



PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2011/12

CORPORATE REAL ESTATE

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Essential legal questions answered
in 23 key jurisdictions

Comparative table

Rankings and recommended
lawyers in 51 jurisdictions

Analysis of critical
legal issues





Cyprus



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THE CORPORATE REAL ESTATE MARKET

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

Cyprus's entry into the Eurozone on 1 January 2008 made investments in Cyprus, including real estate investment, considerably more marketable. However, the global economic slowdown seriously impacted the residential property market as UK buyers, a key source of demand for residential property, were affected by the UK's economic slowdown and the depreciation of sterling against the euro. The fall in demand was exacerbated by delays in issuing title deeds and questions over whether buyers would obtain good title. New laws have been passed to address the title deeds issue (see *Question 43*). Developers are increasingly looking to other markets, such as Russia, the Middle East and Asia, to replace UK buyers. However, activity in the residential property market remains far below the levels of the past and a number of developers are rumoured to be under financial pressure.

Demand for office space, particularly in Limassol and Nicosia, the main commercial centres, initially remained buoyant and a number of shopping malls and leisure developments were opened or are under construction. However, there are signs that the commercial market is slowing and that rental growth is slowing or in some cases reversing.

Despite these trends, there is still substantial activity in the property market. A EUR250 million development, comprising a 1,000-berth marina, restaurant, residential and conference facilities is under construction in Limassol. In addition, the government has recently announced that a number of difficulties which had been delaying the start of a joint development project in Nicosia with Qatari Diar Real Estate Investment Company have been resolved (as at 1 September 2011, US\$1 was about EURO.7).

REAL ESTATE INVESTMENT

2. How is real estate investment carried out in your jurisdiction and what structures do investors use?

Common structures

Development is generally carried out by construction companies and, to a lesser extent, by private individuals and partnerships. Speculative development is common in the residential field, but much less so for commercial and industrial properties, most of which are occupier-developed.

REITs

Cyprus law provides for real estate investment trusts (REITs) but as yet they have been rarely used.

Institutional investors

As most commercial property is occupier-developed, institutional investors are rarely involved in Cyprus property development.

Private investors

Private investment is the main market driver.

REAL ESTATE LEGISLATION

3. What is the main real estate legislation that applies in your jurisdiction?

The main legislation regulating real estate is the:

- Immovable Property (Tenure, Registration & Valuation) Law, Cap. 224.
- Acquisition of Immovable Property (Aliens) Law, Cap. 109.
- Immovable Property (Transfer and Mortgage) Law, No. 9/65.
- Immovable Property Tax Law, Cap. 322.
- Immovable Property (Towns) Tax Law, No. 89/62.
- Capital Gains Tax Law, No. 52/80.
- Town and Country Planning Law of 1972.
- Rent Control Law, No. 23/83.
- Sale of Immovable Property (Specific Performance) Law of 2011.

In addition, many other laws contain provisions applicable to rights in immovable property. These include the:

- Constitution of Cyprus.
- Contract Law, Cap. 149.
- Civil Procedure Law, Cap. 6, and Rules.
- Stamp Law, No. 19/1963.
- Wills and Succession Law, Cap. 195.
- Administration of Estates Law, Cap. 189.
- Probates (Re-Sealing) Law, Cap. 192.
- Trustee Law, Cap. 193.



- Central Bank of Cyprus Law, No. 138(I)/2002.
- Movement of Capital Law, No. 115(I)/2003.

TITLE TO REAL ESTATE

Title and registers

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

Under the Immovable Property (Tenure, Registration & Valuation) Law, “immovable property” means:

- Land.
- Buildings and other erections, structures or fixtures affixed to any land, or to any building or other erection or structure.
- Trees, vines and any other thing planted or growing on any land, and any of their produce.
- Springs, wells, water and water rights whether held with, or independently of, any land.
- Privileges, liberties, easements and any other rights and advantages relating, or reputed to relate to, any land or to any building or other erection or structure.
- An undivided share in any of the above.

Land and the buildings on it are registered together and are inseparable for title purposes. The owner of the land owns the buildings on it.

Evidencing title

5. How is title to real estate evidenced?

The Department of Lands and Surveys, one of the longest-established government departments is responsible for land registration.

The system of land registration is a system of registration of title (as distinct from registration of title deeds). The legal value of registration lies between an indefeasible title (that is, title that cannot be avoided under any circumstances) and a defeasible title (that is, title which is not absolute but may be annulled or voided at a later date). A registered person is considered to be the undisputed owner of the land and its title to ownership is absolute, subject to both the:

- Power of the Director of the Department of Lands and Surveys to correct errors or omissions under certain circumstances.
- Inherent power of the courts to order amendment or cancellation of a registration.

It is not compulsory to register rights acquired in land (for example, by purchase or mortgage), but these rights have no legal status unless they are registered and owners or lenders who fail to register new or transferred rights lose the benefit of registration and their priority.

Information in the public register

6. What are the main information and documents registered in the public register of title?

Land registration records mainly comprise the:

- Register.
- Cadastral plan.
- Tax register.
- Certificate of registration.

The Register contains the following key information about the property:

- Owner.
- Address.
- Purchase price.
- Location.
- Area.
- Tenure.
- Declarations of transfer.
- Mortgages.
- Easements.

Protection from disclosure

7. Can confidential information or documents be protected from disclosure in the public register of title?

The following are treated as confidential:

- Information or documents in the public register of titles connected with the ownership of immovable properties.
- Charges or encumbrances over immovable property.

They are therefore protected in the sense that the Land Registry's practice is to give information about the status of these properties or copies of title deeds or details of the charges only to either the:

- Registered owner or his duly authorised agent and attorney.
- Administrator of his estate or a judgment creditor of the registered owner.

State guarantee of title

8. Is there a state guarantee of title? Is title insurance available? If so, is it commonly used?

There is no state guarantee of title and no government indemnity. Any person who disputes the facts recorded on the land register can seek rectification by application to the Director of the Department of Lands and Surveys, or to the court. Title insurance is not available.



Tenure

9. How can real estate be held (that is, what types of tenure exist)?

Three types of registered tenure exist. They are:

- **Freehold.** This is an estate in fee simple absolute in possession, that is, land held in perpetuity.
- **Leasehold.** This is an interest for a term of years absolute, that is, land held for a limited time. A lease must have a minimum unexpired term of at least 15 years for it to be registered.
- **Shared ownership.** This is property held in undivided shares by two or more persons, who can be physical or legal.

The concept of joint ownership of property does not exist in Cyprus law.

SALE OF REAL ESTATE

Main stages and documents

10. What are the main stages and documents in the sale of real estate?

Marketing

Real estate is marketed by estate agents (who must be licensed), developers and individuals.

Commercial negotiation

The terms of the sale and purchase are negotiated between the parties, assisted by their advisers.

Pre-contractual arrangements

Pre-contractual arrangements are rare and, in most cases, the sale contract is the only agreement.

Sale contract

The parties are legally bound on the execution of the sale contract. Stamping the contract and depositing it at the Land Registry enables the buyer to obtain specific performance and makes the contract enforceable.

When legally binding

Contracts are binding on signature. The Specific Performance Law stipulates that the buyer can secure transfer of the property by depositing a signed and stamped copy of the sale contract at the Registry. The deposit must take place within two months of the contract having been signed or, from 29 July 2011, within six months (see *Question 43*). This provides the buyer with an effective means of enforcing the contract.

Registration

Change of title is registered at the time specified in the contract. This is usually when the full purchase price has been paid and in the case of non-EU citizens needing a licence to hold immovable property in Cyprus, when the licence has been issued.

When title transfers

The transfer of title is effected by application to the Land Registry in the prescribed form signed by the seller and buyer, accompanied by the prescribed transfer fee (see *Question 18*). Notarisation is not required.

Seller's liability to the buyer

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

There is no statutory obligation for the seller to disclose information about the property, or in relation to title. There may be a contractual obligation if warranties are included in the sale contract.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition?

Due diligence typically carried out before acquisition comprises a search with the Land Registry to confirm the validity of the title and the absence of mortgages, charges and other encumbrances. Buyers can also search the Register of Companies for information on a corporate seller, to confirm its soundness. For second-hand property, it is usual to obtain a report by a qualified surveyor on the condition of the property.

A number of well-publicised problems have arisen in relation to foreign buyers of domestic property, particularly relating to inability to obtain title deeds. Most of these problems could have been avoided by taking thorough independent legal and other professional advice at the time of purchase.

Sellers' warranties

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

Warranties usually cover the following matters:

- Legal ownership of the property.
- Absence of mortgages, charges or other encumbrances.
- Timely completion of the property, if under construction.
- Ability to deliver clear title deeds.

Warranties can sometimes be supported by personal guarantees from company directors and (rarely) by bank guarantees.

Inheriting liability

14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it?

An owner or occupier inherits liability for matters relating to the real estate even if they occurred before it bought or occupied it.



However, the owner can, in certain circumstances, claim against the previous owner in relation to any damage suffered as a result of these liabilities.

Retention of liability after disposal

15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it?

The seller can be liable to the buyer in certain circumstances (see *Question 14*).

Seller and buyer costs

16. What costs are usually paid by the buyer? What costs are usually paid by the seller?

Buyer's costs

In addition to its own professional fees, the buyer is usually responsible for payment of VAT if applicable (see *Questions 17 and 18*).

Seller's costs

The seller is responsible for payment of any capital gains tax (CGT) and its professional fees.

CGT is imposed at 20% on gains from the disposal of immovable property in Cyprus, and from the disposal of shares in companies owning such property, unless the shares are listed on a recognised stock exchange. All other gains are exempt from CGT. Exemptions are also available to individuals in relation to their main residence and certain other categories of disposal.

CGT is not charged on gains subject to corporation tax. As with corporation tax, CGT is paid by reference to the calendar year, under a self-assessment system.

The taxable gain is calculated by deducting from the sale price (or in certain circumstances market value):

- The market value of the property at 1 January 1980, or, if it was acquired after that date, the price paid or the consideration given for the acquisition of the property.
- The cost of any major improvements.
- The subsequent increase in the value of the property due to inflation, calculated by reference to the Retail Price Index issued every month by the Department of Statistics.
- Expenses related to the acquisition and disposal of the property, such as transfer fees and legal costs.

Current year and brought forward capital losses on chargeable assets can be offset against gains.

Gains on disposals of shares in companies owning real estate in Cyprus are calculated by determining the amount of the share disposal proceeds attributable to such real estate, and then computing the taxable gain as above.

REAL ESTATE TAXES AND MITIGATION

17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate?

The sale of immovable property is subject to VAT. VAT is payable at the standard rate (currently 15%) on the sale of buildings or parts of buildings, and the land on which they stand if the application for a building permit was submitted after 1 May 2004. Transitional provisions exempt buildings for which a valid application for planning permission was submitted before that date. VAT is only payable on property before its first use.

18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase and who pays?

Stamp duty

Stamp duty on contracts is charged at 0.15% on the first EUR170,860 of the consideration and at 0.2% on any consideration above that sum. Stamp duty on transactions above EUR8,585,715 is capped at EUR17,086.

Transfer fees

Transfer fees are payable by the buyer to the Department of Lands and Surveys. The amount payable is based on the purchase price, or under certain circumstances, on the current market value as follows for the tranche of price or value:

- Up to EUR85,430: 3%.
- Between EUR85,430 and EUR170,860: 5%.
- Above EUR170,860: 8%.

No transfer fees are charged on transfers in the course of corporate reorganisations.

Annual immovable property tax

In addition, immovable property tax is payable annually on 30 September. It is calculated on the basis of the market value as at 1 January 1980 of immovable property owned by the taxpayer on the preceding 1 January.

With effect from 1 January 2012 the rates of immovable property tax are as follows for each tranche of value:

- First EUR120,000: nil.
- Next EUR50,000: 0.4%.
- Next EUR130,000: 0.5%.
- Next EUR200,000: 0.6%.
- Next EUR300,000: 0.7%.
- Above EUR800,000: 0.8%.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?

There are a number of techniques available depending on the circumstances of the case and the use to which the property will be put.



HOLDING BUSINESS PREMISES

Climate change targets

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

Cyprus has ratified the Kyoto Protocol, but is not subject to a specific reduction target. However, regulations for minimum energy efficiency standards for new buildings have been in operation since November 2007.

Third party outsourcing

21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties through outsourcing transactions?

Outsourcing of real estate portfolios and facilities management is in its infancy.

Restrictions on foreign ownership or occupation

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

The Acquisition of Immovable Property (Aliens) Law regulates the purchase of property by non-Cypriots. Under the Law, a non-Cypriot wishing to acquire immovable property requires the prior permission of the Council of Ministers.

The definition of “alien” under the original law comprised any person other than a citizen of the Republic of Cyprus, including local companies controlled by non-Cypriots, foreign companies and trusts in favour of foreign persons. However, with effect from 1 May 2009, citizens of EU member states or companies incorporated in an EU member state other than Cyprus (irrespective of the identity or nationality of their shareholders) are no longer treated as aliens and no restrictions on ownership of property in Cyprus apply to them. Accordingly, restrictions on property ownership apply only to third country (non-EU) nationals or companies, or Cyprus companies controlled by third-country nationals.

As well as a straightforward purchase, the term “acquisition of immovable property” includes:

- The grant or purchase of a lease of immovable property for a period exceeding 33 years.
- The acquisition of shares in a company that is duly registered as a legal entity in the Republic of Cyprus or in the British Sovereign Base Areas, and which (in either case) has acquired immovable property in the Republic of Cyprus or the Sovereign Base Areas. If a majority of shares in the company belong to non-Cypriots, the company is considered as “controlled by non-Cypriots”.
- The formation of a trust in favour of a foreign person that involves, wholly or partly:

- the leasing of immovable property falling within the provisions of a lease for a period exceeding 33 years; or
- a shareholding in a company falling within the provisions described above.

“Trust in favour of a foreign person” means any kind of trust of which the beneficiary or one of the existing beneficiaries is a non-Cypriot. This includes any express or implied contract or agreement, written or oral, under which a non-Cypriot will not be the absolute owner but will have ownership for the benefit of another, or where ownership will be held on trust for its benefit.

Normally permission is routinely granted to bona fide foreigners to acquire a flat or a house, or a piece of land not exceeding three donums (about 4,000 square metres) for the erection of only one house for use as a residence only by the buyer and his family.

Members of the family of an original buyer can also acquire their own property, provided that they are completely independent of the buyer, both financially and residentially (such as married children with their own family and business). Permission is granted for personal use, and not for letting or commercial use. This rule is relaxed for international companies that are permitted to acquire business premises, as well as houses or flats as residences for their members or directors.

Although it can take up to 12 months for the Council of Ministers’ permit to be obtained, buyers are entitled to occupy the property in the meantime.

After the permit has been granted and the property registered in the name of the buyer, no further restrictions are imposed and the property can be disposed of in any way.

Issues on change of control

23. Does change of control of a company affect its holdings of real estate?

Change of control of a company does not affect its holdings of real estate unless majority control of a locally-incorporated company passes to third country (non-EU) nationals, in which case a licence under the Acquisition of Immovable Property (Aliens) Law is required (see Question 22).

Compulsory purchases

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

The right of ownership of immovable property is considered one of the fundamental human rights under the Constitution of Cyprus and it is very well protected. Compulsory acquisition or imposition of restrictions on immovable property by the government is regulated by Article 23 of the Constitution and by the Compulsory Acquisition Law, No. 15/62. Properties can be compulsorily acquired only by the government or local authorities, for specified purposes only, and the acquisition must be in the public interest.

Immediate compensation at the current market value must be paid to the owner, who has recourse to the courts in the event of



disagreement. The compulsorily acquired property can be used only for the specific purpose it was acquired for. If this purpose has not materialised within three years of the date of acquisition, the property must be offered back to its former owner for the price paid to him.

Municipal taxes

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

An annual immovable property tax is payable (*see Question 18*).

Council and other service charges, such as water and sewage charges, are also payable. They are much lower than in most European countries.

REAL ESTATE FINANCE

26. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?

These acquisitions have customarily been financed by local and overseas banks and financial institutions. Cyprus's first leveraged buyout of a listed property company took place in 2007. There have been no further such transactions since, but this may change as the global economy recovers.

27. How is real estate commonly used to raise finance?

Financing methods are usually traditional in nature. Real estate can be mortgaged to raise finance for the owner. To secure its position, the lender registers the mortgage with the Land Registry and, if the borrower is a company, with the Registrar of Companies. Sale and leasebacks are rare. The leveraged buyout transaction referred to above involved the securitisation of income streams from property for the first time in Cyprus (*see Question 26*).

28. What are the most common forms of security granted over real estate to raise finance? How are they created and perfected (that is, made valid and enforceable)?

Common forms of security

The most commonly granted security over immovable property is a mortgage. A mortgage does not constitute an estate in land but a contractual right for the benefit of the lender and a charge on the immovable property.

Formalities

To have legal effect, mortgages, charges and other rights over immovable property must be registered with the Department of Lands and Surveys (*Immovable Property (Transfer and Mortgage) Law*). However, registration is not compulsory.

A company creating a charge over any of its property must send particulars of the charge accompanied by the charge itself to

the Registrar of Companies within 21 days after creation of the charge (*section 91, Companies Law*). If a company acquires property subject to a charge, it must send the same particulars together with a certified copy of the charge within 21 days of acquiring the property (*section 92, Companies Law*). The charges must be properly stamped to be accepted for registration. If sections 91 and 92 are not complied with, the company and every officer can be liable for a default fine of EUR427.

Any other person interested in the charge can submit the particulars to the Registrar of Companies for registration and recover the cost from the company (*section 91, Companies Law*).

Section 96 of the Companies Law gives the court power to extend the time for registration or to register a charge out of time if it considers it appropriate to do so.

A charge that is not registered in the prescribed manner is void against the liquidator and any creditor of the company (*section 90, Companies Law*), but remains valid and enforceable between the parties to the charge.

29. Is real estate securitisation common in your jurisdiction?

To date, there has been only one significant real estate securitisation (*see Question 27*). Others may follow as the global economy recovers.

REAL ESTATE LEASES

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable?

Contractual lease terms are freely negotiable within the framework of the Contract Law. The Rent Control Law applies only to property occupied by Cypriot nationals or companies under their control (*see Question 31*).

31. What are the formal legal requirements to execute a lease?

The Contract Law governs leases, subject to the restrictions introduced by the Rent Control Law, which aims to:

- Protect tenants against eviction (statutory tenants cannot be evicted).
- Control rent adjustments and regulate the relations between landlords and tenants.

To be valid and enforceable, a contract relating to leases of immovable property for any term exceeding one year must comply with all of the following (*section 77, Contract Law*):

- It must be expressed in writing.
- It must be signed by or on behalf of both parties.
- It must be attested in writing by at least two competent witnesses.

Rent levels and reviews

32. How are rent levels usually reviewed and are there restrictions on this? Is VAT (or equivalent) payable on rent?

There is no VAT payable on the leasing or letting of immovable property in Cyprus. The rental market can be divided into two broad categories:

- Properties controlled by the Rent Control Law.
- The free market.

The Rent Control Law and its updated amendments apply to tenancies of residential or business premises that lie within what the Law defines as “Controlled Areas” (that is towns, suburbs and rural centres) which were completed before 31 December 1999. However foreign persons (except the non-citizen wife of a citizen of the Republic of Cyprus) and legal entities controlled by non-residents are not covered by the Rent Control Law and do not benefit from its protection.

After the first tenancy has expired or been terminated, the law allows for an agreed increase of no more than 14% of the existing rent, but not before the lapse of two years from the date of the last application, or the date of the last voluntary increase. If the tenant refuses, the Rent Control Courts determine a “reasonable rent”, taking into account the opinion of the official valuer, and factors such as age, dimensions, location and condition. A Rent Control Court is composed of a president (who is a judicial officer) and two lay members, representing the tenants and the landlords respectively.

Length of term and security of occupation

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

Leases in Cyprus are generally for less than ten years but this is a matter of custom rather than any legal restriction. The length of the lease and arrangements for extension are determined by the lease rather than by any statutory provision. During the term of the lease and any agreed extension the tenant enjoys security of occupation subject to compliance with the terms of the lease.

Leases with an unexpired term of at least 15 years can be registered with the Land Registry, in which case registration should be effected within three months of signature of the lease. Registration is not compulsory, but it gives the tenant certain advantages, including the right to trade the lease. Third country (non-EU) nationals may not take a lease of immovable property for a period exceeding 33 years without prior permission from the Council of Ministers, and they are not allowed to let their premises.

Restrictions on disposal

34. What restrictions typically apply to the disposal of the lease by the tenant?

The following provisions are typical regarding disposal of leases:

- Assignment of whole: usually prohibited unless otherwise agreed with the landlord on special conditions. The assignor generally remains liable under the lease in the event of default by the assignee.
- Underletting of whole: usually permitted with landlord's consent subject to conditions.
- Underletting of part: typically permitted with landlord's consent subject to conditions.
- Sharing with group companies: typically permitted with landlord's consent subject to conditions.
- Charging of whole: typically permitted with landlord's consent subject to conditions.

Use of premises within a corporate group

35. Can tenants usually share their business premises with companies in the same corporate group?

Tenants can usually share their business premises with companies in the same corporate group subject to obtaining the landlord's consent.

Repair and insurance responsibilities

36. Who is usually responsible for keeping the leased premises in good repair?

If a lease is of the entire building, the tenant is usually responsible for keeping the building in good repair and decorative order.

A tenant of part of a building is usually liable for internal repairs and decoration of the part that it occupies. The landlord is generally liable for external and structural repairs of the whole building, and repair and decoration of the common parts, and can recover the cost from the tenant through a service charge.

Leases generally provide that on termination or expiry, the tenant must reinstate the premises to the state and condition that the property was in at the start of the tenancy, unless the landlord accepts any conversions or improvements. It is unusual for tenants to receive any compensation for these.

37. Who is usually responsible for insuring the leased premises?

The landlord, who has the insurable interest, is responsible for insuring the structure. However, the lease can require the tenant to pay the insurance premium.



Grounds for termination

38. On what grounds can the landlord usually terminate the lease? Can the tenant terminate the lease in certain circumstances?

Landlord

The landlord can terminate the lease and claim vacant possession of the property if the tenant is in breach of any of the essential terms of the lease, for example by:

- Failing to pay the rent.
- Committing a nuisance to neighbours.
- Subletting the premises, or part, without authority.
- Deliberately damaging the property.
- Failing to vacate the premises on expiry of the tenancy.
- Insolvency of the corporate tenant.

The court is guided by what is reasonable, and the breach must be wilful and ongoing for the court to make an order for vacant possession. For example, no order will be made if the tenant promptly remedies the breach complained of (for example, by paying all rent due, unless there is a history of persistent non-payment, or by paying the cost of any damage to the property).

Tenant

The tenant has no statutory right to terminate the lease and leases rarely include break clauses.

Tenant's insolvency

39. What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

If the tenant is a physical person, his bankruptcy does not affect the lease, as long as the tenant continues to fulfil his obligations under the lease. The general contract law and insolvency legislation do not provide for termination on insolvency of a corporate tenant, but most leases do (see *Question 38*).

PLANNING LAW

40. What authorities regulate planning control and which legislation applies?

The Department of Town Planning and Housing, a government department within the Ministry of Interior, is responsible for planning. The Development Control Section of the department is the central planning authority. It includes sub-groups responsible for plan implementation and planning enforcement, and provides the administrative umbrella for five of the nation's nine independent local planning authorities.

Planning is carried out under the provisions of the Town and Country Planning Law, which provides, among other things, for the:

- Preparation of Development Plans.
- Control of development.

- Definition of areas of historic, architectural and environmental interest.

41. What planning consents are required and for which types of development?

All developments require planning permission and a building permit. The first step in the development process is to obtain planning permission from the Planning Authority. A building permit can then be obtained from the local municipality or district administration office, incorporating any planning permission conditions.

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

Initial consents

The application is made to the relevant Planning Authority (a list of planning authorities can be found at www.moi.gov.cy/moi/citizenscharter/CitizensCharter.nsf/All/3BAD0A9256302DAFC2256E520024FEEF?OpenDocument).

Third party rights

Owners of adjacent properties whose rights may be affected by the proposed development can object to the Planning Authority.

Public inquiries

There is no public inquiry procedure. The relevant Planning Authority assesses the application and any representations or objections, and makes a decision based on these.

Initial decision

The Planning Authority aims to make an initial decision within three months of receiving the application in 60% to 70% of cases. In practice, it is sensible to allow for six to eight months.

Appeals

Appeals must be submitted within 30 days of notification of the decision. They are examined by a Ministerial Committee, which bases its final decision on the applicable Development Plan, the planning policies (which may be included in other documents) and other material considerations related to the development. Because a number of government departments may need to be consulted during the appeal process, there is no specified time limit for dealing with appeals.

The applicant can lodge an appeal against a Ministerial Committee decision with the Supreme Court, which will base its decision on the legitimacy of the planning decisions, and not on the judgement of the Planning Authority or the Ministerial Committee in relation to the planning parameters that were taken into account.

REFORM

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

New laws were passed early in 2011 to address the highly-publicised title deeds issue (that is, where delays in issuing title deeds had



caused problems for purchasers). In a few extreme cases, developers were alleged to have exploited the delay to remortgage the property unknown to the purchaser.

The Sale of Immovable Property (Specific Performance) Law (new law) repealed and replaced the Sale of Land (Specific Performance) Law, Cap 232 (old law), and significant amendments were made to the:

- Immovable Property (Tenure, Registration & Valuation) Law.
- Town and Country Planning Law.
- Streets and Buildings Law, Cap 96.

The Sale of Immovable Property (Specific Performance) Law of 2011 addresses various flaws in the old law. It also extends the time available to deposit the contract after the date of the contract's signing from two months to six. The new law also provides for a window of six months after the date on which it came into force (29 July 2011) to deposit any contracts which had not been deposited in the past with the Land Registry. This will extend protection to purchasers who had already purchased but failed to lodge their contracts. The new law also provides a mechanism for dealing with mortgages already burdening the property and new provisions enabling purchasers to assign their contract in favour of banking institutions to act as security for loans.

The following key features of the new law intend to address the practical (and particularly planning and construction) issues that have led to delay in issuing title deeds:

- Minor deviations from planning requirements will no longer be an obstacle to the issuing of an updated title deed. A certificate of registration can be issued for a building with certain minor irregularities. However, these irregularities must be recorded on the title deed.
- Updated title deeds can be issued, despite irregularities, provided that an application is submitted to the building control authority (which may be the municipality or the District Office of the Ministry of Interior) together with an accurate description of the building and any irregularities that may appear, in comparison to the building or the planning permit issued.
- The issuing of a title deed with reservations does not render the relevant building legal. Any irregularities must be dealt with to the satisfaction of the relevant authority (the building control authority, the relevant Planning Authority and the Department of Land and Surveys) within a reasonable time after a title deed has been issued.
- The owner of the development, the architect and the supervising engineer must:
 - inform the building control authority, within specified time limits, of the building's completion and first use; and
 - disclose any alterations which do not conform with approved plans and conditions attached to building permits.
- The right to initiate the necessary procedures for the legalisation of the development or for the issuing of updated title deeds (which was formerly limited to the owner of the property) is extended to the purchaser and to the relevant competent

REAL ESTATE ORGANISATIONS

Department of Lands and Surveys

Main activities. This department manages the major land matters of Cyprus concerning surveying, including maintenance of the state survey infrastructure, mapping, investigation into title, registration, conveyance, valuations, conservation and management of State Lands, compulsory acquisition or requisitions and encumbrances.

W www.moi.gov.cy/moi/DLS/dls.nsf/dmlindex_en/dmlindex_en?OpenDocument

Local Planning Authorities

Main activities. These authorities examine planning applications in the context of the Island Plan and grant planning permits as appropriate. A full list can be found at the following website.

W www.moi.gov.cy/moi/citizenscharter/CitizensCharter.nsf/All/3BAD0A9256302DAFC2256E520024FEEF?OpenDocument

Ministry of Finance

Main activities. The Ministry of Finance administers all taxation in Cyprus, including capital gains tax, stamp duty, immovable property tax and VAT.

W www.mof.gov.cy/mof/MOF.nsf/DMLindex_en/DMLindex_en?OpenDocument

authority (that is, the relevant Planning Authority, building authority, or the Land and Surveys Department). Therefore, an owner who is reluctant to fulfil his obligations can no longer delay the process.

- Updated title deeds are issued in the name of the original owner, and not in the purchaser's name, since the authorities involved in the procedure do not have the power to transfer property rights to purchasers without the owner's consent. However, once separate title deeds are available for individual units of a larger development, effective action can be taken to achieve the transfer of the property to the purchaser.
- Liaison and communication between the various government departments involved will be improved to ensure the owner can no longer unduly delay matters.
- The three amended laws (*see above*) give power to the competent authorities to impose administrative fines on owners who fail to submit the required declarations or applications for:
 - the legalisation of buildings;
 - the irregularities in buildings; or
 - the issue of approval certificates or certificates of unauthorised works or updated title deeds.
- The administrative fines aim to encourage owners to comply with their obligations.



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- Property aspects of a EUR83 million process plant construction contract.
- Property aspects of a EUR200 million-plus development project.
- Acquisition of property portfolios on behalf of investors.

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- Acquisition of property portfolios on behalf of investors.
- Successful resolution of a claim between architect and developer.



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From its formation in 1965 Andreas Neocleous & Co has grown to be the largest firm in Cyprus. We are generally recognised as the leading firm in the South-East Mediterranean region and our real estate department is top-rated by all the leading independent legal research organisations.

With more than one hundred and twenty professionals in Cyprus and mainland Europe, our mission is to provide international clients with service of the highest international standards. We value diversity and our team speak most major European languages. All are fluent in English.

We specialise in cross-border work and have the scale and depth of resources required to handle complex international assignments in demanding timescales.

We recognise that each of our clients is unique, with particular business concerns, and we are committed to understanding their objectives rapidly and effectively and to giving them clear, practical business-oriented advice and responsive service.

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