



Real Estate Investment in Zimbabwe

THE LEGAL PERSPECTIVE





Introduction

Following a period of hyperinflation that gripped Zimbabwe from the late 1990s until the end of 2008, the period between 2009 and 2012 was marked by an economic rebound following the introduction of the multiple currency system, with the economy growing at an average rate of 11% per annum during this period. However, from 2013 onwards, Gross Domestic Product (GDP) growth decelerated sharply, culminating in GDP growth being at 0.7% annual change in 2016. Following several economic adjustments, GDP growth increased substantially to a 3.6% annual change in 2018. Zimbabwe, however, is currently encountering a severe cash crisis, with the depletion of foreign currency which has caused some scepticism and uncertainty in the market culminating in a separation and differentiation of the rates applicable to payments made in the physical US dollar and transactions in Real Time Gross Settlement (RTGS), bond notes and coins, and mobile money, which have now been collectively referred to as RTGS dollars (RTGS\$ or ZWL). In light of the above, the real estate sector has taken on an increasingly important role as a store of value in Zimbabwe.

All property in Zimbabwe (commercial and residential), is held in freehold title. Residential property is mostly owned by individuals on freehold, while commercial property is owned by institutional investors, such as pension funds, insurance companies, high-net-worth individuals, local government authorities and the local government itself. Key global multinational real estate service

organizations such as CB Richard Ellis and Knight Frank are well represented as market leaders in Zimbabwe, including other regional leaders such as Pam Golding Properties (who work in conjunction with Savills).

The continued presence of these international market leaders highlights that despite the cash challenges facing Zimbabwe, the demand for well-priced real estate remains strong because real estate is a real hedge asset class for domestic and foreign investors, particularly among Zimbabwe's population in the diaspora, who maintain a continued, significant interest in property investment in their home country.

There is sizeable land available for development in Zimbabwe's urban centers in addition to pre-existing market players that are willing to partner with international investors on new developments. There are currently several proposed new developments for shopping malls, hotels, retail and industrial parks, offices and residential complexes predominantly promoted by private developers who appear to be more willing to take the risk. The large institutional investors (such as insurance companies, pension funds, local authorities) remain laden with large commercial property portfolios (located mostly in CBDs) developed over the years.

Zimbabwe has developed an accurate system of property registration which aims to provide an efficient transfer process and security of title to land and land rights in a free market.

The system allows both local and international entities to become registered owners of immovable property in Zimbabwe.

The shortcomings of the above is the ability to create innovative finance structures for developers which would unlock intrinsic value of property in Zimbabwe. Given the high demand for housing and the huge infrastructure gap that currently exists, coupled with high investment return potentials, Zimbabwe continues to offer opportunities for investors.

It is interesting to note that the ravages of hyperinflation between 2006 and 2008 had the unintended consequence of allowing or creating a property pool that is unencumbered in both commercial and residential real estate, as the devaluation of the then Zimbabwean dollar enabled property owners to settle their obligations and release these encumbrances.

This document is intended to provide a comprehensive insight into, and highlight pertinent aspects involved in investing in real estate in Zimbabwe, which has been produced based on our know-how and practical experience with respect to real estate investments in Zimbabwe. This document does not however purport to be exhaustive. As a result, our highly qualified and experienced real estate team will be available to attend to any further questions which you may have.

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1. Ownership of real estate

1.1 Full ownership

Any business or individual may hold real estate assets in Zimbabwe. The right of full ownership is protected under constitutional provisions as well as The Deeds Registries Act (Chapter 20:05) (the Deeds Act) which states that every person has the right in any part of Zimbabwe to acquire, hold, occupy, use, transfer, hypothecate or dispose of all forms of property; and may only be limited in terms of the law.

Furthermore, the Deeds Act does not stipulate that only citizens of Zimbabwe can hold title in respect of title deeds and the owner of a title deed capable of registration is defined merely as any person, company or trustee. 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 unit 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 in the event that it is necessary for public purposes, without compensation except for improvements effected on the land prior to the 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 in a thing. It is an absolute right and entitles the holder to enforce it against other persons. Real rights are registrable, while personal rights are not. Real rights include long leases and servitudes.

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

1.3 Restrictions on ownership by foreigners

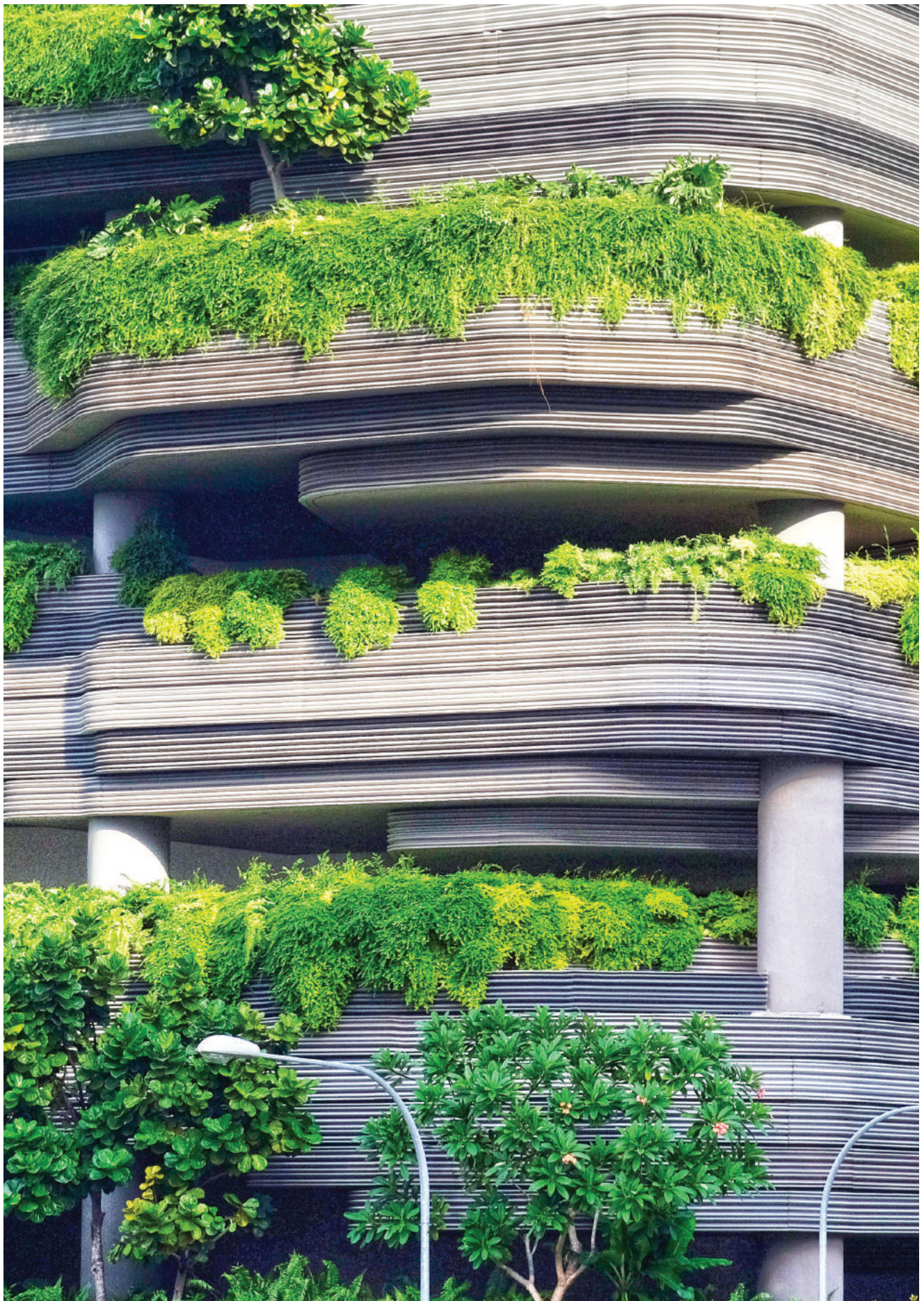
There are no restrictions on ownership by foreigners. Section 71(2) of the Constitution of Zimbabwe, 2013 (the Constitution) states that every person has a right, in any part of Zimbabwe to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property either individually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

1.4 Expropriation of land by the state

In terms of the Land Acquisition Act (Chapter 20:10), 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 that or any other land for settlement for agricultural or other purposes, for purposes of land reorganization, forestry, environmental conservation or the utilization of wildlife or other natural resources or for the relocation of persons dispossessed in consequence of the utilization of land for these purposes. The acquiring authority and the party affected may enter into an agreement for the acquisition, or the formal process in terms of the Land Acquisition Act may be followed.

Where the land is acquired, the Land Acquisition Act allows for the eviction of the owner or the occupier of such land once the relevant procedure has been followed in terms of the Act and an order obtained. The formal process in terms of the Act must be followed and an order obtained. Once the order is obtained, it is then served upon the occupier or owner of the land, and they are then given three months' written notice to vacate. If the land is agricultural land, notice in writing is given to the owner or occupier to cease to occupy, hold or use 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 purchaser and the seller in order to acquire ownership over any real estate. It is not required in Zimbabwe that the agreement be in the form of a notarial deed signed before a registered notary public in Zimbabwe. This formal requirement will however not be necessary in instances where the property is transferred pursuant to an inheritance, expropriation by the state or where the property is disposed of or transferred pursuant to a court order.

2.2 Registration

A draft deed is prepared by the conveyancer, together with a power of attorney to pass transfer and the declarations for signing by the purchaser and the seller. The seller is required to apply for a rates clearance certificate to the local authority 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 make payment for capital gains tax (CGT) and obtain a CGT clearance certificate. The transfer documents are then lodged for registration of title with the Registrar of Deeds Office (the Registrar). All transfers of titles are effected through the Registrar and a record is kept at the Registrar.

Registration of the transfer is required to be effected as soon as a transfer is completed.

The transfer to title fees to the title by the conveyancer is payable by the purchaser, and the fees are determined by the Law Society of Zimbabwe at a fixed tariff, payable at a sliding scale rate of between 1% to 4% of the purchase price. The purchaser is responsible to pay for the transfer fees unless otherwise agreed by the parties in the Sale of Property Agreement.

Any outstanding city council rates or bills applicable to the property must be cleared, and an advance payment of three months must be paid before a transfer can be processed. In the event that a business will be conducted on property, trading licences must also be obtained.

2.3 Asset deals

Asset deals in Zimbabwe typically take place either as a direct acquisition of the asset (asset purchase) or through the sale of a company which holds title to the property (share purchase). Typically, the process in asset deals would involve the signing of a preliminary agreement in respect of the deal, followed by the purchaser conducting a due diligence on the property. Upon the conclusion of the due diligence on terms satisfactory to the purchaser, a sale of property agreement will be executed in order 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 deals, whether it is an asset purchase or a share purchase, sharing of transaction costs between the parties is on the agreed terms; however, liability for taxes and costs is required to be paid as follows in terms of the laws of Zimbabwe:

- Stamp duty is payable on the registration of transfer of immovable property. The owner of property is liable for the payment of stamp duty.
- A rates clearance certificate is required to be obtained from the local authority. This is the obligation of the seller to obtain.
- Capital gains tax 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 a new development, value added tax will be levied upon the purchaser.
- Conveyancer fees are also payable and are determined according to the Law Society of Zimbabwe By-laws S.I. 24/2013 effective of March 1, 2013. The conveyancing fees are payable by the purchaser.

2.4 Share purchase

Share purchases occur in the event that a legal entity holds title to the property. In this regard, a share purchase agreement will be executed between the purchaser and the seller in respect of the sale of the shares. In this regard,

however, there is a limitation on foreigners acquiring shares in a Zimbabwean company, as in terms of the Exchange Control Regulations (Statutory Instrument 109 of 1996) (the Exchange Control Regulations) no person is permitted to issue to a foreign resident or nominee of a foreign resident, security (being shares, stocks, bonds, debentures and debenture stocks) which security is 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 in the event that a creditor institutes 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 of the Court to attach the respective property for service upon 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 will inspect the property to value it and will then advertise

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



3. Other rights to property

3.1 Rights of pre-emption

Rights of pre-emption are personal rights which grant a person a right of priority in relation to the purchase of an asset. This right is an exception from the freedom of contract principle, meaning that the seller cannot freely dispose of the property to another purchaser 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 the statute, but instead this is a matter subject to contractual agreement between the parties. For example, where there is a sale of an apartment in a block of residential flats, it may be a condition imposed by the home owners' association in the home owners' agreement that one owner offers a right of first refusal to other owners in the complex before opening up the sale to members of the public. In an instance such as this, the seller would be required

to offer the property to the other owners on the same terms and thereafter obtain a written refusal from each of the current occupiers before continuing with a sale to a third party.

In respect of rural land, the Land Acquisition (Disposal of Rural Land) Regulations (Statutory Instrument 287 of 1999) provides that the Minister of Lands, Agriculture and Rural Resettlement shall be given the right of first refusal when disposing of rural land. In terms of these regulations, a person would therefore be required to obtain a certificate of no present interest from the Minister of Lands, Agriculture and Rural Resettlement in order to dispose of the rural land.

3.2 Option agreements

Option agreements in real estate allow the purchaser the exclusive right to purchase the property from the seller within a certain period of time and at an agreed price and is a common practice in Zimbabwe.

The option agreement terms are determined on a case-by-case basis and will indicate the conditions for exercising of the option by the purchaser. The basic principles applicable to the common law of contract will be applicable in order for the contract to be valid, and upon the purchaser exercising the option timeously and in accordance with the terms of the agreement, the ownership of the property will be transferred to the purchaser. Should the purchaser opt to not exercise the option or does not exercise the option timeously and in accordance with the terms of the option agreement, the option will then fall away and the seller will be able to sell the property to a third-party purchaser.



4. Zoning and planning law permits

Physical and spatial planning in Zimbabwe are directed by the Department of Physical Planning. The department is a technical arm of the government that is in charge of managing the spatial planning system and giving technical advice for the implementation of the 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 Urban Councils Act (Chapter 29:15) or the Rural District Council Act (Chapter 29:13).

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

Furthermore, the department provides technical assistance relating to the planning of preparation structures for the development planning system, which the Provincial Councils and Administration Act (Chapter 29:11) prescribes; 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 Model Building By-laws constitute the policy instruments governing housing unit development and defines the council'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 (Chapter 29:12), which together guide the enactment of council by-laws. The Factories and Works Act (Chapter 14:08) specifies the minimum building standards for a factory. The government is empowered to deal with buildings of unsatisfactory standards, issues of overcrowding and control of harmful use of premises, including the protection of the rights of neighbors. Structures which are substandard may be demolished.

4.1 Designated use

Legal restrictions are put in place on the designated use of a new building. These restrictions are in the form of city by-laws, and other use-specific legislation such as the Factories and Works Act (Chapter 14:08) and the Environmental Management Act (Chapter 20:27). It is therefore required to inform and get approval from the city council of any change in the designated use of a building before the change takes place.

Other laws regulating the designated use would fall under the National Museums and Monuments Act (Chapter 25:11), which seek to protect some culturally important places that are viewed as sacred in light of tradition and culture.

The state, through local authorities, is responsible for regulating the development and designated use of parcels of land. All land in Zimbabwe vests in the President, who exercises control over the land through government ministers. Agricultural land is under the purview of the Minister of Lands, Agriculture and Rural Resettlement, while communal land is under the purview of the Minister of Local Government.

The Regional Town and Country Planning Act (Chapter 29:12) regulates designation of site planning, whilst the Rural District Councils Act (Chapter 29:13) empowers rural district councils to manage and permit the use of land by third parties on application on behalf of the state. The Urban Councils Act (Chapter 29:15) 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, based on the type of development that one seeks to embark on, the specific permits would be issued based on environmental considerations.

4.2 Permission for new construction or change of designated use

An application for change in use of land would need to be lodged with the responsible authority. Depending on the land, the responsible authority may be the Minister of Lands, Agriculture and Rural Resettlement, the Minister of Local Government or the relevant local authority.

Structures and plans need to be prepared by the property developer and approved by the responsible planning authority. The actual construction process only begins after the approval of the dwelling plans by the planning authority, which will follow the below process.

The project would firstly require the approval from the Inspector of Factories (if it is a commercial factory) in terms of the Factories and Works Act (Chapter 14:08). The 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 would ordinarily circulate the request in almost all its departments that are related to the proposed construction. For example, Chemical Laboratory and Trade Waste, Department of Works, Land Survey and Valuation among other departments. This process takes approximately ten months.

The Building Inspectorate then inspects the building on application upon completion of the foundation

of the building. The process ordinarily takes approximately one month. A second inspection by the Building Inspectorate upon completion of drainage installation is then sought, which normally takes one business day. Upon completion of the structure there will be a further inspection by the Building Inspectorate which typically takes approximately two weeks to obtain. Upon completion of the construction, a final inspection from the Building Inspectorate will be conducted, which will normally take one month.

The next stage would be to request and obtain:

- a sewage connection from the Zimbabwe National Water Authority. This process will take 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 will normally take 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 carrying on a designated use of real estate by submitting their statement to the decision-maker, who will review them before making a final decision. In the event that 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, in situations where a party is aggrieved by a decision by a local authority to designate a certain use for the land. The decision on the development may be reviewed by the High Court of Zimbabwe in the event that one party believes that they have been treated unlawfully, rendering the relevant application under review. In such an event, that party can appeal to the High Court or the Administrative Court.



5. Environmental liability

Environmental protection issues are provided for in the Environmental Management Act (Chapter 20:27). The Environmental Management Agency (EMA) does however take the lead role in ensuring that individuals and companies comply with this legislation.

Owners and occupiers of real estate are typically held liable by the EMA for any pollution or environmental harm caused on the real estate. Lenders holding or enforcing security over real estate will not be liable as they have no real right over the property.

In terms of the Environmental Management Act (Chapter 20:27) and the Environmental Management (Environmental Impact Assessment and Ecosystems Protection) Regulations (Statutory Instrument 7 of 2007), housing

developments, and 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 (Chapter 20:27), the Director General, inspectors and officers are responsible for ensuring that policies and programs in respect of land, air, water and soil pollution and hazardous waste management are coordinated. This Act provides them with many powers, including to enter specified land, examine any activity considered to be detrimental to the environment, take or remove samples, or seize items considered to be used in the commission of an offence.

Power is also granted to them 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 the harmful activities against 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 the purchaser 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

Lease agreements in Zimbabwe do not have a prescribed period, and the length of the lease is subject to contractual agreement between the parties. The market trend in real estate currently sways towards shorter-termed leases, ranging from anything between one to ten years. The current economic challenges in Zimbabwe have forced landlords to grant shorter commercial leases. For long-term leases, that are more than ten years, the Deeds Registries Act provides for the lease to be registered.

6.2 Rent

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

The lease agreement may make provision for the rental to be reviewed after a certain period of time or it may state that the rental will increase on an annual basis by a certain percentage, or in accordance with the comparable market rates. The parties are, however, free to contract as they wish in this regard.

Where the parties cannot reach an agreement pertaining to a rental increase, or where the increase is 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) states that either party may approach the rent board to decide the matter and thereafter issue an order.

6.3 Operating expenses

There are no further costs payable by a lessee at the start of a lease, apart from the deposit and the rental. For the duration of the lease, the lessee will be responsible for paying rates to the local authority, such as water, electricity, municipal rates and service charges.

If the lease needs to be registered with the Deeds Office in terms of the Deeds Registries Act (Chapter 20:05), stamp duty will be payable.

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

Ordinarily, where there are several lessees within a complex, a levy is chargeable per month over and above the monthly rental. This levy then goes towards the maintenance, repairs and safety of the complex.

The landlord is responsible for insuring the structural property against fire and related perils, while the lessee would be responsible for insurance of the remainder against all claim including public liability insurances, for example, glass, signs and supports, fittings and fixtures affixed to the buildings or the contents. The parties would contract that the lessee would not do or fail to do anything which would cause an increase in the insurance premiums, or keep any hazardous goods on the leased premises.

6.4 Assignments/ transfers

Normally the agreement would make provision regarding whether the lessee can cede or assign its rights and obligations, transfer, make over, alienate or pledge any of its rights under the agreement. Should it be permitted, the landlord's prior written consent would be required. A deviation from this would result in a breach of the contractual terms and the landlord would then be permitted to terminate the lease agreement in accordance with the termination provisions.

6.5 Subleases

The parties have contractual freedom in this regard to allow the lessee to sublease the property, and will include a right or limitation to cede or assign its rights and obligations, transfer, make over, alienate or pledge any of its rights under the agreement. Should subletting be permitted, the agreement typically requires subletting to be conducted only with the landlord's prior written consent.

6.6 Termination

When a lease agreement has been entered into for a fixed duration, the lease agreement would then terminate upon expiry of the term. The parties may contract to permit a renewal of the term, but this will be subject to agreement between the parties. The lease agreement typically makes provision for the circumstances in which the lease can be terminated earlier than the expiration date, which would normally apply in the case of non-payment of the rental or operating costs, a failure to comply with the obligations in terms of the lease

agreement or upon a failure to rectify a breach of a condition of the lease agreement, having received written notification to do so. The contract will also provide 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 lessee still remains in occupation of the property, the eviction process would then need to be followed.

6.7 Sales of leased property

The sale of a property which is being leased does not affect the lease or the validity of the lease agreement, and the new lessor would be required to see the lease agreement through to its expiration. Typically, the parties to the lease agreement would have made provision for the instance where the property may be sold in the foreseeable future, sometimes even making provision for the lessee to be offered a right of first refusal to purchase the property. This is especially apparent in respect of commercial leases.



7. Tax

7.1 Taxation on acquisitions

The transfer of land which has already been developed by a registered property developer is subject to value added tax (VAT) at the rate of 15%, for which the purchaser is responsible for paying.

Gains realized from the sale of real estate are subject to CGT calculated by ZIMRA in terms of Section 6 of the Capital Gains Tax Act (Chapter 23:01) at the rate of 20% of the capital gain for real estate acquired after February 1, 2009. Where acquisition was prior to February 1, 2009 and is disposed of after that date, CGT shall be calculated at the rate of 5% of the selling price. The seller is responsible for the payment of CGT.

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

In addition, in the event that the individual disposing of the property is over the age of 55 and the property is their principal private residence, then the proceeds from the disposal of the sale may be exempt in terms of section 10 of the Capital Gains Tax Act (Chapter 23:01).

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

Share deals are subject to capital gains withholding tax payable by the shareholder at the rate of 5% for unlisted shares. In the case of shares that are listed on the Zimbabwe Stock Exchange, the rate shall be 1% of the price at which the shares were sold.

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 assessable to CGT on the sale of real estate.

Land and building transactions are subject to stamp duty payable by the purchaser at the standard rate ranging between 1% and 4%.

Acquisition of real estate for 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 of 2% is payable on every electronic transaction in terms of section 22G of the Finance Act (Chapter 23:04). Where a transaction exceeds the sum of ZWL500,000 a flat rate of ZWL10,000 will be payable. The tax is payable by

the purchaser upon making payment to the seller or the seller's conveyancers. Payments from the conveyancer's trust account to the purchaser are exempt from the tax in terms of the Thirteenth Schedule of the Income Tax Act (Chapter 23:06).

7.2 Value added tax

VAT in Zimbabwe is only chargeable on commercial rent under the terms of the VAT Act (Chapter 23:12), at a rate of 15% VAT is not charged on residential rentals.

VAT is also payable 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 (Chapter 23:06) also states that where an individual is an informal trader, they must notify the Commissioner of ZIMRA of their status as an informal trader in writing. 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; hawker or street vendor; 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

Stamp duty is payable by the purchaser at a sliding scale rate of between 1% to 4% of the purchase price.

In a case of new land development, deduction fees are payable to the Surveyor General's office and are calculated according to 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% in terms of the Income Tax Act (Chapter 23:06). As indicated above, VAT will only be applicable on rental derived from commercial premises and will not be applicable on residential rentals.

7.5 Taxation of dividends from a company owning real estate

In the event that a company owns real estate, dividends distributed to the shareholders will be 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 to a lower level.



8. Real estate finance

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

The Companies Act (Chapter 24:03) 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 it is able to pay its debts as they become due in the ordinary course of its 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 effected at the Deeds Office. In terms of corporate benefit, directors are bound by their fiduciary duties under common law as well as the Companies Act to act in good faith for the benefit of the company and its members.

There are no restrictions on granting security 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 out of the purchase of immovable property by a foreign resident shall be submitted to the Reserve Bank of Zimbabwe through an authorized dealer for approval. Exchange Control approval must be obtained prior to obtaining such loans. The tenure, 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 the security in the event that the borrower defaults in 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 those deadlines, including proceeding in terms of its rights with respect to the mortgaged property. If the borrower fails to meet those deadlines, the lender will apply to the court of law to obtain a judgment, authorising for the attachment of the property. The messenger of court will then attach, remove and sell by public action, the property of the borrower, the process of which is detailed above under paragraph 2.5. After the sale, the messenger of court will pay the lender the amount due to them.

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

In terms of the Companies Act (Chapter 24:03), a company may be placed under judicial management 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 judicial management, it will be able to pay its debts and meet its obligations. Furthermore, the decision to place a company under judicial management must be deemed just and equitable to all interested parties by the High Court.

When a company is granted a judicial management 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 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 in the Companies Act (Chapter 24:03) and involves giving the company flexibility 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 more than one creditor holds a security interest over the same real estate asset, the provisions of the Insolvency Act (Chapter 6:04) will be applicable, which states that preference is given to creditors who prove their claim before the court has given judgement concerning the repossession and sequestration of an estate. A creditor of an insolvent estate who intentionally delays proving their claim until the court has given judgment in those proceedings may not be entitled to share in the distribution of any money or the proceeds of any property recovered as a result of those proceedings.

However, when two creditors' security interests conflict, the creditor who financed the property is entitled to preferential rights. Furthermore, secured creditors are given first priority before 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 creation of security

Fees and levies charges in the granting of security are applicable for stamp duties and notarial fees. Government stamp duties are levied in terms of the Stamp Duties Act (Chapter 23:09). The stamp duty is calculated by taking the value of the mortgage bond, 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 to equal a stamp duty total applicable of USD800. Conveyancing fees are also applicable and are charged based on the tariffs imposed by the Law Society of Zimbabwe on a sliding scale from 1% to 4% based on the value of the bond. In the event that a debtor has been declared insolvent, and has surrendered the property for auction, the creditor will be required to pay sequestration costs, tax on sequestration, CGT and VAT.

Manokore Attorneys, a member of DLA Piper Africa, is a dynamic Pan-African law firm with a core focus on corporate, commercial and financial transactions. Our team consists of diverse multi-lingual lawyers with extensive experience in both local and cross-border transactions. Our key strengths include investment inflows from foreign capital source markets, and a comprehensive understanding of corporate and financial transactions and structuring in various spheres of the commercial sector. We are a service focused and solution driven law firm.

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