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BUYING AND SELLING REAL ESTATE IN ARGENTINA

ILN REAL ESTATE GROUP

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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER ARGENTINIAN LAW

"Buying and Selling Real Estate in Argentina"

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I. INTRODUCTION.

Below you will find a brief outline of the legal regulation of the acquisition of real estate property in Argentina, which is mainly governed by the Argentine Civil and Commercial Code ("CCC").

II. FORMS OF REAL ESTATE OWNERSHIP.

Argentine law regulates different forms of real estate ownership. A brief summary is provided below:

a) Sole Ownership.

Sole Ownership confers all the powers to legally use and materially and legally dispose of a real estate property. All of the existing constructions belong to the owner, which are presumed to be built by said owner, except evidence to the contrary. This kind of ownership extends to the subsoil and airspace, with the exception of specific cases determined by law. The owner is also legally entitled to exclude third parties from said real estate property.

b) Joint Ownership.

Joint Ownership is the right over a real estate property that belongs to more than one person, where each person owns an undivided share of said property. Each co- owner can, solely or jointly, use the common property without altering its destiny, and also, they can agree either the use of the common property at alternate times or the exclusive use over determined parts of the property.

Additionally, each co-owner can sell or encumber his or her undivided share without the assent of the other co-owners, while the sale of the whole property requires the consent of all the co-owners. Each co-owner is responsible for paying the expenses corresponding to his/her share, as well as of refunding other co-owners the expenses in which they may have exceedingly incurred in relation to their shares. Unless otherwise agreed, every co-owner may require the legal partition of the ownership and the division of the property.

c) Condominiums.

Condominium (*propiedad horizontal*) confers rights of use and disposal of an independent and undivided share of a building (called a functional unit) and the proportional part of said building's common areas. The building's different parts, as well as the rights arising from them, are interdependent. This type of property exercised over the *functional unit*, which may consist in a flat, a commercial property or other space with functional independence and direct or indirect access to a street. The condominium is governed by internal regulations which are incorporated to the title deed.

d) Residential Developments.

This category comprises country clubs, gated communities, industrial, commercial or nautical parks or any

other type of residential developments regardless of their destiny (temporal or permanent homestead or commercial), also including those with mixed uses, in accordance with local administrative regulations. The residential developments are considered a type of condominium.

The main characteristics of this developments are: enclosure of the development, existence of common and individual areas and the existence of an internal regulations. All of the common and exclusive parts and areas are interdependent, as well as the rights over them, conforming a non-divisible whole.

Aspects in connection with authorized areas, dimensions, uses and other urbanistic elements of residential developments are governed by local administrative regulations of each jurisdiction.

e) Surface rights.

Surface right is a temporary right over a third party's real estate property, which confers to its holder the power to use and dispose the legal right to plant, forest or construct in said property (or a right over existing plantations, forestations or constructions), comprehending property's terrain, soil and/or subsoil, in accordance with the terms and conditions set forth in the deed title. The third party remains owner of the real estate property.

The term of the surface right cannot exceed seventy years for constructions, or fifty years for plantations and forestations, both terms considered as from the date of acquisition of the surface right. The term can be renewed as long as it does not exceed said maximum terms.

The owner of the property keeps his right to sell and dispose of the property as long as it does not interfere with the existing surface right. During the agreed term, the surface right holder may transfer and encumber the constructions without the prior consent of the owner.

f) Usufruct.

Usufruct confers the right to use a third party's real estate property. This right can apply over a whole property or just a share of said property. This right can only be granted by the owner of the property.

Usufruct can be granted for life if the holder of the right is an individual or for a maximum of 50 years if the holder is a corporation.

I. LEGAL FORMALITIES IN RELATION TO REAL ESTATE OWNERSHIP ACQUISITION.

a) Preliminary Purchase Agreement.

Under Argentine law, all transfers or creation of rights over real estate properties must be granted as a public deed before a notary. The notary must conduct due diligence to verify the soundness of the title of the seller over the relevant property, obtain certificates attesting the ownership and the inexistence of injunctions preventing the transfer. The notary also acts as a withholding agent of the taxes connected with the transfer.

Although it is not mandatory, usually seller and buyer execute a preliminary purchase agreement (*boleto de compraventa*) of the real estate

property, in order to agree on the terms of the transaction while all the required formalities for executing the transfer deed are complied with.

In order to enter into the preliminary purchase agreement each of the parties must: (i) have general capacity in terms of the CCC as for the performance of legal acts; (ii) have an Argentine tax ID number; and (iii) in the case of individuals married under community property regimes, obtain their spouse's assenttothesale.

Preliminary purchase agreements usually include: (i) the identification of the parties; (ii) the price and payment terms;

(iii) a detailed description of the property to be acquired; (iv) the current condition of the property to be acquired; (v) time of conveyance of the possession over the property; (vi) tax treatment of the transaction; (vii) general obligations of the parties; (viii) appointment of a notary public for the granting of the transfer deed; and (ix) provisions in connection with parties' failure to compliance with their respective obligations.

b) Transfer Deed.

Once the due diligence of the title has been completed and the certificates have been obtained, which usually takes about

30 days, the parties shall grant the transfer deed which has substantially the same content as the preliminary purchase agreement.

Parties may directly sign the transfer deed and not sign a preliminary purchase agreement.

The notary public is usually chosen by the buyer. The fees of the notary usually range from 1 % to 1.5 % of the purchase price. The fees and expenses relating to the due diligence over the title to the property are usually paid by the seller, while the remaining fees are paid by the buyer.

c) Registration with the Real Estate Registry.

The final stage for acquiring property is the registration of the transfer deed with the Real Estate Registry of the jurisdiction where the property is located. Once registered, the buyer's ownership over the property is enforceable before third parties. Such registration entails certain fees which are usually comprised in the notarial fees and are also assumed by the buyer.

The times involved in the registration of the deed will depend on the relevant jurisdiction, but in average this should take between 1 and 2 months.

IV. TAXES.

Please find below an outline of the main taxes involved in the sale of real estate property according to the latest tax reform.

a) Real Estate Transfer Tax.

If the real estate property was acquired before January 1, 2018 ("the date"), individual tax residents ("individuals") selling real estate property are taxed at 1.5% tax rate over the price of the sale. This tax is withheld by the notary public.

If the real estate property was acquired after the date, individuals are taxed at a 15% tax rate over net income (sale price minus acquisition cost).

The transference of any rights over real estate property are also taxed at a 15% tax rate (net income) if such rights were also acquired after the date (this includes the transfer of participations in real estate trusts).

b) Corporate Income Tax (CIT).

Local companies selling real estate must pay CIT over the sale of real estate property at a progressive tax rate over the net income. The current law has changed the fixed tax rate (30%) applicable until fiscal year 2020 for a progressive one, according to the following criteria:

a) if the net income of the company does not exceed ARS 7.604.948 million (approximately USD 28,000) in the fiscal year, a 25% tax rate applies;

b) if the net income range exceeds ARS 7.604.948 million but is less than ARS 76.049.485 million (approximately USD 280,000), a tax rate of 30% applies to the income exceeding ARS 7.604.948 million; and

c) if the net income exceeds ARS 76.049.485 million, a tax rate of 35% applies to the income exceeding ARS 76.049.485 million.

c) Stamp Tax.

This is a tax levied by each of the provinces in Argentina and the City of Buenos Aires which in broad terms applies over the purchase price or the registered value of the property, whichever is higher. The tax rate varies in each local jurisdiction. Usually, this tax is borne in equal parts by the seller and the buyer.

V. AGENTS.

Real Estate agents may be used by either buyer or seller of real estate property, but their participation in real estate transactions in not mandatory. The agent fees are not determined by law and may differ from one jurisdiction to another. Usual fees range from 3 % to 4 % of the purchase price.

VI. SPECIAL CASES.

a) Frontier Securities Zone Act (Decree 15,385/44 as Amended) ("FSZA").

The FSZA regulates the acquisition by foreign individuals or foreign companies of rural real estate assets and certain urban real estate assets located in frontier zones. It also regulates the acquisition of shares in companies which own said real estate assets, as well as corporate restructuring operations of said companies.

The regulation of the FSZA considers the following to be foreign companies: (i) companies incorporated abroad from Argentina, (ii) companies incorporated in Argentina, in which foreign companies or individuals hold the majority stake or have sufficient votes to make decisions in shareholders' meeting; and (iii) companies in which foreign shareholders own more than 25% of the corporate capital.

Under the FSZA, all acquisitions of real estate assets located in frontier zones or shares of companies which own said assets require clearance from governmental authorities, with the exception of assets located in certain cities or urban assets which have a surface of less than 5,000 square meters, must be previously approved by

the Internal Affairs Secretary.

In order to obtain said approval, foreign companies must make a filing with the Internal Affairs Secretary, including certain forms provided by said governmental entity, certain corporate information (e.g., corporate bylaws, appointment of board members, latest financial statements, identification of shareholders), certificates of criminal record of the board members and an investment project to be conducted in the real estate property to be acquired. The filing should be made by the investor.

The authorization is granted by way of exception and depends on showing that the investor (or its shareholders and officers) has not been convicted of crimes affecting national security and proposing an investment project for the development of the acquired real estate asset. The investment project is analyzed in the light of the following criteria: (i) that the project is declared of national, provincial or municipal interest by the competent authority; (ii) purports to the social and economic development of the region where it is located; (iii) it will be implemented in underdeveloped zones; and (iv) it mainly employs Argentine workers.

b) Protection of Rural Lands Ownership Act (Act 26,737) ("PRLO").

The PRLO limits the ownership or possession of rural land by foreign individuals or companies (which are referred to as Foreign Owners). Rural Land is defined as any real estate asset located outside the limits of cities. It provides that all Foreign Owners cannot own or possess more than 15% of the total rural land of Argentina. Likewise, Foreign Owners cannot own or possess more than 15% of the total rural land in each Province or Administrative Department. Additionally, Foreign Owners of the same nationality cannot own or possess more than 30% of the rural land owned by Foreign Owners. Moreover, a single Foreign Owner cannot own more than 1,000 hectares in the core area or an equivalent surface in other locations to be determined by the governmental authority. Finally, Foreign Owners cannot hold an interest on rural land adjacent to bodies of water of certain importance. Moreover, any change in the composition of the corporate capital of local companies' owners of rural land should be informed to the authorities to verify compliance with the PRLO.

The PRLO considers the following to be Foreign Owners: a) Individuals of foreign nationality (although there are some exceptions for foreign nationals who have resided in Argentina for more than 10 years, or have Argentine children, or have been married to an Argentine national for more than 5 years); b) Companies, incorporated in Argentina or abroad, whose capital is owned in more than 51% (or a sufficient percentage to adopt decisions in shareholders' meetings) by foreign individuals or companies.

The regulations of the PRLO provide that in the case of usufruct and surface rights, it will only control the owner of the property and not the holders of said rights.

The PRLO has created a National Registry of Rural Land which oversees compliance with the PRLO.

The application of the PRLO is triggered when dealing with the acquisition of real estate assets or participation in companies which own of real estate assets which qualify as rural land. As noted before, the PRLO bans the acquisition of rural exceeding 1,000 hectares in the core area, or adjacent to bodies of water of certain importance, or in excess of the 15% maximum of the rural land allotted to Foreign Owners at national, provincial and municipal level.

Before the granting of the deed of acquisition of the rural real estate asset the intervening notary must procure with the National Registry of Rural Land a certificate of clearance, confirming that the above limits are not breached by the intended transaction. If the certificate of clearance is not obtained the transaction cannot be implemented.

c) "UVA" mortgage loans.

UVA mortgage loans are a new form of mortgage loans aimed at the purchase, repair or expansion of real estate property. They are granted by both public and private banks and represent a comparative advantage over other forms of mortgage loans, since they offer a more convenient interest rate.

These loans are expressed in Purchasing Value Units ("UVAs"), which reflect the average construction cost of one square meter and are updated based on the Consumer Price Index. This is an exception to the general prohibition of making adjustments based on inflation.