when the developer ends the project or receive a percentage of the project's revenue.

Restrictions on foreign ownership or occupation

4. Are there restrictions on foreign ownership or occupation of real estate (including foreign ownership of shares in companies holding real estate)? Are there restrictions on foreign guarantees or security for ownership or occupation and

on lending for the purchase of real estate?

Rural land ownership by foreign persons

Law No. 26,737 of 2012 (enacted by the National Congress) sets out the protection regime of the national domain over the property, possession or control of rural land in Argentina (Rural Land Regime Law). The Law was further regulated by Regulatory Decree No. 274/2012.

The Rural Land Law considers any purchase, transfer or assignment of possession rights of rural lands made in favour of foreign persons as foreign ownership. Foreign persons include foreign individuals and legal entities controlled by foreign capital, subject to certain requirements set out under the law. Some specific exceptions for foreign persons are provided (for instance, for foreign persons with ten years of continuous, permanent and verified residence in Argentina).

The Rural Land Law states that any purchase, transfer or assignment of possession rights of rural lands in favour of foreign persons must be previously authorised by the Argentine Registry of Rural Land.

The principal restrictions under the Law are that:

- Foreign persons (physical or legal) cannot own or possess more than 15% of the rural lands in Argentina.
- Foreign persons (physical or legal) of the same nationality cannot own or possess more than 30% of those 15%.
- Foreign persons (physical or legal) can only own up to 1,000 hectares in the nucleus area (defined under *Decree No. 274/2012*) or the equivalent surface in Argentina, depending on the jurisdiction.
- Foreign persons (physical or legal) cannot own or possess rural lands containing, or bordering, large and permanent bodies of water, unless specifically authorised.
- Foreign individuals or legal entities cannot own or possess rural lands that are located in border security zones, unless specifically authorised (*see below, Authorisations required for border areas*).

According to the Rural Land Law, all acts executed in violation of the Protection Regime Law are absolutely and irrevocably null and void and create no right of indemnification in favour of the authors of and participants in the illegal act.

The Rural Land Law also provides that the Argentine Registry of Rural Land can initiate administrative proceedings to investigate possible breaches of the Law. The results of the investigation must be notified to the potential violator, following which it has ten business days to collect and submit evidence. The National Director of the National Register of Rural Land will analyse the incident and apply the penalty that it deems appropriate (if any). The penalties vary between:

- Warnings.
- Fines.
- Special disqualification orders from six months to two years.

Authorisations required for border areas

The purchase of real estate property by foreign persons in frontier security zones (zones that are between 150 kilometres from terrestrial borders and 50 kilometres from shorelines) is subject to prior and special authorisation issued by the National Commission for Security Zones.

Corporate law considerations

To become a shareholder of an Argentine company, foreign companies must:

- Register with the competent Argentine Public Registry of Commerce.
- Demonstrate that the foreign company:
 - performs its main activity outside Argentina;

- holds sufficient assets outside Argentina;
- has decided, at board level, to register the company in Argentina;
- provides details about its shareholders.

If a foreign company develops habitual business in Argentina, it must also either (*section 123, Business Association Act*):

- Register a branch in Argentina.
- Establish a local subsidiary.

Title to real estate

5. What constitutes real estate in your jurisdiction? Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate property is not distinguishable from land ownership. Therefore, buildings and other constructions on a particular piece of land cannot be owned independently from the corresponding land. Buildings are considered fixtures that belong to the owner of the land (*statutory provisions, Civil Code*).

Title-holders are considered to own the land and everything below and above the land, subject to specific legal restrictions (for example, restrictions relating to aerospace, utilities and mining).

Therefore, the land itself, and any buildings on it, are registered together.

6. How is title to real estate evidenced? What is the name of the public register of title and the authorities responsible for managing it? Is electronic access and electronic conveyancing available?

Legal title to real estate requires both the:

- Execution of a sale deed that is passed before a notary public.
- Transfer of the property.

Legal title is effective from the date of grant. However, to be fully enforceable against third parties, the title must be filed and registered with the Real Estate Register of the relevant province.

7. What are the main information and documents registered in the public register of title? Can confidential information or documents be protected from disclosure in the public register of title? Can confidential information or documents be protected from disclosure in the public register of title?

The main information and documents that must be registered in the public Real Estate Register are:

- Public deeds creating, transferring, declaring, modifying or terminating interests in real property.
- Judicial decisions establishing attachments or other precautionary measures on real property, or restraining orders preventing the owners from disposing of the property.
- Preliminary sales agreements of real estate property under the Registration of Condominium Property Act.

There is no obligation to register all documents. Only the most relevant information must be included in the Real Estate Register.

Persons with a legitimate interest in discovering the legal status of the property, documents, precautionary measures or restraining orders can request a special judicial authorisation to obtain a copy of the relevant title deed, recorded in the Notary's College (*Colegio de Escribanos*) in the province where the deed was granted.

The information available at the Real Estate Register can be obtained through reports or certificates issued by it.

State guarantee of title

8. Is there a state guarantee of title? Is the authority that manages the public register liable to pay compensation for any errors it makes in relation to title registration? Is title insurance available and is it commonly used?

There is no specific state guarantee concerning the accuracy of records made by officers based on public deeds or other documents. However, any party incurring loss due to a registration error can sue the state for damages caused by the inaccuracy of the Real Estate Register.

Title insurance is not yet available and it is unlikely that it will be available in the near future.

9. How can real estate be held (that is, what types of tenure and other main ownership rights exist over land)?

Ownership of real estate is governed by the Civil Code, which applies to all real estate located in Argentina. Under the Civil Code:

- Legal titles which exist *in rem* can only be created by law.
- There are a limited number of *in rem* titles that can be admitted and registered, for example:
 - mortgages;
 - leasehold rights;
 - servitudes;
 - usufruct.

All real estate rights are derived from ownership and generally comprise:

- **Ownership rights.** Similar to common law, these rights are defined as those under which a certain thing is subject to the absolute will and discretion of a given person (subject to any specified legal restrictions).
- **Personal rights.** These rights may also exist in relation to real estate (for example, leases and gratuitous use).

Sale of real estate

Preliminary agreements

10. What types of preliminary agreements are typically used in the sale of real estate? Are they legally binding?

Real estate brokers are usually hired for the sale and purchase of real estate or for lease transactions. Real estate is usually marketed in newspapers, or directly marketed to clients and investors.

Commercial negotiations depend on the size, value and purpose of the property that is being sold or leased.

A buyer's offer to purchase real estate property, made through a broker, often includes a reserve. Under the reserve, the potential buyer provides a deposit to the seller or broker of a certain amount of money, as proof that the offer is reliable. If the agreement is not completed for reasons attributed to the potential buyer (unless they have been specifically waived in the reserve), the potential buyer will lose the amount of money deposited as reserve (usually 5% to 10% of the purchase price offered).

The reserve, once accepted by the seller, creates a period of exclusivity for the potential buyer against rival buyers and limits the disposal faculty of the seller regarding the property during this period of exclusivity. If the seller accepts the reserve, but subsequently withdraws his acceptance of the offer, the seller must reimburse the deposit or reserve received from the potential buyer plus an additional amount equal to the deposit or reserve.

Sale contract

11. Briefly outline the typical main provisions of a corporate real estate sale contract and main real estate provisions of a typical share purchase agreement.

The purchase agreement is a contract by which the seller agrees to deliver and convey a real estate property to the buyer in exchange for a purchase price. Through the purchase agreement, both parties are bound to execute the corresponding public transfer deed. To offer protection against the seller's bankruptcy or reorganisation proceedings, the buyer must pay at least 25% of the purchase price under the reserve. Once this has been paid, if the seller refuses to execute the public transfer deed on time, the buyer is entitled to initiate judicial proceeding to force the execution of the deed.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition and what key areas does it cover? Which documents are typically reviewed? Which specialist advisers are usually involved and which reports do they typically produce?

Before the execution of any arrangement, it is advisable to perform a detailed audit or due diligence relating to the following issues:

- The parties of the transaction.
- The object or purpose of the transaction (that is, the real estate property itself, including the ownership background, its conditions, its legal and administrative status, and any environmental concerns).
- Any issues related to the target project or development (for example, feasibility and the applicable regulatory framework).

The legal audit should be completed simultaneously with other similar analysis and studies carried out by the following professionals:

- Notary public.
- Accounting and financial advisors.
- Architects.
- Engineers.
- Land surveyor.

Sellers' warranties

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover? What are the main limitations on warranties, for example are they typically qualified by disclosure?

The seller must warrant that:

- The seller holds perfect title to the real estate property (that is, that there are no doubts regarding the seller's capacity to sell).
- There are no liens, encumbrances or judicial proceedings that prohibit the seller from freely disposing of the property.

- The property is free from occupants or tenants.

The seller can also warrant that, under municipal zoning regulations, the real estate property can be used for a specific commercial activity.

Liability

14. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

Buyers of real estate are, by law, granted an eviction guarantee. This entitles the buyer to sue the seller for damages if the buyer loses the real estate acquired due to a judicial decision supporting a third party's claim to a better title to the property.

The seller is also responsible to the buyer for hidden defects in the real estate property, provided the defects:

- Are relevant.
- Existed before the sale and were not specifically declared to the buyer.

The existence of hidden defects means the buyer can file legal proceedings to either:

- Terminate the agreement, with a refund of the purchase price plus interest.
- Reduce the purchase price but continue with the purchase.

The time limit for either lawsuit is three months from the date the buyer becomes aware of the defect.

15. Briefly outline the environmental legislation and potential liability for a buyer in a purchase of real estate. Is it common to carry out environmental surveys and searches and to obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

In Argentina liability for environmental matters is in principle borne by the person or entity who caused the damage, whether this person or entity is the owner of the real estate or not. However, certain provincial rules establish that, if it is not possible to determine who actually caused the environmental pollution, the owner of the real estate can be held liable for it (*Resolution OPDS No. 95/14*).

Within the context of real estate transactions and/or M&A, it is common to carry out environmental surveys (for example, Phase I and Phase II Reports) to identify environmental liabilities associated with such transactions. Verified environmental situations and liability arising from them can be dealt with in sale contracts in different ways. The parties can:

- Impose an obligation to remediate environmental pollution on the person/entity who caused the pollution.
- Negotiate a price adjustment (a reduction of the initial sale price) taking into account identified contamination and the costs of remediating or correcting the pollution.
- Include in the sale contract indemnities to protect the innocent party (that is, the party that did not cause or generate the pollution).

Regarding environmental insurance, section 22 of the General Environmental Act No. 25,675 (GEL) states that every person or entity (private or public), that develops activities that may adversely impact the environment, must obtain environmental insurance to cover potential damage that their activities may cause. There are several options in the market to comply with such requirement, but the most popular is the environmental bond (*póliza de caución ambiental*).

16. Can an owner or occupier inherit liability for other matters relating to the real estate even if they occurred before it bought or occupied it? Can a seller or occupier retain any other liability relating to the real estate after it has disposed of it?

The buyer can inherit liability for damage relating to the real estate, if the damage occurred before the purchase. The Civil Code provides for objective liability in certain cases, which means the owner is presumed responsible for damage caused by defects in the property, unless he can prove the guilt of either:

- The seller.
- A third party.

Therefore, the buyer has the burden of proving either the damage to the property

- Existed before the purchase.
- The fault of a third party.

However, the parties can contractually agree that the seller will not be responsible for the damage caused before the purchase, except if the damage was deliberately caused by the seller (*dolus*).

If it is not possible to determine precisely the extent of the damage caused by each party, the Environmental General Act (*Act 25,675*) establishes joint and several liability of the seller and the buyer, irrespective of any potential right of recovery between the parties.

The seller is liable for any damage caused to the real estate property, up to the date the property is legally transferred to the buyer.

However, the seller is responsible for hidden defects in the real estate property, if both of the following applies (*Civil Code*):

- The defects are relevant.
- The buyer claims for the damage within three months from the date it becomes aware of the defect(s) and the defect(s) has not been duly declared by the seller at the purchase contract.

The parties can set out who will be liable for hidden defects in the purchase contract. However, the seller retains liability for environmental damage from any hazardous waste it created, as it is responsible for managing that hazardous waste from the moment it is created until its final disposal.

Completion arrangements

17. What are the typical arrangements and main documents required for completion of the sale? When does title transfer and what are the formal legal requirements to execute the sale documents, transfer the real estate and register the change of title? Is notarisation required?

An offer is based on conditions offered or foreseen in the reserve. The broker then takes the real estate off the market until the seller decides whether to accept the offer. Once the seller accepts the reserve, there are several alternatives as to when the parties become legally bound, depending on the payment conditions.

To be enforceable against third parties, the public deed of transfer of title must be registered in the relevant provincial Real Estate Register.

The transfer of title of real property is made before a notary public, through a deed that must be registered in the Real Estate Register in the province in which the real estate property is located.

Between the parties, the transfer is completed once the public deed is executed.

In relation to third parties, the transfer is known and can be challenged as of the moment of registration before the respective Property Registry.

Real estate tax

18. Is stamp duty/transfer tax (or equivalent) payable on the purchase of real estate? Who pays, what are the rates and are there any exemptions? Does it apply to the transfer of shares in a company holding real estate and at what rate?

Stamp tax is payable on any sale or purchase agreement that bears the signature of both parties, at the rate specified by the province.

Parties can be legally exempt from stamp tax by structuring the purchase as an individual offer (usually executed by the seller) with a corresponding letter of acceptance. These documents must be:

- Separate from each other.
- Only signed by the corresponding party.

The taxable base is the total value of the transaction as set out in the purchase agreement. The applicable rate varies (usually about 3% of the purchase price) depending on the province.

Local tax authorities can claim the total stamp tax due from either party to the transaction. However, it is customary for each party to simply pay 50% of the due stamp tax.

To pay the applicable tax, a tax return must be filed. The payment term depends on the relevant province, usually ranging from ten to 20 working days.

Subject to certain limitations, the purchase agreement for a family's only residence is exempt from stamp tax in some provinces.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios? What is the general approach of the tax authorities in your jurisdiction to such schemes?

The most common methods used to mitigate tax liabilities when acquiring a real estate portfolio are:

- Fulfilling the procedure outlined in Act 11,867 on the transfer of going concerns. This involves providing the tax authority with a notification.
- The creation of an escrow account to cover any potential tax liabilities. The buyer usually requests an indemnity letter from the seller.
- For the buyer to request from the seller an indemnity letter against potential tax claims.
- Holding business premises.

20. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

VAT is generally not payable on the sale of real estate property.

However, VAT may be payable on improvements made by construction companies to the owned real estate properties when the property is sold. In these circumstances, the taxable base (that is, the amount that is subject to tax) is determined by the agreed value of the improvements, as provided in the purchase agreement (provided the agreed value is not lower than the increase in the fiscal value of the property due to the improvement or its proportional cost). The general applicable VAT rate is 21%, although improvements for housing purposes are levied at a 10.5% rate.

21. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?

Business premises can be subject to several municipal contributions, which vary according to the province in which the business is located.

The main contribution levied on business premises is the inspection of security and hygiene contribution. This is usually calculated by applying a fixed rate on the company's gross income. The rate is usually 0.5%.

Business premises may also pay other contributions, depending on their commercial activity and location. These contributions include those for:

- Lighting, sweeping and cleaning of streets.
- Publicity and promotion made.

Climate change issues

22. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

There are currently no targets to reduce greenhouse gas emissions from buildings.

However the following are relevant:

- The Province of Buenos Aires enacted Act 13,059 in 2003 to implement an energy efficient system for insulating buildings (although the regulatory details of this law are not yet defined).
- The City of Buenos Aires enacted Act 4,428 in 2013 to introduce tax benefits to those buildings with green areas on the roof or terrace.
- A draft law was passed in 2013 in the legislature of the city of Buenos Aires that would force buildings with at least six floors to have their own power unit.
- A draft law was passed in 2013 in the legislature of the city of Buenos Aires that promotes sustainable construction. This Bill is currently being analysed.

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

Provisions relating to energy efficiency of buildings are not commonly included. Argentina is starting to include such provisions and is evolving slowly. However, green matters including efficiency of the buildings are topical, and are gradually being used in the commercialisation of projects.

Real estate finance

Secured lending involving real estate

24. Briefly outline the typical security package required by lenders in relation to real estate lending. How are the most common forms of security interest relating to real estate created and perfected (that is, made valid and enforceable)?

Financial lending is currently lacking in Argentina and has been for most of the past decade, due to economic instability.

The most common forms of security interest relating to real estate are:

- **Mortgage.** This is the usual security interest over real estate. Under Argentine law, a mortgage is legal and binding on the parties when it is executed as a public deed. To be perfected and valid against third parties, it must be registered in the Real Estate Registry of the jurisdiction where the real estate is located.
- **Trust.** This security interest is becoming very popular, since its execution is more practical than other security interests. It is regulated by Law 24,441 at federal level, is created by contract, and cannot last longer than 30 years. To be effective against third parties, it must be registered in the Real Estate Registry of the jurisdiction where the real estate is located.

On 1 August 2015 a new Unified Civil and Commercial Code will be in effect in Argentina, which will in some ways amend the current legislation applicable to real estate transactions.

Stamp tax is a local tax levied on the execution of non-gratuitous agreements and other acts. Although it depends on the local jurisdiction where the real estate is located, mortgages are generally subject to stamp tax. For instance, in the Province of Buenos Aires the applicable tax rate is 1.8% of the secured amount (*Article 271, Province of Buenos Aires Tax Code*). In some jurisdictions, such as the

City of Buenos Aires (*Article 460(19), City of Buenos Aires Tax Code*), mortgages are exempt from stamp tax, provided that the agreement that created the guaranteed obligation was subject to stamp tax.

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

Loan agreements in Argentina, although unusual at the moment (*see Question 24*), include the typical provisions in agreements in common law jurisdictions, for example:

- Representations and warranties.
- Conditions precedent.
- Conditions to closing.
- Financial covenants.
- Default and cross default.

26. Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

Argentine environmental legislation sets out as a general rule the polluter-pays legal principle, whereby persons or companies who cause adverse effects to the environment have the obligation to remediate such damage. In most cases, lenders are just third parties and will not incur such liability. In any event, lenders will want to ensure that there is no liability on the properties (environmental or otherwise), to avoid contingencies that may negatively affect the value of the property which secures the loan.

27. Briefly outline the main remedies for lenders in relation to the secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

In case of a mortgage, the only remedy after a default of the borrower is judicial foreclosure which will lead to the judicial sale of the collateral. This procedure can also be shortened, to speed up the process.

Regarding trusts, if the borrower defaults the trustee will liquidate the trust by selling the conveyed property and distributing the product of the sale to the lenders.

In case of bankruptcy or Chapter 11 (*concurso preventivo*) of the borrower, the mortgage will rank ahead of the rest of the borrower's creditors, and the lender will be able to realise the property.

28. Briefly outline key additional issues for lenders in relation to construction and development projects.

Before granting the loan to the borrower, the lender should analyse, among others, the:

- Track record of the developer and constructor.
- Existence of other investors.
- Project's feasibility.
- Commercial perspective of the project.
- Permits already granted and still outstanding.
- Legal structure through which the project will be implemented.

Other real estate financing techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

Real estate securitisation has not yet developed in Argentina. There is some experience but it has not evolved as much as in other countries, for example in Europe.

Real estate leases

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable? Which legislation applies?

Parties cannot agree to set aside the provisions of the Urban Leases Act, which regulates contractual lease provisions (such as minimum and maximum terms).

31. What are the formal legal requirements to execute a lease? Does the lease have to be executed by certain parties or as a deed? How do the formalities differ for a company, partnership and for individuals?

Since a lease is a private agreement, it can be executed without any specific requirements, except that the lease agreement must be in writing and duly signed.

Rent payments

32. How are rent levels usually reviewed and are there restrictions on this? Is stamp duty and VAT (or equivalent) payable on rent? Is a rent security deposit required and does it have to be managed in a certain way?

The following are prohibited, whatever the cause:

- Currency updates of the rent.
- Price indexation (that is, a normalised average price for a given class of goods or services, during a certain amount of time. The index measures the economy's price level or the cost of living).
- Costs variation.
- Debt restatement.

The effect of inflation is usually mitigated in real estate business contracts, mainly through the following mechanisms:

- Price escalation clauses in leases.
- Price variation according to the cost of the lease.

These rules are based on the use and custom of the local real estate market and have been supported by local courts.

VAT is payable on real estate leases at a rate of 21%. In some cases, VAT may be subject to certain exemptions in relation to residential, agricultural and governmental uses.

Length of term and security of occupation

33. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

Urban leases have a minimum term of:

- Two years, if leased for residential purposes.
- Three years, if leased for commercial purposes.

In both cases, the maximum term is ten years. Parties cannot agree to lease terms shorter than the minimum or longer than the maximum.

Unless expressly agreed, the tenant cannot renew the term of the lease at its termination.

Disposal

34. What restrictions typically apply to the disposal of the lease by the tenant? Can the tenant assign or sublet the lease with the landlord's consent? Can tenants share their premises with companies in the same group? What is the effect of a legal reorganisation or transfer/sale of the tenant on the lease and on a guarantee of the lease?

In both rural and residential leases, it is often expressly agreed that, without the express written agreement of the landlord, the tenant cannot:

- Sublet the real estate property.
- Assign its rights under the lease agreement.

In the absence of these terms, the tenant can sublease the real estate.

If the real estate is leased to a well known company (that is, a company with a known brand, track record or commercial activity) for business purposes, it is usual to allow the tenant to sublease or assign the agreement in favour of companies of the same corporate group, but the original lessee remains the tenant under the lease as guarantor of the sublease or assignment.

35. Does a landlord or tenant retain any liability under the lease after the lease is assigned?

If the lease is assigned, the original tenant will not retain any liability unless it is expressly established in the agreement.

If there is a sublease, the tenant is responsible for any possible liability.

The landlord, on the other hand, will always maintain its obligations as assumed in the original lease.

Repair and insurance

36. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of lease improvements?

The tenant must make general repairs as necessary for the regular use of the real estate property. However, it is generally understood that the owner pays for extraordinary repairs (that is, repairs which go beyond the necessary repairs for regular use of the property). There is an exception to this principle when the repairs are due to the tenant's fault or negligence. In these circumstances, the tenant must pay these costs.

Improvements to the real estate cannot be made without the express agreement of the landlord.

The lessee (tenant) is usually responsible for obtaining general fire and civil liability insurance (covering damages that might occur in the leased real estate). The lessor (landlord) is nominated as the beneficiary of those insurance policies (unless something else has been agreed in the purchase agreement).

Landlord's remedies and termination

37. What remedies are available to a landlord for a breach of the lease by the tenant? On what grounds can the landlord usually terminate the lease and what restrictions and procedures apply? What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

Both the landlord and the tenant can terminate the lease in the following circumstances:

- An act of force majeure.
- Total eviction from the real estate.
- Partial eviction from the real estate (that is, an eviction resulting from the landlord depriving the tenant of the use of a portion of the leased premises).
- In accordance with an express clause setting out when the lease can be terminated.

The landlord can terminate the lease due to:

- Non-payment of rents (if this has been agreed in the lease agreement).
- Performance of harmful works or unauthorised improvements to the premises.
- Changes to the agreed use.
- Abandonment of, or damage to, the real estate.

The Reorganisation and Bankruptcy Act (*Act 24,522*) (Bankruptcy Act) refers to, among other things, preventive and bankruptcy proceedings in relation to both physical persons and companies. Under the Bankruptcy Act, insolvency rules are mandatory and therefore cannot be modified by agreement between the parties.

Preventive proceedings

There is no specific regulation established by law in relation to preventative proceedings. Therefore preventive proceedings (that is, proceedings foreseen in the Bankruptcy Act to avoid the bankruptcy of the debtor) are subject to general bankruptcy rules. Under these rules, the preventative proceedings can continue after the filing of bankruptcy proceedings until the declaration of the tenant's bankruptcy, if the tenant requests this within a certain time. The debtor tenant will then continue performing his obligations under the lease agreement.

Tenant's bankruptcy

If the real estate is for commercial use, the lease agreement is suspended on the tenant's bankruptcy until the judge makes a final order (unless the judge orders the immediate continuation of the lease after the bankruptcy). The landlord must appear before the bankruptcy judge and state his desire to continue or terminate the agreement. If the court does not make a decision within a certain term established by law, the lease will terminate.

38. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the leased premises? Can the tenant terminate the lease in certain circumstances?

The tenant can terminate the lease due to:

- A unilateral decision to terminate the agreement. The tenant must pay a penalty that will vary on termination and it needs to be after six months of the lease elapsing.
- Existing defects in the real estate that hinder its use.

Planning and development controls

39. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

The National Constitution (Constitution) empowers the government to compulsorily purchase real estate for public use (*Article 17, Constitution*):

- In certain circumstances provided by law, and with prior express approval of Congress.
- If compensation is paid.

Public use includes any activity for public welfare (for example, construction of a new highway) (*National Expropriation Act (Act 21,499) (Expropriation Act)*).

The following steps are taken during a compulsory purchase:

- A declaration of public use by law.
- The filing of expropriation judicial proceedings.
- A price appraisal of the property determined previously by a court.
- A court order for the expropriation and determination of the amount of compensation.
- The property being taken from the owner after payment of the compensation.

Compensation must be determined by a court order that takes into consideration the value of the real estate property when both the:

- Property is taken.
- Compensation is actually paid.

The compensation must reflect both (*Expropriation Act*):

- The market value of the real estate property.
- Any damages that are a direct consequence of the expropriation (that is, the compulsory purchase).

However, any type of compensation that could be a product of lost profits is excluded from the calculation of compensation (*Expropriation Act*).

40. What authorities regulate planning control and which legislation applies? Is there specific protection for special categories of buildings such as historic buildings?

The authorities responsible for planning control vary depending on the:

- Province in which the real estate is located.
- Urban distribution (that is, guidelines to be followed for city planning).

The municipalities (that is, locally elected governing bodies) are generally responsible for controlling and regulating the construction. The following are the most significant rules for construction and planning:

- Urban Planning Code.
- Building Codes.

- Authorisation Code.
- Environmental Impact Act.
- Internal regulations.

41. What planning consents are required for building works and the use of a building?

The following planning consents are required:

- Use Certificate (180-day duration).
- Conditional Use Certificate (365-day duration).
- Other authorisations specific to the activity involved.

In addition, real estate developments require an Environmental Aptitude Certificate that:

- Determines whether or not to carry out the plan, programme or project.
- Sets the conditions to be performed to protect the environment and natural resources (if the plan, programme or project is to be carried out).

42. What are the main authorisation and consultation procedures in relation to planning consents?

Initial consents

In relation to initial planning consents, the main authorisation and consultation procedures are overseen by:

- General Management of Works Control and Cadastre (*Dirección General de Fiscalización de Obras y Catastro*).
- General Management of Authorisations and Permits (*Dirección General de Habilitación y Permisos*).

The Environmental Aptitude Certificate is a required initial consent (see *Question 41*). From the moment the application is received, the Environmental Aptitude Certificate takes about 180 days to be issued.

Third party rights and appeals

Third parties can take legal action to stop a project by filing precautionary measures. Interested or potentially affected parties can file complaints if the project may eventually affect their rights or the rights of the community in general. The courts resolve these matters on a case-by-case basis.

After analysing and concluding that the activities, projects, programmes or enterprises have a significant environmental effect, the government must convene a public hearing within ten working days (*Environmental Impact Act*).

There is a right of appeal against planning decisions, but there is no specific appeal system under the Environmental Impact Act. Planning decisions can therefore be appealed through standard administrative proceedings (*Administrative and Tributary Litigious Code of the City of Buenos Aires*).

Reform

43. Are there any proposals to reform real estate law in your jurisdiction?

With the enactment of Law No. 26.994, the civil and the commercial codes have been unified. This will come into force in August 2015. This will affect the Business Associations Law, the Horizontal Property Law, the Trust Law, and many other rulings concerned with real estate property rights.

Online resources

Ministry of Economy and Finance

W www.infoleg.gov.ar/

Description. This is the official website of the Ministry of Economy and Finance where up-to-date original language text of legislation can be obtained.

Contributor profile

Pedro Nicholson

Estudio Beccar Varela



T +54 11 4379 6881

F +54 11 43 79 68 60

E pnicholson@ebv.com.ar

W www.ebv.com.ar

Professional qualifications. Lawyer, Catholic University, Buenos Aires, Argentina, 1991; LL.M, University of Illinois at Urbana-Champaign, US, 1994

Areas of practice. Real estate and hospitality; corporate law; mergers and acquisitions

Languages. Spanish, English, French, Portuguese

Resource information

Resource ID: 2-509-8608

Law stated date: 01-May-2015

Products: Corporate Real Estate multi-jurisdictional guide, PLC Cross-border, PLC UK Corporate, PLC UK Finance, PLC UK Law Department, PLC UK Property, PLC UK Public Sector, PLC UK Tax, PLC US Law Department, PLC US Real Estate

Series: Country Q&A

Related content

Article

Transfer tax on the sale of real estate (<http://global.practicallaw.comtopic7-508-0012>)

Country Q&A

Construction and projects in Argentina: overview (<http://global.practicallaw.comtopic1-519-9815>)

Environmental law and practice in Argentina: overview (<http://global.practicallaw.comtopic8-500-1340>)

Lending and taking security in Argentina: overview (<http://global.practicallaw.comtopic9-517-1836>)

©2015 Thomson Reuters. All rights reserved. Privacy Policy and Cookies (<http://www.practicallaw.com/3-386-5597>). Legal Information (<http://www.practicallaw.com/8-531-0965>). Subscription enquiries +44 (0)20 7202 1220 or email subscriptions@practicallaw.com. The reference after links to resources on our site (e.g. 2-123-4567) is to the PLC Reference ID. This will include any PDF or Word versions of articles.