



THE LEGAL PERSPECTIVE

Real estate investment in Zimbabwe

Some peculiarities of the country

Peculiarities in this jurisdiction include:

1. **Intervention of the notary:** Notaries play a significant role in the due diligence process for real estate transactions, including acquisitions and financing;
2. **Exchange control requirements:** Repatriating funds from transactions conducted in foreign currency requires approval from the Reserve Bank of Zimbabwe. This regulation is aimed at managing the country's foreign currency reserves and ensuring compliance with exchange control laws;
3. **Shortage of foreign currency risk:** Zimbabwe faces a persistent risk of foreign currency shortages, which may delay or prevent the remittance of revenue from real estate transactions conducted in hard currency. This risk is particularly significant for foreign investors;
4. **Inflation risk** the country's high inflation rate poses a risk to real estate investments, as the actual inflation rate may exceed projections. This can erode the value of returns and impact the overall viability of investments.
Land Tenure System: Zimbabwe's land tenure system is unique, with a mix of freehold, leasehold, and communal land ownership. Investors must navigate these systems carefully, particularly when dealing with agricultural or communal land, which may have restrictions on ownership or use.

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

1. **Agreement of Sale:** This is a legally binding contract prepared by the Seller's attorney. It outlines the terms and conditions of the sale, including the purchase price, payment terms, and any special conditions agreed upon by the parties.
2. **Declarations of the Seller and Purchaser:** Both parties, or their authorized representatives, must sign individual declarations. These declarations confirm critical details such as the agreed purchase price, the property being sold, and any improvements made to the property. These documents are essential for transparency and compliance with legal requirements.
3. **Power of Attorney:** This document is prepared by the Seller's attorney to authorize the conveyancer to act on behalf of the Seller. The conveyancer is empowered to handle the transaction, including registering the transfer of ownership with the Registrar of Deeds at the Deeds Office.

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1. Ownership of real estate

1.1 Full ownership

Any legal entity or individual may hold real estate assets in Zimbabwe. The right of full ownership is protected under Section 71 (2) of the Constitution of Zimbabwe which states that every person has the right in any part of Zimbabwe to acquire, hold, occupy, use, transfer, mortgage or dispose of all forms of property; this right can only be limited by law.

Furthermore, there are no restrictions under local laws against ownership of property by foreign individuals or entities. In terms of the Deeds Registries Act (Chapter 20:05) (the "Deeds Registries Act") any person, company or trustee can hold title deeds over property. However, from an investment structuring perspective, foreign investors who wish to invest in real estate through a corporate vehicle may elect to do so through local unit trusts, real estate investment trusts, limited liability companies, and public limited companies.

Expropriation is possible in Zimbabwe, particularly in respect of agricultural land, which may be compulsorily acquired by the State to the extent that it is required for public purposes, without compensation except for compensation in respect of improvements made to the land prior to acquisition.

1.2 Other rights over real estate

Zimbabwe recognizes two categories of property rights: real rights and personal rights.

A real right is an exclusive interest or benefit enjoyed by a person over a thing. It is an absolute right that entitles its holder to enforce it against other persons. Real rights are registrable, while personal rights are not. Real rights include long leases and easements.

A personal right is a right that is enforceable only against a particular person and is based on the existence of a special legal relationship, such as a contract. It is a right from one person to another. An example is a short-term lease.

1.3 Restrictions on ownership by foreigners

There are no restrictions on ownership by foreigners. Section 71(2) of the Constitution of Zimbabwe, 2013 (the "Constitution") states that every person has the right, in any part of Zimbabwe to acquire, hold, occupy, use, transfer, mortgage, lease or dispose of any form of property either individually or in association with others.

1.4 Expropriation of land by the state

Under the Land Acquisition Act (Chapter 20:10) (the "Land Acquisition Act"), the President of Zimbabwe or any Minister duly authorized by the President, may compulsorily acquire: any land, where the acquisition is reasonably necessary in the interests of defense, public safety, public order, public morality, public health, town and country planning or the utilization of that or any other property for a purpose beneficial to the public generally or to any section of the public; any rural land, where the acquisition is reasonably necessary for the utilization of such land or any other land for agricultural or other settlements purposes, for land reorganization, forestry, environmental conservation or the utilization of wildlife or other natural resources, or for the resettlement of persons dispossessed by reason of the utilization of land for such purposes.

The acquiring authority and the party affected may enter into an agreement for the acquisition, or follow the formal process laid down in the Land Acquisition Act.

Where the land is acquired, the Land Acquisition Act allows for the eviction of the owner or the occupier of that land to be authorized once the relevant procedure has been followed in accordance with the Act and an order has been obtained. The formal process laid down in the Land Acquisition Act must be followed and an order obtained. Once the order is obtained, it is served upon the occupier or owner of the land, and the latter is given three months' written notice to vacate the land. If the land is agricultural, notice is given in writing to the owner or occupier to cease occupying, holding or using that land 45 days after the date of service of the order upon the owner or occupier. If they fail to do so, they shall be guilty of an offence and liable to pay a fine or to imprisonment for a period not exceeding two years. The Act states that fair compensation shall be paid within a reasonable time by the acquiring authority.

2. Acquisition of ownership

2.1 Formal requirements

A written agreement must be executed between the buyer and the seller in order to acquire ownership over any real estate. In Zimbabwe, it is not mandatory for the agreement to take the form of a notarial deed signed before a registered public notary. However, written agreement is not required when the property is transferred as a result of inheritance, expropriation by the State or when the property is disposed of or transferred pursuant to a court order.

2.2 Registration

A draft title deed is prepared by a registered conveyancer, together with a power of attorney to pass transfer and the declarations for signing by the buyer and the seller. The seller is required to apply for a rates clearance certificate from the local municipality under whose jurisdiction the property falls. The seller must also apply for a capital gains tax clearance certificate from the Zimbabwe Revenue Authority ("ZIMRA"). After an assessment is completed by ZIMRA, the seller is required to pay the capital gains tax ("CGT") and obtain a CGT clearance certificate.

Fees attributed to the transfer of title by the conveyancer are payable by the buyer, and fees are determined by the Law Society of Zimbabwe at a fixed tariff, payable at a fixed percentage of 3% of the purchase price. The buyer is responsible for payment of transfer fees, unless otherwise agreed by the parties in the sale agreement.

Any outstanding municipality rates (i.e. the levies payable to the city/municipal council) or bills applicable to the property must be cleared, and a three-month advance payment must be paid before a transfer can be processed. If a business activity will be carried out on the property, trading licenses must also be obtained.

2.3 Asset transaction

Asset transactions in Zimbabwe generally take the form of a direct acquisition of the asset (asset deal) or the sale of a company that holds title to the property (share deal). Typically, asset transactions involve the signing of a preliminary agreement in respect of the transaction, followed by the due diligence on the asset by the buyer. Upon completion of the due diligence deemed satisfactory by the buyer, a property sales agreement will be executed to effect the transfer of the property, containing various conditions precedent to be satisfied as well as comprehensive warranties by the seller in respect of the property.

In all asset transactions, whether an asset deal or a share deal, sharing of transaction costs between the parties is on agreed terms; however, liability for taxes and costs must be paid as follows, in accordance with Zimbabwean law:

- Stamp duty is payable on registration of the transfer of property. The buyer is liable for the payment of stamp duty.
- A Rates Clearance Certificate is required to be obtained from the local authority by the seller.
- CGT is levied on the gain where the immovable property is sold. This is a cost borne by the seller. In the event that the property is sold by a property developer, value added tax ("VAT") will be levied upon the seller.
- Conveyancer fees are also payable and are determined according to the Law Society of Zimbabwe By-laws S.I. 24/2013 effective of 1 March 2013. The conveyancing fees are payable by the buyer.

2.4 Share purchase

A share purchase occurs when the sale involves a legal entity that holds title to a property. In this regard, a share purchase agreement will be executed between the buyer and the seller in respect of the sale of the shares. However, there is a limitation on the acquisition of shares in a Zimbabwean company by foreigners. Indeed under section 12 of the Exchange Control Regulations (Statutory Instrument 109 of 1996) (the Exchange Control Regulations) no person is permitted to transfer to a foreign resident or foreign resident's agent, any securities (being shares, stocks, bonds, debentures and debenture stocks) which are registered in Zimbabwe, unless otherwise authorized by the Exchange Control Authority. A foreign resident is defined as a person who is not a Zimbabwean resident.

2.5 Public auctions

Public auctions of properties owned by debtors will take place when a creditor takes legal action against the debtor, and a court order is obtained to proceed with the execution of the property. A writ of execution is prepared to instruct the Sheriff or court Messenger to attach the property concerned for service on the debtor. Upon service on the debtor, the Sheriff will indicate the date on which the property will be auctioned. Upon serving the writ of execution, the Sheriff/Messenger of Court will inspect the property to value it and then advertise the auction sale.

The debtor may, until the property is sold by auction, settle the debt in full to prevent the property from being auctioned. If the property is auctioned and the debtor believes that the property was sold for less than its value, he may request that the property be valued by an estate agent and initiate proceedings to set aside the sale.

3. Other rights to property

3.1 Rights of pre-emption

Rights of pre-emption are personal rights that grant a person a right of priority to purchase an asset. This right is an exception to the principle of freedom of contract, meaning that the seller cannot freely dispose of the property to another buyer without first complying with the pre-emption right. This is also referred to as a right of first refusal.

Pre-emption rights in Zimbabwe are not imposed by law; instead they are a matter of contractual agreement between the parties. For example, in the case of the sale of an apartment in a block of residential flats, the homeowners' association may impose as a condition by in the homeowners' agreement that an owner offers a right of first refusal to other owners in the complex before opening the sale to members of the public. In such a case, the seller would be required to offer the property to the other owners under the same conditions and then obtain a written refusal from each of the current occupiers before proceeding with the sale to a third party.

In respect of rural land, the Land Acquisition (Disposal of Rural Land) Regulations (Statutory Instrument 287 of 1999) provide that the Minister of Lands, Agriculture and Rural Resettlement shall be given the right of first refusal when disposing of rural land. Under this regulation, a person would therefore be required to obtain a certificate of current non-interest from the Minister of Lands, Agriculture and Rural Resettlement in order to dispose of the rural land.

3.2 Option agreements

There are a number of different methods of assigning responsibility for the design and construction of an Option agreements within the real estate context give the buyer the exclusive right to purchase the property from the seller within a certain period of time and at an agreed price; This is a common practice in Zimbabwe.

The option agreement's terms are determined on a case-by-case basis and specify the conditions under which the buyer may exercise the option.

The basic principles of common contract law apply for the contract to be valid, and as soon as the buyer exercises the option in due time and in accordance with the terms of the agreement, ownership of the property is transferred to the buyer. the buyer opts not to exercise the option or not to exercise the option on time and in accordance with the terms of the option agreement, the option lapses and the seller can sell the property to a third-party buyer.

4. Zoning and planning law permits

Physical and spatial planning in Zimbabwe is managed by the Department of Physical Planning. This department is a technical arm of the government in charge of managing the spatial planning system and providing technical advice on the implementation of development planning systems to the Minister of Local Government, Public Works and National Housing. The department has oversight of the country's local authorities, who must adhere to the provisions of the Regional, Town and Country Planning Act (Chapter 29:12) (the "Regional Town and Country Planning Act"), the Urban Councils Act (Chapter 29:15) (the "Urban Councils Act") or the Rural District Council Act (Chapter 29:13) (the "Rural District Council Act").

The Department of Physical Planning is also involved in facilitating sites for the development of government, state enterprise, as well as parastatal activities, as well as in the detailed planning of housing estates on state land. It also carries out technical assessment of plans (master plans, local plans and layout plans) originating from local planning authorities to assist the minister in making decisions on plans and mediates in conflicts between stakeholders arising from spatial planning decisions that interfere with other people's land rights.

Furthermore, the department provides technical assistance in planning preparation structures for the development planning system, as prescribed by the Provincial Councils and Administration Act (Chapter 29:11); it manages urban public transport and carries out tachometric surveys and the pegging of state land.

With regards to the appearance and method of construction of a new building, the Housing Standards and Control Act (Chapter 29:08) and the relevant local authority Building By-laws are the policy instruments governing housing unit development, and define the local authority's powers to monitor housing development and to order demolition where necessary. These two instruments work in conjunction with the Regional Town and Country Planning Act, which together guide the enactment of council by-laws.

The Factories and Works Act (Chapter 14:08), (the "Factories and Works Act") specifies the minimum building standards for a factory. The government is mandated to deal with substandard buildings, overcrowding issues and the control of harmful use of premises, including the protection of the neighbor's rights of. Substandard structures may be demolished.

4.1 Designated use

Legal restrictions are put in place regarding the designated use of a new building. These restrictions take the form of city by-laws and other use-specific legislation, such as the Factories and Works Act and the Environmental Management Act (Chapter 20:27) (the "Environmental Management Act"). The owner is therefore required to inform the city council of any change of use of the building, and to obtain its approval before any such change takes place.

The National Museums and Monuments Act (Chapter 25:11) is another piece of legislation that governs the designated use of property and aims to protect culturally important places that are recognized as sacred through local tradition and culture.

The state, through local authorities, is responsible for regulating the development and designated use of parcels of land. In Zimbabwe, all land vests in the President, who controls it through his ministers. Agricultural land falls under the purview of the Minister of Lands, Agriculture, Water, Climate and Rural Resettlement, while communal land falls under the purview of the Minister of Local Government.

The Regional Town and Country Planning Act regulates designation of site planning, while the Rural District Councils Act empowers rural district councils to manage and authorize the use of land by third parties upon application on behalf of the state. The Urban Councils Act empowers urban councils to regulate buildings and construction of related infrastructure such as sewers, water pipes and roads.

Other applicable permits would depend on the specific designated zonal use of land. Thus, depending on the type of development to be undertaken, specific permits would be issued based on environmental considerations.

4.2 Permission for new construction or change of designated use.

An application for a change in use of land must be submitted to the responsible authority. Depending on the land, the responsible authority may be the Minister of Lands, Agriculture, Water, Climate and Rural Resettlement, the Minister of Local Government or the relevant local authority.

To obtain permission to construct new structures, the structures and plans must be prepared by the property developer and approved by the responsible planning authority. The actual construction process only begins once the housing plans have been approved by the planning authority, which will follow the process below.

The project must first be approved by the Inspector of Factories (if it is a commercial factory) in accordance with the Factories and Works Act. This process takes approximately one month. Approval of the construction plan is then sought from the local authority. Before a plan is approved, the local authority usually circulates the application to almost all every department involved in the proposed construction. For example, Chemical Laboratory and Trade Waste, Department of Works, Land Survey and Valuation among others. This process takes approximately ten months. The Building Inspectorate then inspects the building on request upon completion of the foundation of the building.

The next stage would be to apply for and obtain:

- a sewage connection from the Zimbabwe National Water Authority. This process takes one day; and
- a connection to the national electricity grid from the Zimbabwe Electricity Supply Authority.

Finally, the occupancy certificate from the City of Harare would be obtained. This process normally takes one or two months.

4.3 Objections and review by other bodies

Third parties have the right to object to official permissions for the development or continuation of a designated use of real estate by submitting their statement to the relevant authority, which will review the merits of the objections before making a final decision. If third parties believe they have been treated unfairly, they may appeal to the Administrative Court.

There are circumstances in which an application for permission for development of the carrying on of a designated use or the permission itself is reviewed by another body, for example, when a party is aggrieved by a local authority's decision to designate a certain use for the land. The decision on the development may be reviewed by the High Court of Zimbabwe if one party believes that they have been treated unlawfully, resulting in the application in question being reconsidered. In such an event, that party can appeal to the High Court or the Administrative Court.



5. Environmental liability

Environmental protection issues are governed by the Environmental Management Act. The Environmental Management Agency ("EMA") takes the lead role in ensuring that individuals and companies comply with this legislation.

Owners and occupiers of real estate are generally held liable by the EMA for any pollution or environmental damage caused on the property.

Lenders holding or enforcing security over real estate are not liable as they have no real right over the property.

Under the Environmental Management Act and the Environmental Management Regulations (Environmental Impact Assessment and Ecosystems Protection) (Statutory Instrument 7 of 2007), housing developments, commercial industrial plants, tourist resorts and recreational developments among other developments require an Environmental Impact Assessment to be conducted by the EMA.

According to the Environment Management Act, the Director General, inspectors and officers are responsible for ensuring the coordination of policies and programs relating to land, air, water and soil pollution, as well as hazardous waste management are coordinated. This Act gives them many powers, including the right to enter specified land, to examine any activity considered harmful to the environment, to take or remove samples, or to seize items considered to have been used in the commission of an offence.

They are also empowered to effect closure of a premises for a period of three weeks or to serve an order requiring the individual to take preventative measures against harmful activities to the environment. An investigation is normally conducted, depending on the circumstances of the case, in order to ascertain the source of the pollution or contamination of the building. In the event that a new buyer is served with an order in this instance where the fault was not his own, the Act makes provision for an appeal process and for the Administration Court to hear the matter and make a decision based on the evidence submitted.



6. Leases

6.1 Duration

In Zimbabwe, lease agreements do not have a prescribed duration, and the length of the lease is subject to contractual agreement between the parties. The current market trend in real estate is towards short-term leases, ranging from one to nine years. The current economic challenges in Zimbabwe have forced landlords to grant shorter commercial leases. For long-term leases over ten years, the Deeds Registries Act provides for the registration of such leases.

6.2 Rent

There are no mandatory legal requirements governing rent indexation in lease agreements. However, The Commercial Premises Lease Control Act (Chapter 14:04) states that once a fair rent has been determined and is in force, the landlord is not permitted to charge a rent higher than this amount. The parties retain their contractual freedom, however, and may include in their agreement a rent review clause stipulating that the rent will be subject to an increase of a certain percentage after a certain period of time, or that it will increase in accordance with comparable market rates.

The parties are, however, free to contract as they wish in this regard.

Where the parties cannot reach an agreement on rent increase, or where the increase is deemed excessive, the Housing and Building Rent Regulations (Statutory Instrument 32 of 2007) and the Commercial Premises Lease Control Act Rent Regulations (Statutory Instrument 676 of 1983) state that either party may refer the matter to the rent board for a ruling and subsequent an order.

6.3 Operating expenses

There are no further costs payable by a tenant at the start of a lease. However, in practice, tenants are generally required to pay a security deposit and the rent at the start of a lease. For the duration of the lease, the tenant is responsible for paying rates to the local authority, such as water, electricity, refuse collection, municipal rates and service charges.

If the lease (in the case of long-term leases) needs to be registered with the Deeds Office in terms of the Deeds Registries Act, stamp duty will be payable.

With regards to communal costs, the parties are free to contract as they wish in this regard, but in general, the landlord is responsible for the maintenance and repair of the roof, the structure, exterior and all common areas of the leased premises. Where gardens are only part of the leased premises, for example in a garden flat, the tenant is normally responsible for maintaining it. However, the common grounds and garden areas are normally maintained by the landlord.

Usually, where there are several tenants within a complex, a levy is charged in addition to the monthly rent. This levy is intended for the maintenance, repairs and security of the complex.

The landlord is responsible for insuring the structural property against fire and related risks, while the tenant is responsible for insuring the remainder of the building against all claims including public liability insurance, for example, glass, signs and supports, fittings and fixtures affixed to the buildings or their contents. The parties generally undertake that the tenant will not do anything or refrain from doing anything which will cause an increase in insurance premiums or keep any hazardous goods on the leased premises.

6.4 Assignment/transfers

Generally, a lease agreement contains a provision allowing the tenant to cede or assign its rights and obligations, or to transfer, make over, alienate or pledge any of its rights under the agreement. Should this be permitted, the landlord's prior written consent is required. Any deviation from this rule constitutes a breach of the contractual provisions and the landlord is then entitled to terminate the lease agreement in accordance with the specific termination provisions.

6.5 Subleases

The parties have contractual freedom in this regard. The tenant may be allowed to sublease the property, or there may be a limitation on subleasing, cession or assignment of the landlord's rights and obligations under the agreement.

Should subletting be permitted, the agreement typically requires that subletting be conducted only with the landlord's prior written consent.

6.6 Termination

When a lease agreement has been concluded for a fixed duration, it expires at the end of that duration. The parties may agree to a contract authorizing renewal of the term, but this is subject to an agreement between the parties. The lease agreement generally sets out the circumstances in which the lease can be terminated earlier than the expiration date, which normally applies in the event of non-payment of the rent or operating costs, non-compliance with the general obligations set out in the lease agreement or a breach of a condition of the lease agreement, following written notification to this effect. The contract also provides for termination of the lease agreement if the tenant absconds, deserts or vacates the property without giving proper notice.

In the event that one of the circumstances mentioned above has occurred and the agreement is terminated, but the tenant still remains in occupation of the property, a regulated eviction process will need to be followed.



6.7 Sales of leased property

The sale of a leased property does not affect the lease or the validity of the lease agreement, and the new landlord is bound by the lease agreement until it expires. Typically, the parties to the lease agreement will have made provision for instances where the property may be sold in the foreseeable future and may also include a provision offering the tenant a right of first refusal to purchase the property. This is more common in commercial leases.

6.8 Long-term leases

A long-term lease is a contract between the landlord and the tenant that entitles the tenant to a limited real right over the property in question for an agreed period ranging from 10 to 99 years. Long-term leases or leasehold tenure provide a viable, alternative tenure arrangement that can be tailored to a multitude of land uses without transferring ownership of the underlying land.

The landlord agrees to allow the tenant to use and enjoy the property, and the tenant agrees to compensate the landlord by paying rent. Similarly, as with freehold title or property ownership, a long-term lease, with all the terms of the agreement, is registered and an endorsement is made against the property's title deed in the Deeds Registry. This affords both the tenant and the landlord security in terms of the real rights and obligations afforded to each party under the agreement.

7. Tax

7.1 Taxation on acquisitions

The transfer of land that has already been developed by a registered property developer is subject to VAT at the rate of 15%, for which the buyer is responsible.

Gains realized from the sale of real estate are subject to capital gains tax ("CGT") calculated by the Zimbabwe Revenue Authority ("ZIMRA") in accordance with Section 6 of the Capital Gains Tax Act (Chapter 23:01). For real estate acquired by the seller or transferor before the 1 of February 2009, the rate of CGT shall be 5% (five percent) of the capital gain received from the sale or disposal. For real estate acquired by the seller or transferor after the 1 of February 2009 but before the 22 of February 2019, the rate of CGT shall be 5% of the consideration received for the asset. For real estate acquired by the seller or transferor after the 22 of February 2019, the rate of CGT shall be 20% of the capital gain derived from the sale or disposal. The seller is responsible for paying the CGT.

Companies can offset or reduce tax as provided by Section 15 of the Capital Gains Tax Act (Chapter 23:01) (the "Capital Gains Tax Act") when transferring property between companies under the same control. Further, under section 10 of the Capital Gains Act, the receipts and accruals of a licensed investor from the sale of a property forming all or part of the investment to which his investment license relates are exempt from payment of CGT. A licensed investor is a foreign investor who has obtained a license from the Zimbabwe Investment Authority to invest in Zimbabwe.

In addition, if the individual disposing of the property is over the age of 55 and the property is their principal private residence, the sales proceeds may be exempt under of section 10 of the Capital Gains Tax Act.

The amount of CGT payable may also be reduced by expenditure incurred for the acquisition or construction of properties sold during the year of assessment. Other expenditure incurred for additions, alterations or improvements to properties that are not deductible from gross income under the Income Tax Act (Chapter 23:06) (the "Income Tax Act") may be deducted from CGT.

Share transactions are subject to capital gains tax. For unlisted shares, the rate of CGT shall depend on the date on which the shares were acquired. In the case of shares listed on the Zimbabwe Stock Exchange, the rate is 1.5% of the selling price (withheld by the stockbrokers) if the security was held for at least six months and 2% if held for less than six months. Property acquired through donation is also subject to CGT and a detailed valuation report of the property is required to be submitted to ZIMRA in this instance. A trust is also liable for CGT on the sale of real estate.

Land and building transactions are subject to stamp duty payable by the buyer at the standard rate ranging from 1% to 4% of the purchase price. Acquisition of real estate in relation to deceased estates is subject to estate duty, the amount of which is calculated in accordance with the Estate Duty Act (Chapter 23:03).

Further, an intermediated money transfer tax (IMT Tax) of 2%





is payable on every electronic transaction carried out in ZWL under section 22G of the Finance Act (Chapter 23:04) (the "Finance Act"). Where a transaction exceeds the sum of USD500,000 (in ZWL at the prevailing interbank exchange rate) a flat rate of ZWL10,150 (in ZWL at the prevailing interbank exchange rate) will be payable. With respect to transactions in foreign currency, IMT is charged at the rate of 1% of the value of the payment with a flat tax of USD10,150.00 being payable for transactions exceeding USD500,000.00. The tax is payable by the buyer upon making a payment to the seller or the seller's conveyancers. Payments from the conveyancer's trust account are however exempt from IMT Tax under the Thirteenth Schedule to the Income Tax Act.

7.2 Value added tax

In Zimbabwe, VAT is only applicable to commercial rents under the terms of the VAT Act (Chapter 23:12), at a rate of 15%. VAT does not apply to residential rentals.

VAT is also due on the acquisition of real estate from a property developer when the developer is a VAT-registered taxpayer.

VAT is, however, recoverable through input tax claims.

The Income Tax Act also states that where an individual is an informal trader, they must notify the Commissioner of ZIMRA in writing of their status as an informal trader. A presumptive tax, equal to such percentage of the rent paid, must then be paid to the commissioner, unless the landlord is in possession of a VAT tax clearance certificate. An informal trader, for these purposes, is described as a person who: carries on a trade for their own account from which they derive a gross income of less than USD6,000; has not, in the most recent year of assessment for which they could have done so, furnished a return for the assessment of the income derived for their own account; a hawker or street vendor; or anyone who sells articles at a place commonly known as a "people's market" or a "flea market"; or who manufactures or processes any articles in or from residential premises.

7.3 Other real estate taxes

In the case of new land development, deduction fees are payable to the Surveyor General's office and are calculated according to the size of the land.

7.4 Taxation of rental income from real estate

Income derived from letting property is subject to income tax, levied at the rate of 25% under the Income Tax Act. As indicated above, VAT is applicable on rent derived from commercial premises and is not applicable on residential rents.

7.5 Taxation of dividends from a company owning real estate

If a company owns real estate, dividends distributed to shareholders are subject to a taxation rate of 10% for dividends derived from listed shares and 15% for other dividends. The distribution of dividends to shareholders that are non-resident in Zimbabwe is subject to non-resident withholding tax at the rate of 10% for dividends from listed shares and 15% for other dividends unless an applicable tax treaty reduces the tax.

8. Real estate finance

The typical form of security over real estate is a mortgage bond, registered by a borrower against the land he is acquiring. The other common type of security common to real estate is a surety bond, which is a mortgage bond placed over property of a third party, who stands surety for the borrower. An agreement is executed between the lender, the borrower and the surety in this regard.

Section 208 of Companies and Other Business Entities Act (Chapter 24:31) (the “Companies and Other Business Entities Act”) states that it is generally unlawful for a company to provide financial assistance for the purpose of a person acquiring, or proposing to acquire, shares in a public company unless such assistance is given in accordance with a special resolution of the company and the company is able to pay its debts as they become due in the normal course of business. Furthermore, before a company can give valid security over its real estate, for example, in the case of debenture registration (if a debenture binds movable and immovable property), registration should be carried out at the Deeds Office. In terms of corporate benefit, directors are bound by their fiduciary duties under common law and the Companies and Other Business Entities Act and must act in good faith in the interests of the company and its members.

There are no restrictions on granting surety to foreign lenders. However, such security must be registered with the Exchange Control authorities. Additionally, according to the Exchange Control Act Regulations (Statutory Instrument 109 of 1996),

any application for the transfer of funds arising from the purchase of immovable property by a foreign resident shall be submitted to the Reserve Bank of Zimbabwe for approval through an a licensed broker. Exchange control approval must be obtained prior to obtaining such loans. The duration, repayment periods, security and interest terms etc. of such loans must be registered and must be in line with the exchange control guidelines and parameters for external borrowings.

If the security has not been validly perfected, the lender is not considered a secured creditor should the borrower become insolvent or fails to meet its obligations.

8.1 Enforcement of security

In order to enforce security if the borrower defaults on its obligations, the lender will need to place the borrower in mora through a letter of demand. This letter contains deadlines and highlights the consequences of the borrower’s failure to meet these deadlines, including proceeding relating to its rights over the mortgaged property. If the borrower fails to meet these deadlines, the lender will apply to the court of law for a judgment authorising seizure of the property. The messenger of the court or sheriff will seize, remove and sell the borrower’s property by public action, the process for which is detailed above in paragraph 2.5. After the sale, the messenger of the court or sheriff will pay the lender the amount due to them.



If the borrower is a company in financial difficulty, lenders have the option of applying to the court for an order placing the company under corporate rescue or for a scheme of arrangement.

In terms of the Part XXIII Insolvency Act (Chapter 6:07), a company may be placed under corporate rescue for mismanagement or if for any other cause the company is unable to pay its debts or there is a probability it will be unable to pay its debts. There must be a "reasonable probability" that should the company be placed under corporate rescue; it will be able to pay its debts and meet its obligations. Furthermore, the decision to place a company under corporate rescue must be deemed just and equitable to all interested parties by the High Court. When a company is granted a corporate rescue order, the assets of the company are placed under the control of the judicial manager, who is then tasked with the responsibility of restructuring the company and resuscitating the business. More importantly, creditors' payments are suspended, and the company is protected from legal action against it by creditors.

A scheme of arrangement is also provided for under section 147 of the Insolvency Act (Chapter 6:07) and involves giving the company flexibility it needs to reach an agreement with shareholders and creditors. The lender will be one of the creditors involved in the scheme of arrangement.

In the event that several creditors hold a security interest over the same real estate asset, the provisions of the Insolvency Act (Chapter 6:07) will apply, meaning that preference is given to creditors who prove their claim

before the court has issued a judgement concerning the repossession and sequestration of real estate. A creditor of an insolvent estate who intentionally delays proving their claim until the court has rendered a judgment in such proceedings may not be entitled to participate in the distribution of any money or proceeds of any property recovered as a result of such proceedings.

However, when two creditors' security interests' conflict, the creditor who financed the property is entitled to preferential rights.

Furthermore, secured creditors have priority over tax and all other claims. To secure the property, the creditor would also have to take physical control of it.

8.2 Fees applicable in the creating of security

Fees and levies charges associated with granting a security are applicable as stamp duties and notarial fees. Government stamp duties are levied under the Stamp Duties Act (Chapter 23:09). Stamp duty in the case of mortgage bonds is calculated by taking the value of the mortgage bond or loan amount, multiplying the figure by four and then dividing that figure by 1,000. Therefore, if the value of a mortgage bond is USD200,000 that amount is multiplied by four (USD800,000) and then divided by 1,000 giving a stamp duty of USD800. Conveyancing fees are also applicable and are charged based on the tariffs imposed by the Law Society of Zimbabwe as 2.5% of the value of the bond. If the debtor has been declared insolvent and has surrendered the property at auction, the creditor will be required to pay sequestration costs, tax on sequestration, CGT and AT.



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This guide was prepared in September 2015 and updated in January 2019. Subsequent changes in the law are therefore not taken into account. This guide cannot be considered as a substitute for obtaining specific legal advice in individual cases. DLA Piper does not assume any liability in connection with this guide.

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