

2012

## Cross-Border Real Estate Practice

Anders Forkman

Lavia Haidempergher

Estefania Peiretti

Terry A. Selzer

Rupen Kanawala

*See next page for additional authors*

---

### Recommended Citation

Anders Forkman et al., *Cross-Border Real Estate Practice*, 46 INT'L L. 321 (2012)  
<https://scholar.smu.edu/til/vol46/iss1/24>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in *International Lawyer* by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

---

## Cross-Border Real Estate Practice

### Authors

Anders Forkman, Lavia Haidempergher, Estefania Peiretti, Terry A. Selzer, Rupen Kanawala, Timur Bondaryev, Victoria González, Meritxell Yus Guijarro, Cristina Jiménez Labayru, Sara Perez Peña, and Vanessa Sánchez López

# Cross-Border Real Estate Practice

ANDERS FORKMAN, LAURA LAVIA HAIDEMPERGHER, ESTEFANÍA PEIRETTI, TERRY A. SELZER, RUPEN KANAWALA, TIMUR BONDARYEV, VICTORIA GONZÁLEZ, MERITXELL YUS GUJARRO, CRISTINA JIMÉNEZ LABAYRU, SARA PÉREZ PEÑA, AND VANESSA SÁNCHEZ LÓPEZ

Financial turmoil and political uncertainty in 2011 affected the real estate markets of many countries. This often produced new or amended legislation regarding taxation in general and real estate in particular. This article surveys developments during 2011 in Argentina, Denmark, India, Ukraine, and Spain.

## I. Argentina\*

In 2011, the most significant development in the real estate field in Argentina was a bill sponsored by the executive branch aimed to establish restrictions on the ownership and acquisition of rural land by foreign entities or individuals.<sup>1</sup> The bill would create a special registry (the National Registry of Rural Land), and its main function would be to carry out the real estate and ownership registry of rural land in the country. Currently, this registration relies on provincial land registries. Consequently, each registry would have to resign its authority in favor of the national registry created by this bill. This bill appears to affect the provinces' autonomy because Argentina is a federal country.

The bill would apply to all individuals or legal entities that own a plot of land for rural purposes as of January 1, 2010. In addition, foreign individuals or entities owning rural land at the time of enforcement of the law would be obliged to inform the National Registry of Rural Land (an authority created by the bill) within a 180-day term of the ownership of rural land.

In connection with the restrictions, the bill sets forth a twenty percent limit for legal ownership of rural land within the national territory by foreign individuals or entities. In addition, ownership of foreign individuals or entities with the same nationality would not

---

\* This section on Argentina was authored by Laura Lavia Haidempergher, Vice-Chair, Cross-Border Real Estate Practice Committee, Partner at M. & M. Bomchil, and Estefanía Peiretti, associate at M. & M. Bomchil.

1. Bill introduced to the Congress by the Executive Branch on Apr. 27, 2011, File No. 0001-PE-2011, published in: *Trámite Parlamentario No. 36*; Apr. 27, 2011, available at <http://www1.hcdn.gov.ar/dependencias/dsecretaria/Periodo2011/PDF2011/TP2011/0001-PE-11.pdf> [hereinafter Apr. 27, 2011 Bill].

exceed thirty percent of the assigned percentage,<sup>2</sup> and no single foreign individual or entity could own land in excess of 1,000 hectares. The bill defines “foreign entities” as companies that:

- (1) have been incorporated in a foreign country;
- (2) have been incorporated in Argentina but foreign individuals or companies incorporated in foreign countries hold a majority stake, or are entitled to the votes needed to prevail at shareholders’ meetings, or exercise control of the local company by means of special relationships such as *de facto* control, or hold more than 25 percent of the shares;
- (3) trusts in which foreign individuals or entities are beneficiaries in excess of 25 percent;
- (4) foreign individuals or companies that participate in any type of joint ventures or collaborative agreements that exceeds 25 percent; or
- (5) foreign individuals or companies that hold convertible bonds issued by a company incorporated in Argentina, in such case that, if converted, the foreign individuals or corporations might acquire more than 25 percent of such company.<sup>3</sup>

In the case of the acquisition of rural land located within security zones,<sup>4</sup> the foreign national must request a prior authorization to the Ministry of Homeland Affairs.

Supporters of the regime proposed by the bill consider that these limitations are needed to avoid unfair competition between foreign and local investors because foreign investors benefit from the favorable exchange rate. From a constitutional viewpoint, the bill seems to contradict sections 14, 20, and 25 of the Argentina National Constitution. While sections 14 and 25 forbid discrimination and promote equality before the law, section 20 expressly grants foreign nationals the right to acquire and sell properties in the country in the same conditions as Argentinean citizens.

The bill also states that, for the purposes of its application and regarding bilateral investment treaties to which Argentina is a party, the purchase of rural land shall not be deemed as an investment because it is a non-renewable natural resource. This provision violates the fair and equitable treatment principle in international investment law.

The bill is expected to be enacted in the short term, particularly after the results of the recent presidential elections,<sup>5</sup> but in an amended version in light of other bills introduced in the House of Representatives on the same matter.<sup>6</sup> It seems that the twenty-percent

2. Apr. 27, 2011 Bill, *supra* note 1, art. 8.

3. *Id.* art. 3.

4. There are two types of security areas within the Argentine territory: (1) border areas (including rural or suburban areas adjacent to the borders with neighboring countries listed in Decree No. 887/1994), and (2) internal areas (all rural or suburban areas located within 30 km, *i.e.* 18.64 miles from military headquarters or other security forces facilities). Laura Haidempergher, *Real Estate Projects in Argentina’s Protected Areas*, INT’L BAR ASS’N. (Oct. 2008), available at <http://www.ksw.at/fileadmin/dateien/RealEstateLawOct2008.pdf>.

5. President Cristina Fernández de Kirchner was reelected for a second mandate. Alexei Barrionuevo, *Kirchner Achieves an Easy Victory in Argentina Presidential Election*, N.Y. TIMES, Oct. 24, 2011, at A4, available at <http://www.nytimes.com/2011/10/24/world/americas/kirchner-appears-headed-to-second-term-as-argentinias-president.html?pagewanted=all>.

6. Files No. 1270-D-2011 and 2015-D-2009, available at <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=2015-D-2009>, and <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=1270-D-2011>.

cap on the ownership of lands by foreign entities or individuals would remain mandatory, but other issues might be reviewed (*e.g.*, exclusion of foreign individuals that are permanent residents in the country for a given period).

## II. Denmark\*

In 2011, a continued slow market for real estate transactions was seen in Denmark, as well as most of Europe. Although there are many sellers willing to sell at discounted prices, there are few buyers. Banks and other financial institutions are reluctant to issue new financing because either they have insufficient resources or are scared off by the current state of the real estate market. Private equity firms, in particular, seem to be sitting on the sidelines and waiting for greater stability in the European economy before reentering the real estate market. Although many assets are distressed, banks in Denmark and Europe have not started foreclosing on distressed properties to the extent seen in the United States.

In the Danish residential market, there has been an increase in the number of houses and apartments put up for sale in the second half of 2011 even though many houses for sale have been taken off the market. In addition, there has been an increase in 2011 in the average price discounts for the small number of houses and apartments that have sold.

There was no new Danish legislation affecting real estate during 2011. Nor has the new government, elected in September 2011, called for any new legislation. There has been talk about the imposition of a new EU tax on share transactions, but few details have been released.

Over the past two years, the government tax authorities have started to focus more on investigating dividend and interest payments to offshore entities. The authorities are looking closer at where such payments ultimately end up, not just where the initial payments were made. For example, dividend payments from a Danish company to a company in a Member State may not require any tax payment in Denmark. But if the payments are then transferred to an off-shore account, the Danish tax authorities are demanding tax payments, arguing that the company in the other Member State is merely a shell company and the dividends are really being made to the off-shore company and thus, subject to Danish tax.

## III. India\*

In the State of Maharashtra—and especially in its cities including Mumbai—housing units are constituted in the form of co-operative societies, which must be registered under the Maharashtra Co-Operative Societies Act, 1960.<sup>7</sup> Albeit long established, the Act has come to be of great importance to at least foreign investors, and, therefore, warrants a description.

---

\* This section was authored by Terry A. Selzer, Co-Chair, Cross-Border Real Estate Practice Committee, Head of Cross-Border Transactions, Stampe, Haume & Hasselriis, Copenhagen, Denmark.

\* This section was authored by Rupen Kanawala, Senior Associate, Juris Corp, Mumbai, India.

7. The Maharashtra Co-Operative Societies Act, No. XXIV of 1961 § 4, *available at* <http://xa.yimg.com/kq/groups/19351422/1486681708/name/Maharashtra+Co-operative+Societies+Act,+1960.pdf>.

The Act came into force in 1962 to provide for orderly development of the co-operative (mutual benefit) movement in the State of Maharashtra. This act was given effect to directive principles enunciated in the Constitution of India. Generally, any society that seeks to promote the economic interests or general welfare of its members or the public can be registered under the Act. For any society to be registered under the act, the following conditions must be fulfilled:<sup>8</sup>

- (1) A society must frame its by-laws, the rules that govern a co-operative society and its members. By-laws are akin to a company's Articles of Association.
- (2) As per the Act, a member is a person joining in an application to register a co-operative society, or a person duly admitted to membership of a society after the registration. Any individual who is competent to contract, a firm, company, or any other corporate body constituted under the laws in force at the time can be a member of a co-operative housing society.<sup>9</sup>

Under the Act, no society can, without sufficient cause, refuse membership to any person. When a person is refused membership, such person can tender an application together with payment to the Registrar, who shall forward the application and the amount to the society concerned within thirty days from the date of receipt of such application and the amount. But if the society fails to communicate its decision to the applicant within sixty days of receipt of the application and amount, then the person shall be deemed a member. Any person aggrieved by the decision of the society refusing admission may appeal to the Registrar within three months from the date of its receipt. On appeal, the decision of the Registrar shall be final, and the Registrar shall communicate his decision within fifteen days from the date thereof.

In *Usha Arvind Dongre v. Suresh Raghunath Kotwal*, the court held that the title of a flat remains in the society and is not affected by the transfer of shares in the society. Only the right to occupy a flat flows from the ownership of share in such a co-operative society.<sup>10</sup>

A society is free to put in restrictive covenants as to the nature of persons who can be admitted to membership. The Supreme Court of India in *Zoroastrian Co-Operative Housing Society v. District Registrar Co-Operative Society* dealt with a stipulation in the bylaws that the transferee/incoming member had to be of the Zoroastrian faith (religion), and found that the stipulation was not against the law and therefore enforceable.<sup>11</sup> The Supreme Court held that as long as the approved bylaw stands and the Act does not provide for invalidity of such a bylaw, the Supreme Court could not hold that the formation of such a society under the Act would be opposed to public policy and consequently liable to be declared void or that society directed to amend its basic bylaw relating to qualification for membership. Thus, the Court upheld the action of the co-operative society of disallowing a non-Zoroastrian to become a member of the society.

Membership granted by the society can be ceased if the member resigns and the resignation is accepted; if the member transfers all of his shares or interest in the society to

---

8. *Id.* at § 5. A society with unlimited liability can also be registered under certain circumstances.

9. *Id.* at §§ 6, 22.

10. *Usha Arvind Dongre v. Suresh Raghunath Kotwal*, (1989) 91 Bom. L.R. 233 (India), available at <http://indiankanoon.org/doc/558316/>.

11. *Zoroastrian Coop. Hous. Soc'y v. Dist. Registrar*, (2005) 5 S.C.C. 632 (India), available at <http://www.indiankanoon.org/doc/713373/>.

another member; on the member's death or removal or expulsion from the society; or when a firm, company, other corporate body, society, or trust is a member in the society when the society is dissolved or ceases to exist. On the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated or if no person is nominated, then to such person as may appear to the committee to be the heir or legal representative of the deceased member (a legal heir or representative should be duly admitted as member of the society). All transfers and payments made by a society shall be valid and effectual against any demand made upon the society by any other person.

Disputes, if any, can be referred to the Registrar appointed under the Act, in writing, along with any relevant records on which the dispute is based and any other statements or records that the Registrar may require. The Registrar may decide the dispute or refer it to a Co-operative Court having jurisdiction.

#### IV. Ukraine\*

The principal laws regulating real estate and construction sectors in Ukraine are the Civil Code,<sup>12</sup> the Commercial Code,<sup>13</sup> the Land Code,<sup>14</sup> the Laws "On Regulation of the Town-Planning Activities,"<sup>15</sup> "On Architectural Activities,"<sup>16</sup> and "On Fundamentals of Town-Planning."<sup>17</sup> In addition, there are a number of bylaws governing various industry-specific issues as well as technical standards and rules applicable to design and construction activities.

The activities of both local and foreign designers and contractors in Ukraine are subject to licensing. From time to time, state authorities reconsider the list of activities subject to licensing in the field of design and construction. Conducting construction and design activities without a license may amount to such activity being classified as unauthorized construction and may result in the imposition of financial fines or even confiscation of the constructed property, construction materials or equipment, or the destruction of the unauthorized construction.

According to the Land Code, foreign legal entities, foreign citizens, and joint ventures are prohibited from acquiring agricultural land into private ownership. As far as non-agricultural land is concerned, foreign entities and joint ventures may only acquire land ownership (1) within residential areas, if the foreign entities and joint ventures acquire real

---

\* This section was authored by Timur Bondaryev, Attorney-at-law, Managing partner, Arzinger, Kyiv, Ukraine.

12. CIVIL CODE [CIV. C.], No. 435-VI (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=435-15>.

13. COMMERCIAL CODE [COM. C.], No. 436-VI (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=436-15>.

14. LAND CODE [LAND C.], No. 2768-III (Ukr.), available at <http://zakon2.rada.gov.ua/rada/show/2768-14>.

15. Про регулювання містобудівної діяльності [On Regulation of the Town-Planning Activities], No. 3038-VI (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3038-17>.

16. Про архітектурну діяльність [On Architectural Activities], No. 687-XIV (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=687-14>.

17. Про основи містобудування [On Fundamentals of Town-Planning], No. 2780-XII (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2780-12>.

estate for construction of the property involved in the commercial activities; or (2) outside residential areas, if the foreign entities and joint ventures purchase real estate. But there exist certain schemes allowing foreigners to participate in agricultural business in Ukraine.

The land in the Ukraine is divided into nine categories by its designated use (purpose of use), i.e., lands of agricultural use, lands of residential and public use, lands of recreational use, etc. Designation of a land plot is normally indicated in the title document. A land plot may be used exclusively according to its designated purpose. Should a land plot be used outside of its designated use, this will provide grounds for cancellation of the respective land right. To use a land plot for purposes other than its original designated use or category, such land plot must be rezoned according to the procedure defined by the Cabinet of Ministers (CMU) of Ukraine.<sup>18</sup>

Ukraine is a civil law jurisdiction; so no precedents are established by courts for the future. Ukrainian courts adopt individual decisions on a case-by-case basis. Previous decisions of upper courts may be a persuasive authority for lower courts, but contradicting court practices exist on similar cases.

#### A. LABOR REQUIREMENTS

Ukrainian law does not require a minimum number of local employees to be employed on a construction project, except in the renewable energy sector. According to recent amendments to the Law of Ukraine "On Electrical Energy,"<sup>19</sup> the green tariff and other privileges for renewable energy producers should apply provided that, from January 1, 2012, the share of materials, fixed assets, works, and services of Ukrainian origin in the total construction cost of energy generation facilities should not be less than fifteen percent; from January 1, 2013, the share should not be less than thirty percent; and from January 1, 2014, the share should not be less than fifty percent. The respective order of determination of the share of raw materials, fixed assets, works, and services of Ukrainian origin in the construction cost is under preparation and is expected to be adopted by the end of 2011.

And in other sectors, the contractor is entitled to decide by itself on the quantity and the ratio of domestic and foreign labor to be engaged on a project.

#### B. NEW PERMITTING PROCEDURE

On February 17, 2011, the Law of Ukraine "On Regulation of City-Planning Activities"<sup>20</sup> (Law) was adopted. A set of particular requirements applicable to the design and construction of a particular property is now determined based on the category of object com-

18. Про затвердження Порядку зміни цільового призначення земель, які перебувають у власності громадян або юридичних осіб [On approval of the Procedure of Changing Designation of Lands Owned by Citizens and Legal Entities], CMU Decree No. 502 (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=502-2002-%EF>.

19. Про внесення змін до статті 17-1 Закону України "Про електроенергетику" щодо умов стимулювання виробництва електроенергії з а [On Amendment of Article 17-1 of the Law of Ukraine "On Electrical Energy" Regarding the Conditions of Stimulation of Electricity Production from Alternative Sources], No. 3549-VI (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3549-17>.

20. Про регулювання містобудівної діяльності [On Regulation of the Town-Planning Activities], No. 3038-VI (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3038-17>.

plexity (I through V).<sup>21</sup> A category of complexity is determined by a designer and a customer according to state construction norms and standards on basis of the class of consequences (responsibilities) of such object. But criteria for assigning of the object to IV and V categories of complexity are defined by the Cabinet of Ministers of Ukraine.<sup>22</sup> Specifically, for construction objects of I through III categories of complexity (*i.e.*, non-complex objects, including private residential houses) declarative principle (submission of respective declaration by the developer) shall be used for obtaining a construction permit and commissioning. But the permitting procedure for objects of IV and V categories (*i.e.*, shopping and entertainment centers, airports, theaters, etc.) remains in general the same as it was before the adoption of the Law.

According to the Law, the design documentation for construction is not subject to approval by state or local authorities, and the design documentation of objects of I through III categories of complexity is not subject to mandatory state expertise unless a land plot is located in the area with complicated geological and anthropogenic conditions. This benefits the customer in terms of significant cost and time savings.

The Law establishes limits of payments for development of infrastructure of settlements that shall not exceed four percent (for residential buildings) and ten percent (for non-residential constructions) of total estimated costs of construction.<sup>23</sup> The procedure for definition of the exact amounts of such payments shall be determined by local authorities.

The cornerstone of the Law is the introduction of a zoning model on January 1, 2012, that will be used in many jurisdictions. “The Ukrainian territory will be divided into nominal zones, each with strict parameters for construction that will set a maximum height for buildings and other criteria for design and construction.”<sup>24</sup>

Thus, an investor seeking to plan a real estate investment project in a given district will know from the outset what type of building can be built and what problems the investor must solve in planning the development. This will significantly facilitate projects by improving investment processes and eliminating bureaucratic obstacles—in particular, the waiting times for approval of documentation are likely to be significantly reduced.<sup>25</sup>

At the same time, land zoning may have a number of unpopular effects, particularly the imposition of a moratorium on investment activity until the development of the necessary zoning documentation.<sup>26</sup> But the provision is unlikely to come into force until January 1, 2012, because local authorities do not have funds in their budgets for the development of zoning plans. Therefore, these provisions are likely to come in force as of 2013 or even 2014.

21. *Id.* at art. 32, consider adding a list of the categories.

22. Про затвердження Порядку віднесення об'єктів будівництва до IV і V категорій складності [On Assigning Construction Objects to IV and V Category of Complexity], CMU Decree No. 557 (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=557-2011-%EF>.

23. On Regulation of the Town-Planning Activities, *supra* note 20, art. 40.

24. *Id.*

25. *Id.*

26. According to the Law, as of Jan. 1, 2012, in case of absence of the plans of zoning, the transfer of land plots of state or communal ownership into the ownership of individuals and legal entities for construction is prohibited. *Real Estate and Construction*, ARZINGER (Dec. 9, 2011), [http://www.arzinger.ua/file\\_collection/2\\_newsletter\\_09.12.2011\\_engl.pdf](http://www.arzinger.ua/file_collection/2_newsletter_09.12.2011_engl.pdf).

### C. TAXATION

Land and real estate objects in Ukraine are taxed separately. According to the Tax Code of Ukraine<sup>27</sup> that came into force on January 1, 2011, tax on real estate introduced as of January 1, 2012, is a local tax—the amount of which is defined by the local authorities. Such amount, however, shall not exceed the respective rates defined by the Tax Code. The object of taxation is residential property only. The tax base shall be the residential or living area of the facility.

The tax rate on rental incomes for both residents and non-residents amounts to fifteen percent or seventeen percent depending on the taxable amount, and this is a positive signal for foreign investors. Property acquisition transactions (asset deals) are subject to Value Added Tax (VAT). VAT-exempt are transactions on supply (sale, transfer) of certain land plots.

Land payment shall be made in the form of (1) land tax and (2) land rent. The owners of the land are subject to land tax and the lessees of the land are subject to land rent. Land rent cannot be less than the land tax for agricultural land, and for other categories of land, it amounts to triple land tax. Under the general rule, the land tax rate for land with statutory pecuniary appraisal amounts to one percent of its value.<sup>28</sup> For lands in populated areas and lands used for industry, transport, communications, and energy, the land tax is determined on the basis of the statutory pecuniary appraisal of such land plots and not on the basis of the purchase price defined in the respective purchase agreement, as it was the case before. While rental payments for public (state or municipal) land plots are VAT-exempt, the rental payments for private land plots are VAT-taxable.

The Tax Code introduces significant benefits for land plots allocated for renewable energy facilities (tax rate for such lands is twenty-five percent of the tax rate applicable to the appropriate land plot).<sup>29</sup>

### D. NEW TITLE REGISTRATION PROCEDURE

Ukrainian system of registration of rights to real estate is still in the development stage. The new revision of the Law of Ukraine “On State Registration of Rights to Real Estate and its Encumbrances” introduces a unified State Register of Real Property Rights (the Real Estate Register) as of January 1, 2012.<sup>30</sup> The Real Estate Register will contain information on rights to real estate, owners of real estate, technical information on buildings and structures, land plot cadaster plans, and information on transactions related to real estate, as well as all encumbrances imposed on a land plot or real estate object.

In Ukraine, a building and the underlying land plot enjoy separate legal treatment, are supported by separate title documents, and are subject to different registration procedures

27. TAX CODE [TAX C.], No. 2755-VI (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2755-17>.

28. Timur Bondaryev, *Taxation of Real Estate Transactions in Light of the New Tax Code*, INT’L BAR ASS’N, Sept. 2011, available at [http://arzinger.ua/file\\_collection/ua/Taxation\\_of\\_real\\_estate\\_transactions\\_in\\_light\\_of\\_the\\_new\\_Tax\\_Code.pdf](http://arzinger.ua/file_collection/ua/Taxation_of_real_estate_transactions_in_light_of_the_new_Tax_Code.pdf).

29. *Id.*

30. Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень [On State Registration of Rights to Real Estate and its Encumbrances], No. 1952-IV (Ukr.), available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1952-15>.

and taxation rules. For these reasons, the term “real estate” is often used in the Ukrainian legislation to denote “building and constructions” as distinct from “land.”

The past years saw the general trend toward the gradual implementation of the principle “Land Follows the Property.” In 2009, in pursuance of the above principle, the provisions of the Civil Code<sup>31</sup> and the Land Code<sup>32</sup> have been amended to the effect that the person acquiring the building simultaneously acquires the ownership or use rights to the respective land plot or part thereof accommodating such building; the rights to the land plot of the previous owner of the building terminate. When an acquirer is not entitled to own land under Ukrainian law, he acquires the right of land lease instead. Despite certain promising signs of the “automatic” transfer of land following the property, the principle does not work properly yet. As before, the parties would have to comply with the ordinary formalities and procedures to execute the transfer of title to land.

Pursuant to the Civil Code, all real estate sale and purchase agreements must be executed in written form and are subject to notarization. As of January 1, 2012, the right of ownership to a building, capital structure, or a land plot will arise upon its state registration with the Real Estate Register.

#### E. LAND REFORM

An important factor preventing the development of the land market in Ukraine is the temporary moratorium on alienation of agricultural land plots. The cancellation of the moratorium is conditional upon adoption of the Laws of Ukraine “On State Land Cadaster”<sup>33</sup> and “On Land Market.”<sup>34</sup>

The Law “On State Land Cadaster” establishes a unified and integral state land cadaster providing for fundamentally new rules regarding the land plot registration. According to draft Law “On Land Market,” the right of ownership on agricultural land is limited to Ukrainian citizens, small farmer enterprises, and the state; foreign individuals and legal entities (entities that have not less than 10 percent of foreign equity) are not entitled to acquire lands plots of agricultural purposes in ownership. Therefore, it is likely that foreign investors will not be allowed to directly invest in Ukrainian agricultural land that, taking into account the attractiveness of the agricultural business in Ukraine, will boost the development of alternative investment structures allowing foreign capital to invest in agriculture.

#### F. ANTI-BRIBERY LEGISLATION

Unlike U.S. and UK anti-bribery legislations, the anti-corruption legislation of Ukraine does not have an extraterritorial effect. The Law of Ukraine “On Principles of Preventing

31. CIV. C., No. 435-VI (Ukr.).

32. LAND C., No. 2768-III (Ukr.).

33. Про Державний земельний кадастр [On State Land Cadaster], No. 3613-VI (Ukr.), *available at* <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3613-17>. On State Land Cadaster was adopted in July 2011 and is effective as of Jan. 1, 2012.

34. Проект Закону про ринок земель [Draft Law On Land Market], No. 9001-1 (Ukr.), July 19, 2011, *available at* [http://w1.c1.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=40958](http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=40958). Draft Law On Land Market is currently under consideration by the parliament, is expected to come into force as of Jan. 1, 2012.

and Counteracting of Corruption”<sup>35</sup> established new principles of preventing and counteracting corruption in both public and private sectors. According to the Law, the subjects of liability for corruption are not only persons authorized to perform functions of state or local government but also officials of public law legal entities, persons who receive salaries at the account of state or local budget, and even persons who hold organizational-dispositive or administrative-economic functions in private law legal entities irrespective of legal form thereof. The Law limits acceptance of gifts received for corruptive offenses, made directly or indirectly from legal entities or individuals as a reward for decisions, actions, or lack of action in the interests of the donator, adopted or performed both directly by such persons and with their concurrence by other officials and bodies. For committing corrupt actions, offenders and their collaborators may face criminal, administrative, civil, or disciplinary liability in accordance with the procedure established by Law.

## V. Spain\*

The Royal Decree-Act 8/2011<sup>36</sup> (Royal Decree-Act) introduced the following changes to Spanish law:

### A. SUPPORT MEASURES FOR MORTGAGE DEBTORS

The Royal Decree-Act amends the Civil Proceedings Act<sup>37</sup> by (1) establishing that as a result of foreclosure proceedings, transfer of the premises to the creditor shall be for an amount no lower than sixty percent of the assessed value,<sup>38</sup> and (2) reducing to twenty percent the amount of deposit required to participate in the foreclosure auction.<sup>39</sup>

### B. PROMOTION OF REFURBISHMENT WORKS

Among other measures aimed at promoting the refurbishment works (by defining the persons obliged and the faculties of the authorities if not performed), the Royal Decree-Act imposes a general obligation on owners to fulfill a technical building inspection, which examines the condition and proper conservation of the building.<sup>40</sup> Starting July 7, 2012, a

35. Про засади запобігання і протидії корупції [On Principles of Preventing and Counteracting of Corruption], No. 3206-VI (Ukr.), available at [http://www.eubam.org/files/legislation/Anticorruption\\_Law\\_Ukraine.pdf](http://www.eubam.org/files/legislation/Anticorruption_Law_Ukraine.pdf). “On Principles of Preventing and Counteracting of Corruption” was introduced in April 2011 and came into force as of July 1, 2011.

\* This section on Spain was authored by Victoria González, Meritxell Yus Guijarro, Cristina Jiménez Labayru, Sara Pérez Peña, and Vanessa Sánchez López, all of the firm Cuatrecasas, Gonçalves Pereira, Barcelona, Spain.

36. Real Decreto-ley 8/2011, de 1 de julio, de medidas de apoyo a los deudores hipotecarios, de control del gasto público y cancelación de deudas con empresas y autónomos contraídas por las entidades locales, de fomento de la actividad empresarial e impulso de la rehabilitación y de simplificación administrativa [Royal Decree-Act 8/2011, Support Measures For Mortgage Debtors] (B.O.E. 2011, 116411) (Spain), available at <http://www.boe.es/boe/dias/2011/07/07/pdfs/BOE-A-2011-11641.pdf>.

37. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil [Civil Proceedings Act 1/2000] (B.O.E. 2000, 323) (Spain) available at [http://www.boe.es/aeboe/consultas/bases\\_datos/act.php?id=BOE-A-2000-323.pdf](http://www.boe.es/aeboe/consultas/bases_datos/act.php?id=BOE-A-2000-323.pdf).

38. *Id.* art. 671.

39. *Id.* art. 669.1.

40. Royal Decree-Act No. 8/2011, Support Measures For Mortgage Debtors, art. 21.

periodic technical building inspection shall be undertaken for buildings mainly used for dwelling, provided that (1) they are located in cities with population over 25,000, and (2) they are over fifty years old—or even less if the regional governments' regulations provide so (*comunidades autónomas*).

### C. INCREASE OF LEGAL SECURITY

A new negative silence system has been introduced for certain authorizations and licenses (and, therefore, the general rule of the positive administrative silence shall not apply). This system shall apply to all acts of transformation, construction, building, and use of land that require confirmation, authorization, or approval of the administrative authorities pursuant to the applicable land and town planning regulations. If the legal deadline expires and there has been no express resolution by the relevant authorities, the applicant shall understand the administrative silence to mean that the authorization has been denied.<sup>41</sup>

It will no longer be possible for finished new building works to access the land registry unless the first occupation license has been granted.<sup>42</sup> The Notaries shall not authorize the finalized new works deed and land Registrars shall not register it with the Land Registry unless (1) the first occupation license; (2) the relevant administrative authorizations confirming that the building fulfills the energy efficiency requirements have been granted;<sup>43</sup> and (3) all relevant conditions established by the applicable regulations for the buildings to be handed over to the users have been met.

“Out of town-planning” building works (*obras fuera de ordenación*) will have access to the Land Registry under some circumstances.<sup>44</sup> And administrative authorization is required to register with the Land Registry “real estate complexes” (*complejos inmobiliario*).<sup>45</sup>

### D. LAND DECONTAMINATION AND RECOVERY OPERATIONS OBLIGATIONS

Act 22/2011<sup>46</sup> introduces relevant changes in the waste regulation, as well as in certain matters related to polluted soil. When soil is officially declared polluted, the polluter(s) must perform the decontamination and recovery operations; alternatively, in this order, owners of contaminated soils and holders of that soil will be next in the decontamination obligation chain. The Act also sets out a new authorization, required to carry out the waste treatment activity, granted by the autonomous region in which the company has its headquarters, and is valid for the activity in the whole country.

41. *Id.* art. 23.

42. *Id.* art. 24.

43. See Real Decreto 47/2007, de 19 de enero, por el que se aprueba el Procedimiento básico para la certificación de eficiencia energética de edificios de nueva construcción. [Royal Decree 47/2007, Basic Procedure for Certification of Energy Efficiency of Newly Buildings] (B.O.E. 2007, 2007) (Spain), available at [http://www.boe.es/boe/consultas/bases\\_datos/act.php?id=BOE-A-2007-2007](http://www.boe.es/boe/consultas/bases_datos/act.php?id=BOE-A-2007-2007). This Decree is based the European Parliament and Council Directive of on Energy Performance of Buildings, Council Directive 2010/31/EU, 2010 O.J. (L 153) (EC).

44. Land Act art. 20.4 (Spain).

45. Land Act art. 17.6 (Spain).

46. Ley 22/2011, de 28 de julio, de residuos y suelos contaminados [Waste and Polluted Soils Act] (B.O.E. 2011, 13046) (Spain), available at <http://www.boe.es/boe/dias/2011/07/29/pdfs/BOE-A-2011-13046.pdf>.

The Act further includes a general negative silence system for the authorization procedures for all waste treatment activities. For all other activities, apart from waste treatment, the Act establishes a prior notice system. It also introduces specific rules for waste transport.

Finally, for waste production activities, the Act submits to prior communication the production of all types of hazardous waste, as well as the production of over 1,000 tons per year of non-hazardous waste.

#### E. AMENDMENT OF THE VALUING RULES

Royal-Decree 1492/2011<sup>47</sup> establishes new rules for valuing the different types of land, as well as constructions, installations, and buildings.

#### F. EVICTION PROCEEDINGS

Act 37/2011<sup>48</sup> sets forth that eviction proceedings caused by payment failure will be resolved through an express proceeding (*juicio monitorio*) instead of verbal proceeding (*juicio verbal*). If the lessee fails to vacate the premises, to pay the amount owed, or to respond objecting the claim, the eviction will be implemented directly. The reform aims at speeding up eviction proceedings.

#### G. VALUE ADDED TAX

There have been two main changes to the VAT Act:<sup>49</sup> First, starting August 20, 2011, the VAT rate on non-exempt transfers of buildings or parts of buildings suitable to be used as dwellings is temporarily reduced from eight percent to four percent; this reduction only applies from August 20, 2011 until December 31, 2011.<sup>50</sup> Second, starting January 1, 2012, a new reverse charge rule applies for non-exempt real estate transfers derived from insolvency proceedings—the acquirer is the taxable person, which must self-charge the corresponding VAT.<sup>51</sup>

47. Real Decreto 1492/2011, de 24 de octubre, por el que se aprueba el Reglamento de valoraciones de la Ley de Suelo [Royal Decree, 1492/2011, Valuations of the Land Law] (B.O.E. 2011, 17629) (Spain), available at <http://www.boe.es/boe/dias/2011/11/09/pdfs/BOE-A-2011-17629.pdf>.

48. Ley 37/2011, de 10 de octubre, de medidas de agilización procesal [Law, 37/2011, on measures to streamline proceedings] (B.O.E. 2011, 15937) (Spain), available at <http://www.boe.es/boe/dias/2011/10/11/pdfs/BOE-A-2011-15937.pdf>.

49. Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido [Value Added Tax Act, 37/1992] (B.O.E. 1992, 28740) (Spain), available at [http://www.boe.es/boe/consultas/bases\\_datos/act.php?id=BOE-A-1992-28740](http://www.boe.es/boe/consultas/bases_datos/act.php?id=BOE-A-1992-28740).

50. Real Decreto-ley 9/2011, de 19 de agosto, de medidas para la mejora de la calidad y cohesión del sistema nacional de salud, de contribución a la consolidación fiscal, y de elevación del importe máximo de los avales del Estado para 2011 [Royal Decree-Act 9/2011] Transitory Provision 4 (B.O.E. 2011, 14201) (Spain), available at <http://www.boe.es/boe/dias/2011/08/20/pdfs/BOE-A-2011-14201.pdf> (modifying article 91.Uno.1.7° of the Value Added Tax Act).

51. Ley 38/2011, de 10 de octubre, de reforma de la Ley 22/2003, de 9 de julio, Concursal [Insolvency Act], art. 118 (B.O.E. 2011, 15938) (Spain), available at <http://www.boe.es/boe/dias/2011/10/11/pdfs/BOE-A-2011-15938.pdf> (modifying article 84.Uno.2° of the VAT Act).

## H. PERSONAL INCOME TAX (PIT)

There have been two remarkable changes to the PIT Act<sup>52</sup>: since January 1, 2011, the 2010 State Budget Act substantially reduced the scope of the allowance for the purchase of the usual dwelling premises (*vivienda habitual*) (in general a fifteen percent tax credit, for amounts up to €9,040, with some specialties);<sup>53</sup> the tax allowance is now available only to taxpayers with taxable income under €24,107.20. But if the usual dwelling premises were acquired before January 20, 2006, a transitory system applies, permitting the application of the previous allowance system.<sup>54</sup>

Since May 7, 2011, the scope of the temporary tax allowance for specific refurbishment, which initially included only the usual dwelling premises, has been extended; in general terms (1) the tax credit can be applied to improvement works made in any residence and not only in the usual dwelling premises; (2) it is extended from a ten percent to a twenty percent rate; (3) it is applicable to taxpayers with a taxable amount of less than €71,007.20; and (4) the maximum credit applicable has been increased.<sup>55</sup>

## I. WEALTH TAX (WT)

The WT,<sup>56</sup> which applies only to individuals, has been re-introduced in Spain for the 2011 and 2012 tax years. The re-introduction of this tax may have a significant impact on non-resident individuals with assets located in Spain, as they may be liable for WT at a tax rate ranging from 0.2% to 2.5% on the net value of these assets.

Among other material changes that have been regulated with the reintroduction of WT, it should be highlighted that the minimum exempted amount is increased from €108,182 to €700,000 and now applies to non-resident taxpayers who were not entitled to it before.

---

52. Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio [Personal Income Tax Act (PIT)] (B.O.E. 2011, 20764) (Spain), available at <http://www.boe.es/boe/dias/2006/11/29/pdfs/A41734-41810.pdf>.

53. Ley 39/2010, de 22 de diciembre, de Presupuestos Generales del Estado para el año 2011 [2010 State Budget Act], art. 67 (B.O.E. 2010, 19703) (Spain), available at <http://www.boe.es/boe/dias/2010/12/23/pdfs/BOE-A-2010-19703.pdf> (modifying article 68(1) of the PIT Act).

54. PIT Act, Transitory Provision 13.

55. Real Decreto-ley 5/2011, de 29 de abril, de medidas para la regularización y control del empleo sumergido y fomento de la rehabilitación de viviendas [Regulation and Control of Unemployment and Promotion of Housing Rehabilitation], Final Provision 1 (B.O.E. 2011, 7972) (Spain), available at <http://www.boe.es/boe/dias/2011/05/06/pdfs/BOE-A-2011-7972.pdf> (modifying additional disposition 29 of the PIT Act).

56. Real Decreto-ley 13/2011, de 16 de septiembre, por el que se restablece el Impuesto sobre el Patrimonio, con carácter temporal [Wealth Tax Act] (B.O.E. 2011, 14809) (Spain), available at <http://boe.es/boe/dias/2011/09/17/pdfs/BOE-A-2011-14809.pdf>.

## J. CORPORATE INCOME TAX (CIT)

There have been two significant changes to the CIT Act:<sup>57</sup> The first change affects two issues related to the compensation of unused carry forward losses. The first entails the following two issues:

(A) Exclusively for the tax years starting in 2011, 2012, and 2013, the company's right to compensate unused carry forward losses is limited (the maximum amount to be compensated is seventy percent of the previous taxable base if turnover in the preceding twelve months ranges from €20 million to €60 million and fifty percent of the previous taxable base if turnover in the preceding twelve months exceeds €60 million).<sup>58</sup> (B) With effect for the tax years starting January 1, 2012, the available period to carry forward losses is extended three more years so that, starting from that date, companies will have an eighteen-year carry forward losses period, instead of a fifteen-year period.<sup>59</sup>

The second change permits a free tax depreciation system applicable for investments in new fixed assets and real estate investments used for economic activities, acquired by the taxpayer in tax years starting in 2011, 2012, 2013, 2014, and 2015, regardless of whether the company maintains its average number of staff.<sup>60</sup>

---

57. Real Decreto Legislativo 4/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley del Impuesto sobre Sociedades [Corporate Income Tax (CIT) Act] (B.O.E. 2004, 4456) (Spain), *available at* [http://www.boe.es/aeboe/consultas/bases\\_datos/act.php?id=BOE-A-2004-4456](http://www.boe.es/aeboe/consultas/bases_datos/act.php?id=BOE-A-2004-4456).

58. Royal Decree-Act 9/2011, Transitory Provision, art. 9.Primero.Dos (temporarily modifying article 25 of the CIT Act).

59. *Id.* art. 9.Segundo (modifying article 25.1 of the CIT Act).

60. Real Decreto-ley 13/2010, de 3 de diciembre, de actuaciones en el ámbito fiscal, laboral y liberalizadoras para fomentar la inversión y la creación de empleo [Procedures in Tax, Labor and Liberalization to Promote Investment and Job Creation Act], art 1.Cuatro (B.O.E. 2010, 18651) (Spain) *available at* <http://www.boe.es/boe/dias/2010/12/03/pdfs/BOE-A-2010-18651.pdf> (modifying additional provision 11 of the CIT Act).