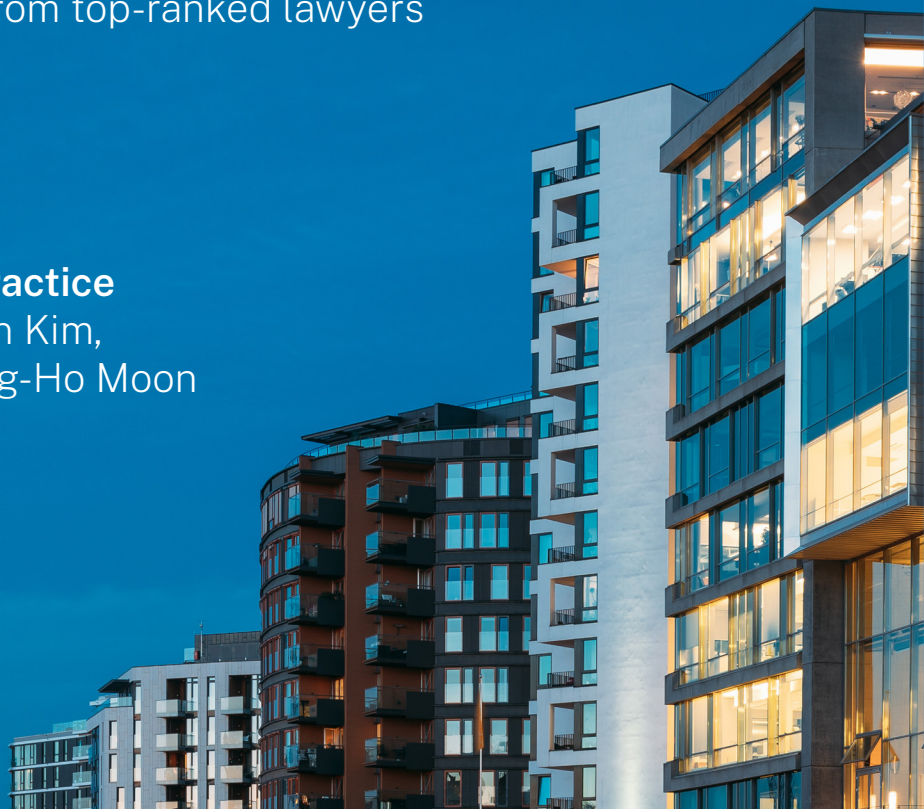

CHAMBERS GLOBAL PRACTICE GUIDES

Real Estate 2025

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South Korea: Law & Practice

Hyeon Kang, Tae Kyoon Kim,
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Bae, Kim & Lee LLC



SOUTH KOREA



Law and Practice

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Bae, Kim & Lee LLC (BKL) was founded in 1980 and is a full-service law firm covering all major practice areas, including corporate law, mergers and acquisitions transactions, dispute resolution (arbitration and litigation), white-collar criminal defence, competition law, tax law, capital markets law, finance, intellectual property, employment law, real estate, technology, media and telecom (TMT), maritime and insurance matters. With more than 650 professionals located across its offices in Seoul, Beijing, Hong Kong, Shanghai, Hanoi, Ho Chi Minh City, Yan-

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1. General

1.1 Main Sources of Law

The main sources of real estate law are as follows:

- the Civil Code;
- the Real Estate Registration Act (RERA);
- the National Land Planning and Utilisation Act (NLPUA);
- the Report of Real Estate Transaction Act (RRETA);
- the Building Act;
- the Housing Lease Protection Act (HLPa); and
- the Commercial Building Lease Protection Act (CBLPA).

1.2 Main Market Trends and Deals

In 2025, the Korean economy is expected to experience a slowdown following the modest growth in 2024. The Bank of Korea's base interest rate is expected to be further reduced this year following the two reductions implemented at the end of last year. However, the speed of such reductions will depend on domestic and international economic conditions.

In 2024, the Seoul commercial real estate market recorded a transaction volume of approximately KRW11.6 trillion, reflecting solid growth of about 24% compared to the previous year. In particular, large-scale transactions totalling KRW3.6 trillion were closed in the fourth quarter. One notable transaction in the fourth quarter involved NH REIT Management's investment vehicle purchasing a major office building known as D-Tower for KRW895.3 billion from MASTERN Investment Management, making it the second largest transaction of the year. The largest transaction was the third-quarter sale of Asset Gangnam at KRW1.1 trillion. Other major deals included Hanwha REITs' acquisition of Hanwha

Building in the third quarter for KRW8.08 trillion, and KORAMCO REITs and Trust's acquisition of the Arc Place building from Mirae Asset Management in the first quarter for KRW7.917 trillion. Investor interest in prime-grade buildings and offices with development potential remains strong and is expected to continue into 2025.

The Korean logistics centre market, which suffered from oversupply in 2023, showed signs of recovery in 2024, with diverse transaction structures being utilised. Departing from the customary indirect investment method, there has been a noticeable rise in transactions based on builders' construction completion and debt guaranty. Additionally, the logistics market has seen an increase in foreign investors participating in these transactions.

In 2023, the volume of large hotel transactions was very low at KRW0.4 trillion. However, in 2024, transactions involving five-star hotels significantly increased, reaching KRW1.8 trillion. This increase reflects a shift from development-purpose transactions to operational-purpose transactions, indicating a recovery in the hotel market.

Further, a recent trend has seen the introduction of new business models that leverage blockchain and other disruptive technologies, such as digital asset-backed securities (DABS) offered with real estate as the underlying asset. The Korean government has been supportive of new technologies and has exempted the application of current regulations to business models designated as an innovative financial service under "regulatory sandbox" regime.

Since 2019, several real estate investment platforms have been admitted to the regulatory sandbox, enabling them to offer trust interests

backed by commercial buildings. This allows investors to trade on the platform while recording the transactions on a blockchain, with the benefit of exemptions from certain securities regulations. The regulatory sandbox provides a transitional exemption for new business models for a period of up to four years.

These recent advancements suggest an increasing influence of disruptive technologies on real estate markets. The Korean government is gradually enhancing legislative measures regarding virtual assets and tokenised securities while continuing to utilise the regulatory sandbox as a temporary framework for innovative business models. This approach also serves as a test-bed to identify areas requiring further regulatory refinement. Notably, in February 2025, the financial regulators issued a legislative notice to accommodate business models previously addressed under the regulatory sandbox regime. This includes the introduction of a new investment brokerage licence permitting the operation of fractional investment platforms that issue non-monetary trust interests backed by real estate and other diverse assets.

In line with this trend, digital assets and blockchain are expected to become key instruments for securitising real estate and raising funds. The evolution and regulation of these new technologies and products will continue to be significant topics within Korean real estate capital markets in the future.

1.3 Proposals for Reform

The Ministry of Land, Infrastructure, and Transport (MOLIT) has identified the long-term and stable growth of the real estate investment trust (REIT) industry as a key measure for revitalising the real estate market. On 17 June 2024, it announced the REITs Revitalization Plan for

Increasing National Income and Advancing the Real Estate Industry and is currently working to amend the Real Estate Investment Company (Trust) Act (REIT Act) along with its related enforcement decrees and rules.

Even under the current REIT Act, REITs are allowed to engage in real estate development projects. However, practical limitations often arise due to various regulations, such as REIT business (change) authorisation, stock diversification (public offering obligations), and disclosure/reporting requirements, which significantly hinder the use of REITs in real estate development. To address these challenges, MOLIT plans to introduce a new initiative called Project Real Estate Investment Company. This initiative aims to ease regulations during the development stage by adopting a two-pronged approach: regulations intended to protect general investors will be substantially relaxed during the development phase, while investor protection mechanisms will be applied during the operation phase.

Currently, a bill to partially amend the REIT Act has been introduced and is under review by the National Assembly, with plans for it to be passed in the first half of 2025. The government announced the Senior Residence Revitalization Plan at the Economic Ministers' Meeting on 23 July 2024. Through this initiative, the government aims to significantly relax regulations on the establishment and operation of senior residences, as well as those covering the entire supply process, including land acquisition and funding. The Senior Residence Revitalization Plan aims to promote the expansion of senior residence supply and develop policies to enhance customised support for elderly consumers. Specifically, the government intends to enact a special law to promote senior residences and amend related laws during the first half of 2025. Accordingly, it

will be important to monitor the progress of the enactment and amendment of these laws and regulations.

2. Sale and Purchase

2.1 Categories of Property Rights

Property rights that may be acquired include:

- ownership rights;
- superficies (*jeesang-kwon*);
- easements (*jeeyeok-kwon*);
- *jeonse-kwon* (a deposit-based lease right recorded in the registry); and
- mortgages.

2.2 Laws Applicable to Transfer of Title

RERA applies to the transfer of title of all real estate.

2.3 Effecting Lawful and Proper Transfer of Title

To be lawful and proper, transfers of real estate must be registered in the real property registry. Title insurance is not common in Korea.

2.4 Real Estate Due Diligence

Buyers carry out legal due diligence based on information provided by sellers and on public information such as that acquired through the real estate registry, the real estate ledger and the certificate of land use plan issued by the municipal government. Legal due diligence typically covers the transaction structure, title, encumbrances, zoning, government permits and approvals, and taxes.

2.5 Typical Representations and Warranties

Representations and warranties provided in a commercial real estate transaction typically include:

- authorisation, enforceability;
- title;
- no encumbrances;
- government approval;
- no violation;
- registration;
- no litigation or dispute;
- taxes;
- environment;
- no expropriation and encroachment; and
- no hazardous materials.

No specific warranties are statutorily required to be provided by a seller in the sale of real estate. However, the Civil Code provides that, in the event that a property has defects, and unless a buyer was aware of or could have been made aware of these defects at the time of the sale, such buyer may cancel the contract if the objective of the contract cannot be achieved as a result of such defects. Otherwise, a buyer may only claim damages for the defects. A buyer's remedies are termination of the contract, indemnification and/or claim for damages. In many cases, security deposits are kept for a certain period of time as security for damages claims. The survival period for the seller's representations and warranties varies by case, with a maximum limit of ten years under the Civil Code and five years under tax law. In particular, for investment vehicles that must be liquidated after the sale, the period is often not set at all or is set at a short period of six months. The scope of the seller's liability for a breach of its representations and warranties is also diverse, making it difficult to speak universally, and in many cases different

limits are set on liability depending on the specific representations and warranties. There have been cases where representation and warranty insurance was used.

2.6 Important Areas of Law for Investors

As several government approvals may be required for real estate transactions, parties should ascertain which approvals are required for their deals and incorporate sufficient time into the deal timeline to obtain any such approvals.

2.7 Soil Pollution or Environmental Contamination

Even if a buyer did not cause the pollution or contamination of a property, such buyer is responsible for the pollution or contamination unless such buyer was not aware of, or could not have been made aware of, the state of pollution or contamination of the property.

2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

A buyer may ascertain the permitted uses of a parcel of real estate by obtaining a certificate of land use plan issued by the relevant municipal government. It is possible to enter into specific development agreements with the relevant public authorities. A typical example would be the development of non-governmental rental housing in accordance with the Special Act on Non-Governmental Rental Housing.

2.9 Condemnation, Expropriation or Compulsory Purchase

The government's taking of land (including by an industrial site development project enterprise) is permitted for public interest projects as stipulated in the Act on Expropriation of Land, etc, for Public Works and Compensation (AELPWC). To expropriate property, the government must make a public announcement of the properties

to be expropriated, notify the property owners and implement a compensation plan. The government must assess the compensation amount and negotiate with the property owners.

If an owner agrees to transfer their property at the price offered by the government based on the government's assessment, an agreement for the property transfer may be executed at such price. However, if an owner does not accept the government's proposal, the government may file, or must file at the request of the owner, a motion to determine the appropriate purchase price for the relevant property with the Central Land Expropriation Committee, which will examine the value of the property, assign a certified appraiser to assess the property, and consider briefs from the government and the property owner.

In approximately three to four months, the Committee renders a decision on the purchase price for the property subject to the expropriation. The government must then pay the purchase price as determined by the Committee. Ownership of the expropriated property is then transferred to the government on the expropriation date indicated in the Committee's decision, even if the owner files an objection or a lawsuit regarding the decision.

2.10 Taxes Applicable to a Transaction Acquisition and Recordation Tax

When a company or an individual acquires real property in Korea, it must pay an acquisition tax of 4.6% (inclusive of surtax) of the purchase price (ie, the actual acquisition cost) reported at the time of the acquisition. However, if the real property is located in a specific region designated as an overpopulated control area, a stepped-up tax rate of 9.4% will apply. The acquisition tax is inclusive of a recordation tax. Acquisition tax

is exempt if a property is purchased on condition that it will be donated to the state or a local government.

Stamp Duty

Stamp duty of up to KRW350,000 is payable on the contract for the acquisition of real estate and generally paid by the buyer. The buyer must also purchase national housing bonds at a rate of approximately 5% of the purchase price of the real estate. In practice, these bonds are immediately resold at a 10% to 15% discount on the purchase price of the bonds.

Additional Taxes

Additional taxes apply to share deals and partial ownership transfers, to the extent that the buyer (and its related parties) becomes a majority shareholder of a target company holding real estate. A deemed acquisition tax is imposed when an entity (along with its related parties) becomes a majority shareholder of a target company by acquiring more than 50% of its shares, and the majority shareholder is required to pay deemed acquisition tax of 2.2% (inclusive of surtax) of the book value of the real estate held by the target company in proportion to the majority shareholder's ownership percentage, as if it has directly acquired such real estate. In addition, the seller of shares in a share deal must pay a securities transaction tax, which is equal to 0.35% of the sale price.

2.11 Legal Restrictions on Foreign Investors

Foreign investors acquiring land are required to file a report with the local government in Korea within 60 days of the execution of the sale and purchase agreement, or to obtain approval in cases where the land is located in:

- a military facilities protection area;

- a cultural relic protection area;
- a natural ecology protection area; or
- a wildlife protection area.

Foreign investors acquiring 50% or more of shares in a land-owning company are required to file a report to that effect. However, the filing of this report may not be required if the foreign investors elect to file a general real estate transaction report with the local government in accordance with RRETA.

3. Real Estate Finance

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate are financed through both debt and equity financing. In particular, institutional investors such as investment banks, public pension funds, mutual aid associations, securities companies and insurance companies are a significant source of financing for such acquisitions, as well as foreign investors.

In addition to conventional debt and equity financing by various investment vehicles (as described in **5. Investment Vehicles**), there are some financing options more tailored for acquisitions involving large real estate assets. For example, real estate securitisation using asset-backed securities (ABS) or asset-backed commercial paper (ABCP) is common in Korea. Sale-and-leaseback transactions have also been a commonly used alternative financing method in Korea.

3.2 Typical Security Created by Commercial Investors

Investors borrowing funds to acquire or develop real estate typically use a mortgage on the real

estate as security, created by a mortgage agreement between the parties. Another type of security typically used is a security trust, under which the real estate investor entrusts the real estate to a trustee and the lender becomes a beneficiary.

3.3 Restrictions on Granting Security Over Real Estate to Foreign Lenders

Any foreign lender who intends to acquire a security interest over real estate located in Korea is required to file in advance a report with a foreign exchange bank in Korea under the Foreign Exchange Transaction Regulations. Furthermore, if the land in question is located within a district subject to prior approval by MOLIT under the NLPUA, and if the foreign lender intends to acquire a security interest that would grant them the right to use the land for the purpose of owning buildings and structures on such land, additional approval must be obtained from the local government with jurisdiction over the land.

A foreign lender is generally not subject to any restrictions on transferring the proceeds of a loan repayment to its offshore account as long as the government authorisation required under the Foreign Exchange Transaction Regulations was duly obtained in respect of the security agreement and the loan agreement at the time of signing or closing the financing transaction.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Security over real estate (ie, mortgages) must be registered with the competent court registry office. In the case of mortgages, registration tax (0.2% of the maximum secured debt amount) and local education tax (20% of the registration tax), as well as certain other fees and duties such as charges for the purchase of national housing bonds and stamp duty, must be paid prior to

filing the application for registration of the mortgage.

3.5 Legal Requirements Before an Entity Can Give Valid Security

Under Korean law, if an entity (the security provider) grants security over its assets to secure the debt of another person/entity (the debtor) without adequate consideration from the debtor, this may constitute criminal and civil breach of fiduciary duty by the directors of the security provider. In other words, if the security provider's directors fail to procure adequate consideration when they approve the provision of collateral, the directors will be deemed to have caused economic harm to the security provider in breach of their fiduciary duty. In order to be deemed "adequate" in this context, the consideration must be equivalent to the risk exposure of the security provider (ie, forfeiture of its assets should debtor default on the loans).

In addition, if the debtor is a specially related person/entity of the security provider (ie, its major shareholder), the provision of security by the security provider may be subject to certain additional restrictions or requirements under Korean law, including the following:

- approval by a resolution of its board of directors with the affirmative votes of two-thirds or more of the directors, in accordance with the Korean Commercial Code (KCC);
- if the security provider is a listed company in Korea, the provision of security to a specially related person/entity must fall under a specifically permitted exception under the KCC; and
- it may not constitute "unfair trading" under the Monopoly Regulation and Fair Trade Act of Korea (MRFTA) – ie, there will be no negative effect on the market of unfairly enhancing the competitiveness of the debtor in the

relevant industry by granting security to such debtor without receiving reasonable compensation.

Furthermore, there is a requirement to file a public notice of acquisition of security interest if the security provider and the debtor belong to the category of “*companies subject to restriction on mutual contribution*” under the MRFTA, and the value of the security to be granted exceeds a certain threshold.

3.6 Formalities When a Borrower Is in Default

The enforcement of security over real estate against a defaulting borrower may be made in accordance with the terms of the security document, and there is no other legal formality that must be complied with or legal impediment to enforcing the security if the requisite foreign exchange report was made in respect of the security document and the loan agreement. However, if a rehabilitation proceeding under Korean insolvency law is commenced in respect of a security provider, enforcement of security will generally be prohibited, the lender will be required to report its claim and security and will have to be repaid in accordance with the terms of the rehabilitation plan approved by the court.

Korea is a race jurisdiction, and therefore, priority of any competing lender’s security interest over the real estate is determined in the order of registration of security. If the foreign lender is a secured lender, no additional step needs to be taken to secure priority over any lower-ranked security holder or unsecured lender.

It usually takes approximately 6–12 months to enforce and realise real property security, although the actual time may vary for each case.

The government has not introduced any restrictions on the enforcement of collateral in real estate lending due to the COVID-19 situation, but it was requiring lenders to take steps to extend the maturity of loans made to small to medium-sized enterprises and small business owners. In case of a borrower default, lenders often pursued a loan restructuring or forbearance arrangement rather than taking immediate acceleration and foreclosure action. However, this is no longer the case.

3.7 Subordinating Existing Debt to Newly Created Debt

Existing secured debt may become subordinated to newly created debt only if all existing lenders agree to subordinate their debt. In such cases, the existing security must also be subordinated to the new loan, and the security must be newly registered in the order of priority. Registration of security is required to have a perfected right to the security (as in the case of mortgages).

According to the Debtor Rehabilitation and Bankruptcy Act (DRBA), if a new loan is advanced to a debtor subject to rehabilitation proceedings that have already commenced, such new loan is granted a preferential right of repayment in priority to pre-rehabilitation claims and secured rehabilitation claims.

3.8 Lenders’ Liability Under Environmental Laws

A lender may not be held liable for environmental liabilities caused by encumbered real estate unless it acquires the property through a foreclosure sale (or by otherwise enforcing its security). In such cases, the lender’s environmental liabilities will be as described in 2.7 **Soil Pollution or Environmental Contamination**. Thus, a lender holding security over real estate will not be liable under environmental laws.

3.9 Effects of a Borrower Becoming Insolvent

Under the Civil Code, security interests knowingly created by a borrower against the proprietary interest of existing lenders may be made void by the courts upon the request of such existing lenders if:

- the borrower is insolvent or becomes insolvent as a result of the creation of such security interests; and
- the borrower's assets decrease as a result of the same.

Additionally, granting security interests in favour of only some of the existing lenders without receiving any new financing (or new lending arrangements) may constitute fraudulent transfer.

Under the DRBA, a security interest created by a borrower in rehabilitation or bankruptcy may be voided by the rehabilitation receiver or the bankruptcy administrator if created by "*preferential*" act by the borrower that favours certain lenders over others.

3.10 Taxes on Loans

When entering into a loan agreement in Korea, a fixed stamp duty is levied based on the loan amount. For loans exceeding KRW1 billion, the applicable stamp duty is KRW350,000. This applies regardless of whether the loan is secured, mezzanine or of any other type.

If a mortgage is created for a secured loan, a registration tax equivalent to 0.24% of the value of the property is levied when registering the mortgage. There is no separate stamp duty for the mortgage.

4. Planning and Zoning

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

The principal laws applicable to strategic planning and zoning are NLPUA (regulating zoning and land use) and the Building Act (regulating construction and building use). For certain types of development such as the redevelopment of urban areas, other specific laws may apply, such as the Act on Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents (AMIUADCR) and the Special Act on Promotion of Urban Renovation.

In addition, at the national level, MOLIT regulates the development and use of land by setting out a basic land-use plan. At the local level, municipal governments regulate the development and use of land by promulgating local ordinances.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

The principal laws applicable to the design, appearance and method of construction are the NLPUA and the Building Act. In particular, the Building Act regulates the standards and usage of the land and the structure and facilities of buildings, as well as the safety, functionality, environment and aesthetics of buildings, and its application is overseen by municipal governments.

4.3 Regulatory Authorities

As explained in 4.1 **Legislative and Governmental Controls Applicable to Strategic Planning and Zoning**, at the national level, MOLIT regulates the development and use of land by setting out a basic land use plan. At the local level, municipal governments regulate the devel-

opment and use of land by promulgating local ordinances.

The NLPUA provides a basic framework for planning regarding the use, development and preservation of national land and the implementation of such plans. Under this framework, MOLIT devises the national land plan, in accordance with which the regional plan, urban master plan and city management plan are devised by governors, mayors and other heads of local governments.

The city management plan contains a detailed zoning plan covering certain areas of the city. In addition, the city management plan and related local regulations restrict granting development permits or building permits in certain areas where development activities and/or building works could seriously pollute or damage the surrounding environment, scenery, historic buildings, cultural heritage, etc.

4.4 Obtaining Entitlements to Develop a New Project

To develop a new project or a reconstruction/redevelopment project, certain permits, approvals and licences must be obtained in accordance with the relevant laws (ie, the Urban Development Act, the Housing Act, the Building Act, the Act on the Ownership and Management of Aggregate Buildings, the AMIUADCR, etc).

The specific processes for obtaining such entitlements vary depending on the relevant law. Generally, an application for entitlements will be submitted to the relevant government authority, in accordance with the requirements and processes set forth in the relevant laws, and the relevant government authority will then grant such entitlements if the application complies with the relevant city management plan and the restric-

tions under the Building Act and other regulations.

Third-Party Objections

In general, a third party does not have the right to object to such developments, unless such third party's rights have been infringed by such development. Under Supreme Court precedent, rights are infringed only if there is "*legally protected interest*", which means individual, direct and specific interest protected by the law underlying the applicable government decision and other relevant laws.

In addition, a third party who has suffered losses or injury (ie, noise, infringement of the right to light, ground subsidence, etc) due to the construction work for such development may seek suspension of such construction work or claim damages for losses suffered.

4.5 Right of Appeal Against an Authority's Decision

An applicant for permits, approvals or licences may appeal the authority's decision regarding the application (ie, a decision rejecting an application or a decision not fully granting permission) by bringing an administrative suit.

Furthermore, a third party whose legal rights are infringed by the decision may also appeal the decision.

However, an appeal seeking the cancellation of a decision by an administrative agency must be brought within 90 days of the appellant becoming aware of the decision or within one year of the decision, whichever is earlier.

4.6 Agreements With Local or Governmental Authorities

A government authority must consult other government authorities or agencies that will be affected by the permits/approvals being sought, before such permits/approvals are issued. That said, whether it is possible or necessary to enter into separate agreements with government entities or utility suppliers, and what kinds of agreements are typical, may vary depending on the specific law applicable to each development project. For an example of an agreement that may be entered into, please refer to **2.8 Permitted Uses of Real Estate under Zoning or Planning Law**.

4.7 Enforcement of Restrictions on Development and Designated Use

If a developer who has obtained permits/approvals does not carry out the development in accordance with such permits/approvals, or does not adhere to the prescribed conditions, the relevant government authority may cancel such permits/approvals.

In addition, if a developer engages in any conduct in connection with a development project without obtaining the permits/approvals required under the relevant laws or does not satisfy a prescribed condition under the relevant laws, such developer may be subject to criminal sanctions (ie, imprisonment, penalty payment) or administrative sanctions (ie, fine payment, business suspension).

5. Investment Vehicles

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

There are two general forms of companies:

- stock corporation (*chusik hoesa*); and
- limited liability company (*yuhan hoesa*).

Five special forms of investment vehicles, the corporate restructuring REIT (CR-REIT), general REIT, real estate trust fund (RETF), real estate corporate fund (RECF) and project financing vehicle (PFV), are also available (see **5.2 Main Features of the Constitution of Each Type of Entity**).

5.2 Main Features and Tax Implications of the Constitution of Each Type of Entity Stock Corporation

A stock corporation has the familiar corporate structure of shareholders, a board of directors and one or more executives, and is organised under the articles of incorporation. Shareholders of a stock corporation are liable only up to an amount equal to their capital contribution, and shares may be transferred freely.

Limited Liability Company

A limited liability company is comprised of “members” instead of shareholders. As in the case of a stock corporation, the liability of members is limited to the amount of their capital contribution to the entity. However, a board of directors is not required for a limited liability company, although one may optionally be created by the members. Unlike in some other jurisdictions, in Korea there is no material difference in tax treatment between a stock corporation and a limited liability company, as both are subject to two-tier taxation from the investor’s perspective (on corporate income and on dividends).

Corporate Restructuring Real Estate Investment Trust

A CR-REIT may be classified as a stock corporation; it is required to invest 70% or more of its assets in “CR-REITable” assets, as defined

in the relevant regulations, and to manage its assets through an asset management company with net assets of KRW7 billion or more and with five or more professionals.

Real Estate Investment Trust

A general REIT may be classified as a stock corporation, and it is required to invest 70% or more of its assets in real estate and manage its assets through an asset management company with net assets of KRW7 billion or more and with five or more professionals.

Real Estate Trust Fund

An RETF may be classified as a trust; it is required to manage its assets through an asset management company with net assets of KRW1 billion or more and with three or more professionals.

Real Estate Corporate Fund

An RECF may be classified as a stock corporation; it is required to manage its assets through an asset management company with net assets of KRW1 billion or more and with three or more professionals.

Project Financing Vehicle

A PFV may be classified as a stock corporation, and it is required to manage its assets through an asset management company that is a shareholder of the PFV, or a company set up by a shareholder of the PFV.

Tax Benefits and Costs

Stock corporations and limited liability companies are required to pay a corporate registration tax of 0.48% of the par value of shares issued upon establishment and, thereafter, upon each capital increase. If a company is established in an overpopulated control area or a company increases its capital within five years of its estab-

lishment, a stepped-up capital registration tax rate of 1.44% (ie, triple the normal rate) applies. However, CR-REITs, general REITs, RECFs and PFVs are not subject to such tripling of capital registration tax nor to the stepped-up acquisition tax normally applied to real property located in overpopulated control areas.

Land owned by a public REIT or a public fund for their business use is not separately taxed for property tax purposes and is not subject to comprehensive real estate tax. However, this exception does not apply to PFVs.

As to the corporate income tax benefits applicable to each type of entity, please refer to **5.5 Applicable Governance Requirements**.

5.3 REITs

REITs are real estate investment vehicles that are actively used in Korea. Both private and public offerings are available, and general REITs in particular are required to offer at least 30% of their shares to the public, as described in **5.5 Applicable Governance Requirements**. Furthermore, there are 19 REITs listed on the stock market. Foreign investment is also permitted (please refer to **5.5 Applicable Governance Requirements** regarding the requirements for qualification).

5.4 Minimum Capital Requirement

The minimum capital requirement for each type of entity is as follows:

- stock corporation – not applicable (KRW100 million for foreign-invested companies);
- limited liability company – not applicable (KRW100 million for foreign-invested companies);
- CR-REIT – KRW5 billion;
- general REIT – KRW5 billion;

- RETF – not applicable;
- RECF – KRW100 million; and
- PFV – KRW5 billion.

5.5 Applicable Governance Requirements

The ownership limitation for each type of entity is as follows:

- stock corporation – not applicable;
- limited liability company – not applicable;
- CR-REIT – not applicable;
- general REIT – up to 50% by any one shareholder (with certain exceptions);
- RETF – must be owned by more than two investors (with certain exceptions);
- RECF – must be owned by more than two investors (with certain exceptions); and
- PFV – at least 5% of the shares must be owned by financial institution(s).

There are no public offering-related requirements that apply to the various types of entity except for:

- general REIT – at least 30% of the shares must be put up for public offering (with certain exceptions).

Restrictions on external financing for each type of entity are as follows:

- stock corporation – not applicable;
- limited liability company – not applicable;
- CR-REIT – permitted within double (or ten times, under certain exceptions) the amount of its net assets;
- general REIT – permitted within double (or ten times, under certain exceptions) the amount of its net assets;
- RETF – permitted within double the amount of its net assets (with certain exceptions);

- RECF – permitted within double the amount of its net assets (with certain exceptions); and
- PFV – not applicable.

Qualifications for assets invested in by each type of entity are as follows:

- stock corporation – not applicable;
- limited liability company – not applicable;
- CR-REIT – seller of the assets is a company subject to corporate restructuring;
- general REIT – at least 70% of the assets are invested in real estate;
- RETF – more than 50% of the assets are invested in real estate (with certain exceptions);
- RECF – more than 50% of the assets are invested in real estate (with certain exceptions); and
- PFV – investment is made in facility and security operations centre (SOC) development, natural resource development or other specific development projects that require large amounts of time and money.

Requirements for real estate development projects invested in by each type of entity are as follows:

- stock corporation – not applicable;
- limited liability company – not applicable;
- CR-REIT – the investment ratio is required to be set by shareholders' resolution, and the business plan is required to be confirmed by a licensed real estate investment consulting company;
- general REIT – the investment ratio is required to be set by shareholders' resolution, and the business plan is required to be confirmed by a licensed real estate investment consulting company;

- RETF – the business plan is required to be confirmed by an appraisal company;
- RECF – the business plan is required to be confirmed by an appraisal company; and
- PFV – it is required to invest all of its assets in real estate development projects.

The applicability of corporate income tax to each type of entity is as follows:

- stock corporation – taxable;
- limited liability company – taxable;
- CR-REIT – deemed dividend deduction;
- general REIT – deemed dividend deduction;
- RETF – not taxable;
- RECF – deemed dividend deduction; and
- PFV – deemed dividend deduction (applicable through the fiscal year ending on or before 31 December 2025).

The governing law of each type of entity is as follows:

- stock corporation – the KCC;
- limited liability company – the KCC;
- CR-REIT – the Real Estate Investment Trust Act (REITA) and KCC;
- general REIT – REITA and the KCC;
- RETF – the Financial Investment Services and Capital Markets Act (FISCMA) and KCC;
- RECF – FISCMA and the KCC; and
- PFV – the Special Tax Treatment Control Act and KCC.

The implications of the Corporate Transparency Act may extend to US contributors investing offshore, including those investing directly or indirectly in Korean real estate. Their compliance obligations regarding disclosure, reporting and enhanced due diligence for anti-money laundering purposes may potentially affect their strategic decisions regarding the ownership structure,

investment timeline and deal structuring. Given that US contributors may be required to disclose the beneficial ownership of the Korean target they are investing in under the CTA, it would be important for Korean sponsors to recognise that such information concerning their identity and ownership could potentially be reported to US authorities. Korean counterparts may also need to provide their co-operation so that US contributors can provide the information required to fulfil their disclosure obligations under the Corporate Transparency Act.

5.6 Annual Entity Maintenance and Accounting Compliance

The main items in annual maintenance costs for special investment vehicles are the fees paid to the asset management companies, custodians and business trustees. As an example, for REITs, annual fees paid to asset management companies are typically within 0.2% to 0.4% of the total property purchase price, while annual fees paid to custodians and business trustees typically add up to 0.04% of the total property purchase price. Fees paid by other special investment vehicles do not vary significantly. The annual accounting compliance cost for special investment vehicles is typically around KRW10 million or lower, although this may vary slightly depending on the asset size and the accounting period.

6. Commercial Leases

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Arrangements for the occupancy and use of real estate include a lease on real estate, an easement on land and a superficies on land.

6.2 Types of Commercial Leases

There are two main types of commercial leases:

- a gross lease typically used for offices – a tenant is not responsible for the payment of any amounts other than rent; and
- a net lease typically used for retail stores – a tenant pays, in whole or in part, the cost of possession and maintenance with respect to the real estate, in addition to rent.

6.3 Regulation of Rents or Lease Terms Under the Civil Code

Rents and lease terms are basically freely negotiable. However, under the Civil Code, certain terms may not be contractually agreed upon to the extent that they are unfavourable to a tenant. For example, in the event that the agreed rent becomes inadequate due to an increase in taxes, public charges or other claims, the landlord is entitled by law to request an increase in future rent. However, the tenant's right to request a reduction in rent in case of a change in economic circumstances may not be waived or excluded by contractual agreement. As another example, in the event that a tenant installs a fixture in or on the leased building for its benefit with the landlord's consent, the tenant is entitled by law to request the landlord to purchase the fixture upon termination of the lease, and such right of the tenant may not be waived or excluded by contractual agreement.

Under the CBLPA

Furthermore, for commercial building leases regulated under the CBLPA, the lease term may not be less than one year (unless the tenant, on its own, elects for a period of less than one year), and the tenant is entitled to request renewal of the lease for a cumulative term of up to ten years. In addition, for such leases, with respect to the right to request an increase or reduction

of rent based on changes in economic circumstances, rent may not be increased within one year from the execution date of the lease or of a prior rent increase, or by the maximum limit for a rent increase as prescribed by law.

6.4 Typical Terms of a Lease

A lease for business premises typically includes the following terms:

- the lease term may be one or two years, and may usually be extended to up to ten years by the tenant, as set out in the CBLPA;
- the tenant is usually responsible for the maintenance and repair of leased retail stores, whereas the landlord is usually responsible for the maintenance and repair of leased office buildings; and
- rent is paid monthly.

6.5 Rent Variation

The amount of rent depends on the terms agreed between the parties but will usually increase for retail shop leases in accordance with an increase in the consumer price index (CPI). The CBLPA provides that if the rent or security deposit becomes insufficient due to taxes, import duties or any other increase or decrease in the burden on the leasehold building, or due to fluctuations in economic conditions, each party to a lease may claim an increase or decrease in the future rent or security deposit. However, the landlord may not increase the rent or security deposit by more than 5% at a time, and a rent increase is not allowed within one year of commencing the lease contract, or within one year of an agreed increase in the rent or security deposit.

6.6 Determination of New Rent

New rent will be determined by an agreement between the parties after negotiations but, as stated in **6.5 Rent Variation**, an increase in rent

for certain leases will be regulated under the CBLPA, as applicable.

6.7 Payment of VAT

VAT is payable on rent unless the leased property is:

- a rice paddy;
- a garden;
- an orchard;
- a ranch site;
- forest land;
- a salt pan; or
- housing (and attached/accompanying) land.

6.8 Costs Payable by a Tenant at the Start of a Lease

Costs payable at the start of a lease include a security deposit and a maintenance fee, the amounts of which are negotiated with the landlord.

6.9 Payment of Maintenance and Repair

Under the Civil Code, the landlord is basically responsible for maintaining and repairing areas used by tenants, but the costs for maintenance and repair incurred by the landlord may be charged to tenants in accordance with the lease contract. In such cases, the tenants must pay for the maintenance and repair in proportion to the size of their leased property.

6.10 Payment of Utilities and Telecommunications

Utilities and telecommunications charges are paid by tenants in proportion to the size of their leased property.

6.11 Payment of Property Taxes

As the owner of property, including land, building and residential homes, the landlord is subject to an annual property tax. Although there are

exceptions, the landlord is typically responsible for the payment of property taxes relating to the leased property.

6.12 Insurance Issues

A landlord purchases a package insurance policy and, in many cases, pays the premium for insurance, which includes coverage for:

- property all risk;
- machinery risk;
- landlord's business interruption;
- gas accident liability; and
- general liability.

In some double-net or triple-net leases for retail stores, the tenant pays the cost of insuring the real estate.

There are very few insurance policies that cover reduced profits from the suspension of operations, and there is no insurance policy that compensates for any damage caused by COVID-19.

6.13 Restrictions on the Use of Real Estate

There are no regulations or laws generally restricting a tenant's use of real estate, but restrictions may be imposed by the landlord, relevant clauses may be incorporated into a lease agreement and regulations relating to specific areas may impose specific restrictions on a tenant's use of real estate. For example, the Outdoor Advertisement Control Act (OACA) stipulates that any person who intends to display advertisements or change authorised advertisements must obtain permission from, or report to, the local government depending on the type of advertisements, thereby directly restricting a tenant's use of real estate in connection with advertisements.

6.14 Tenant's Ability to Alter and Improve Real Estate

Under the Civil Code, a tenant is basically permitted to implement improvement measures that objectively increase the value of the leased real estate. However, the tenant is not allowed to alter or improve the real estate against the landlord's objection.

6.15 Specific Regulations

Special laws (as opposed to the general provisions of the Civil Code) do exist, such as:

- the HLPAs, which applies to residential leases; and
- the CBLPA, which applies to commercial leases.

Parties cannot contract around clauses contained in these special laws to the detriment of tenants (ie, lease agreements cannot contain provisions that are less favourable to tenants than as set forth in the relevant special law).

As described in 6.3 Regulation of Rents or Lease Terms, legislative amendments were made to the CBLPA in 2020 to mitigate the impact of the COVID-19 pandemic.

6.16 Effect of the Tenant's Insolvency

A lease term that stipulates the tenant's insolvency as a cause of termination is invalid because it is inconsistent with the DRBA, which provides that the insolvent company has the right to elect either to terminate or keep the contract effective.

6.17 Right to Occupy After Termination or Expiry of a Lease

A tenant has the right to continue to occupy the leased real estate until the security deposit is returned by the landlord, even after the expiration of the lease. Therefore, the landlord needs

to be prepared to return the security deposit to the tenant on the date originally agreed.

6.18 Right to Assign a Leasehold Interest

Tenants and sub-tenants may assign their leasehold interest with the consent of the landlord; however, it is extremely rare in practice for such consent to be granted by the lessors.

6.19 Right to Terminate a Lease

A common reason for a landlord to terminate a lease is a tenant's failure to make timely rent payments, or the tenant's alteration of the real estate without approval from the landlord. On the other hand, a common reason for a tenant to terminate a lease is the landlord's transfer of the real estate to a third party. In such cases, the landlord may negotiate with the tenant to insert a clause in the lease agreement permitting the landlord to freely transfer the real estate as long as the transferee (ie, the third party) agrees to accept all the terms and conditions of the lease agreement.

6.20 Registration Requirements

There are no registration requirements or particular execution formalities for leases. However, in order for the tenants to protect their leasehold interest from third parties, tenants are advised to record their leasehold interest in the registry (in practice, and in many cases, leases are recorded in the real estate registry). In addition, the tenant must pay a recording tax of 0.24% (inclusive of surtax) of the monthly rent payable to the landlord and a recording fee of KRW15,000 for the real property.

6.21 Forced Eviction

A tenant may be forced to leave if they are late paying rent, but the CBLPA stipulates that the tenant cannot be forced to leave until the delayed

rent payments amount to, or exceed, triple the periodic rent payments (eg, three months' rent in the case of monthly payments).

If the tenant refuses to surrender the real estate voluntarily, the landlord may file an eviction lawsuit against the tenant. It usually takes about six to ten months for a district court to render a judgment, which may then be appealed to a higher court. In order for the landlord to avoid such a long adjudication procedure, at the time the lease contract is made, they may opt for a pre-trial settlement procedure. With respect to the enforcement of the court judgment or the pre-trial settlement protocol, the eviction is executed by a court-appointed enforcement officer, and it usually takes two to three weeks from the landlord's filing of a petition for the commencement to the completion of the eviction process.

6.22 Termination by a Third Party

A lease may be terminated in accordance with the relevant law, including the AELPWC, and the tenant's leasehold interest may be extinguished upon expropriation of the leased premises (whether land or building) by the government. Specifically, a lease is automatically terminated at the time the expropriation process is commenced, in which case the landlord must return the lease deposit to the tenant. The landlord is not obliged to pay separate damages for termination due to expropriation. However, under the relevant law, the expropriating entity must pay the following as compensation to the tenant of an expropriated building:

- if a residential lease – two months' cost of living for relocation, the relocation settlement cost (between KRW6 million and KRW12 million) and the cost of moving; or
- if a commercial lease – loss of profits for the interruption of business for up to four months

(calculated by aggregating profits from operations, decrease in profits from operations, depreciation, maintenance costs, labour costs, etc).

6.23 Remedies/Damages for Breach

If a lease is terminated due to reasons attributable to the tenant, the landlord, in principle, is entitled to claim liquidated damages under the lease (eg, an amount equivalent to the remaining rent). However, if the lease agreement is silent as to liquidated damages, the landlord may only claim damages equivalent to the rent covering the period between the date of termination and the date on which the landlord was able to secure a new tenant. The majority of case law has rarely allowed this period to be longer than six months. In most cases, a cash security deposit is provided to the landlord to protect against a tenant's failure to meet its obligations under a lease. Although quite rare, a letter of guarantee issued by a financial institution may replace the cash security deposit.

7. Construction

7.1 Common Structures Used to Price Construction Projects

Since there are no statutory or other legal procedures for paying contractors, the payment structures for construction projects are typically set out in contractual agreements. The most common payment method for construction contracts is the fixed fee method, while the cost of the work method (or cost plus fee) is rarely used. However, in public construction contracts, unlike private construction contracts, escalation clauses are generally allowed.

In fixed-fee contracts, contractors bear the risks relating to, among others:

- delays due to local civil petitions against the construction;
- cost increases (including labour and material costs);
- procurement of construction equipment; and
- personal injury caused by on-site accidents.

7.2 Assigning Responsibility for the Design and Construction of a Project

For small to medium-sized projects, build-only contracts are common in both public and private construction projects. In such contracts, the owner is responsible for appointing an architect to carry out the design, and the contractor is responsible for the construction only.

For large-scale public construction projects, design-build contracts have become more frequently used of late. In such contracts, the contractor is responsible for the design (in whole or in part) as well as the construction of the project.

7.3 Management of Construction Risk

Commonly used contractual devices for managing construction risks are as follows.

Retention/Retainage/Holdback Provisions

Although these provisions are enforceable in principle, a contract that has been prepared by one party for execution with multiple counterparties will be treated as a standardised contract, and any retention provision in a standardised contract that is unjustifiably unfavourable to the other party may be unenforceable.

Indemnity Provisions, Including Liquidated Damages and Penalty Provisions

Although these provisions are enforceable in principle, a court may reduce the amount of liquidated damages at its discretion if it finds the amount to be excessive (ie, in circumstances involving concurrent delay), and a penalty pro-

vision may be unenforceable if the amount is found to be excessive.

Contract Provisions Regarding Damages for Delay

Delay damages are generally calculated by multiplying the contract price by the rate of delay, and the amount is payable unless the delay was due to force majeure, or was the owner/ employer's fault. Although delay damages are enforceable in principle, they are treated as liquidated damages by Korean courts, and if a court finds the amount of delay damages to be excessive, it may exercise its discretion to reduce the amount. Please see **7.4 Management of Schedule-Related Risk**.

Consequential Damages Provisions

Consequential damages are only recognised if they are expected or reasonably foreseeable by the party liable for such damages. Therefore, in order for consequential damages to be recoverable, they should be expressly contemplated in the contract to the extent possible. A contractual agreement to exclude consequential damages or compensation for loss of profit is enforceable in principle.

7.4 Management of Schedule-Related Risk

Schedule-related risk on construction projects may be managed by including provisions regarding damages for delay in the construction contract. Parties are allowed to agree that an owner is entitled to monetary compensation for delays in achieving certain milestones and completion dates. However, if a court finds the amount of delay damages to be excessive, it may exercise its discretion to reduce the amount. The typical percentage for delay damages is 0.1% of the contract price per day of delay.

Furthermore, parties may include a provision allowing the owner to terminate the contract if there is a material delay in the construction.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

Owners often seek additional forms of security to guarantee the performance of contractors under construction contracts, such as:

- bid bonds, whereby a bidder is obliged to pay the deposit money when participating in a bid and, if the bid is successful, to execute the construction contract (a general requirement for public procurement);
- performance guarantees/bonds, which secure the performance of a contractor's obligation under the contract;
- warranties, which oblige a contractor to remedy defects that occur after completion of construction; and
- advance payment guarantees, which secure the contractor's obligation to return the advance payment under the construction contract.

7.6 Liens or Encumbrances in the Event of Non-Payment

In the event of non-payment, a contractor may exercise lien rights and refuse to hand over the project until the contract price is paid, provided that an incomplete building that is not deemed an independent building is classified as an improvement on the land, and thus may not be subject to a lien. Therefore, the subject property must be objectively considered to be an independent building in order for a lien to be exercised. According to relevant court precedents, an incomplete building will be considered an independent building if it has more than a minimum number of pillars, a roof and main walls.

Civil and Commercial Liens

There are two types of liens available, and a contractor may selectively assert a lien under the Civil Code (a civil lien) or under the KCC (a commercial lien).

Civil liens

For a civil lien, a contractor must be in possession (including indirect possession) of the subject property, and the claims for the contract price must be correlated to the property in possession (meaning that the property in possession must be the property in relation to which the claim for the contract price has arisen). The subject property is not required to be owned by the debtor.

Commercial liens

For a commercial lien, this correlation is not required, but the subject property must be owned by the debtor (ie, the project owner), and the contractor must be in possession of the subject property as a result of the relevant commercial transaction.

In addition, a contractor may demand that the owner establish a mortgage on the subject real property to secure the contract price.

Similarly, a designer may assert a commercial lien or demand that the owner establish a mortgage on the subject real property, but the civil lien would not be available as the designer's claim for the contract price would not be correlated to the property in possession. To assert a commercial lien, the designer must be in possession of the subject property as a result of a commercial transaction.

Lien Waivers

The right to a lien and the right to a mortgage may both be waived by agreement of the parties.

Since the parties may execute lien waivers at any time by mutual agreement, a comprehensive lien waiver is often executed in advance for convenience. If a comprehensive lien waiver is executed, a monthly/periodic lien waiver is not required.

While there is no statutorily prescribed form for a lien waiver, the waiver will typically contain the location and other details of the subject property, and an expression of intent to waive a lien.

7.7 Requirements Before Use or Inhabitation

Under the relevant laws, a use permit must be obtained before a completed project may be inhabited or used for its intended purpose. A use permit (or temporary use permit) may be obtained from the competent authority after the completion of construction.

8. Tax

8.1 VAT and Sales Tax

For the transfer of a building, VAT is levied at the rate of 10% of the transfer price, and the transferor must collect this amount of VAT from the transferee. However, no VAT is imposed on a transfer of land, which is exempt from taxation. In the case of a comprehensive transfer of a business, including all rights and obligations therein, no VAT is imposed even if the transferred assets include a building.

8.2 Mitigation of Tax Liability

If an investment vehicle such as a REIT or a PFV distributes 90% or more of its distributable income as dividends, the disbursed dividend amount may be deducted from the income calculated for the relevant business year. For PFVs, this tax benefit is applicable through the fiscal

year ending on or before 31 December 2025. An REF is a pass-through entity, and thus not a taxable entity, and is also exempt from the tripling of the acquisition tax or the corporate registration tax in an overpopulated control area such as Seoul Metropolitan City.

8.3 Municipal Taxes

If a corporate entity occupies premises where it continuously conducts business, with its employees working there and its facilities being installed at the location, the business owner registered in the tax ledger must pay the property tax portion of the resident tax, in the amount of KRW250 per square metre of gross floor area of the business premises. If the business owner is not the owner of the building where the business premises are located, then the owner of the building may become secondarily liable for unpaid tax. However, any business premises with an area under 330 square metres is tax exempt.

In addition, the corporate entity must pay a per capita resident tax, at the rate of 0.5% of the aggregate monthly salaries paid to employees, to the municipal government of the location of the business premises. The per capita resident tax may be increased or decreased by up to 50% in accordance with the rules set by the municipal government.

8.4 Income Tax Withholding for Foreign Investors

Regarding a foreign corporate entity's income generated from Korean domestic sources, depending on the category of income, either the person/entity providing the income must withhold and pay income tax to the government, or the foreign corporate entity itself must report and pay the income tax. Rental income from real estate constitutes income generated

from domestic sources, and a foreign corporate entity itself must report and pay the income tax. The applicable tax rate is 9.9% to 26.4% of the income, depending on the amount of taxable income. On the other hand, a foreign corporate entity's income from the transfer of real estate constitutes income from domestic sources, and the person/entity providing the income must withhold as income tax the lower of either 11% of the amount paid to the foreign corporate entity for the transfer or 22% of the capital gain from the transfer, and report and pay the same to the government.

The foreign corporate entity receiving income from the transfer of real estate must also complete an income tax filing, but the amount with-

held as income tax by the transferee is creditable. The applicable tax rate is the same as it is for real estate rental income (9.9% to 26.4%). There are no special exemptions for real estate transfer taxes, and tax treaties joined by Korea generally prescribe that real estate rental income and real estate transfer income are taxable in Korea, the location of the income source.

8.5 Tax Benefits

A domestic corporate entity owning real estate (as opposed to leasing real estate) may recognise depreciation of the building as an economic loss of such corporate entity, within the limits prescribed in the Corporate Tax Act. There appear to be no other tax benefits that can be gained from owning real estate.

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