ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO
ALLEN & OVERY SCS
AL TAMIMI & COMPANY
AUMENTO LAW FIRM
BELLWETHER GREEN
BINDER GRÖSSWANG RECHTSANWÄLTE GMBH
BIRD & BIRD
CHIOMENTI
CORDATO PARTNERS LAWYERS
DENTONS
DE PARDIEU BROCAS MAFFEI
DLA PIPER
ESTUDIO BECCAR VARELA
GUZMÁN ARIZA
HENGELER MUELLER
HERBERT SMITH FREEHILLS CIS LLP
LIEDEKERKE WOLTERS WAELBROECK KIRKPATRICK
MAPLES GROUP
N.DOWUONA & COMPANY
NIEDERER KRAFT FREY
NISHIMURA & ASAH
NORTON ROSE FULBRIGHT SOUTH AFRICA INC.
Acknowledgements

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
PINHEIRO NETO ADVOGADOS
POPOVICI NIȚU STOICA & ASOCIAȚII
SLAUGHTER AND MAY
SOŁTYSIŃSKI KALWECKI & SZLEZAK
TSMP LAW CORPORATION
URÍA MENÉNDEZ
WOLF THEISS
# CONTENTS

PREFACE.......................................................................................................................................................... vii
  
  John Nevin

Chapter 1  BREXIT AND REAL ESTATE........................................................................................................ 1
  
  John Nevin

Chapter 2  ARGENTINA.................................................................................................................................... 5
  
  Pedro Nicholson and Delfina Calabró

Chapter 3  AUSTRALIA..................................................................................................................................... 15
  
  Anthony J Cordato

Chapter 4  AUSTRIA.......................................................................................................................................... 26
  
  Tibor Fabian and Markus Uitz

Chapter 5  BELGIUM......................................................................................................................................... 35
  
  Yves Delacroix and Alexandre Emond

Chapter 6  BRAZIL............................................................................................................................................ 46
  
  Franco Grotti and Guilherme de Toledo Piza

Chapter 7  CAYMAN ISLANDS..................................................................................................................... 55
  
  George Loutas

Chapter 8  DENMARK....................................................................................................................................... 64
  
  Torben Mauritzen

Chapter 9  DOMINICAN REPUBLIC............................................................................................................... 76
  
  Fabio J Guzmán Ariza, Christoph Sieger and Alfredo Guzmán Saladín

Chapter 10  ENGLAND AND WALES............................................................................................................. 82
  
  John Nevin
Chapter 11 FRANCE.............................................................................................................................. 96
Pierre Gebarski and Guillaume Rosignol

Chapter 12 GERMANY........................................................................................................................ 113
Jan Bonhage and Thomas Lang

Chapter 13 GHANA............................................................................................................................... 126
NanaAma Botchway

Chapter 14 HONG KONG .................................................................................................................... 136
Dennis Li

Chapter 15 INDONESIA....................................................................................................................... 146
Ayik Candrawulan Gunadi and Tania Faramutia

Chapter 16 ITALY .................................................................................................................................. 157
Umberto Borzi

Chapter 17 JAPAN .............................................................................................................................. 166
Norio Maeda, Takuya Shimizu, Keisuke Yonamine and Yujin Gen

Chapter 18 LUXEMBOURG.................................................................................................................. 183
Serge Hoffmann and Philippe Eicher

Chapter 19 NETHERLANDS................................................................................................................ 193
Max van Drunen and Leen van der Marel

Chapter 20 POLAND ........................................................................................................................... 204
Janusz Siekański and Radosław Waszkiewicz

Chapter 21 QATAR ................................................................................................................................ 214
Nicola de Sylva

Chapter 22 ROMANIA .......................................................................................................................... 225
Valentin Creata

Chapter 23 RUSSIA .............................................................................................................................. 238
Sergey Kolobov

Chapter 24 SCOTLAND ......................................................................................................................... 249
John Bingham
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>SINGAPORE</td>
<td>261</td>
</tr>
<tr>
<td></td>
<td>Jennifer Chia, Yvonne Lian and Zan Wong</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>SLOVENIA</td>
<td>277</td>
</tr>
<tr>
<td></td>
<td>Markus Bruckmüller and Petra Jermol</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>SOUTH AFRICA</td>
<td>287</td>
</tr>
<tr>
<td></td>
<td>Pieter Hugo Niehaus</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>SPAIN</td>
<td>295</td>
</tr>
<tr>
<td></td>
<td>Diego Armero and Rodrigo Peruyero</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>SWEDEN</td>
<td>305</td>
</tr>
<tr>
<td></td>
<td>Jan Berg and Carl-Magnus Uggla</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>SWITZERLAND</td>
<td>314</td>
</tr>
<tr>
<td></td>
<td>Andreas F Vögeli and Oliver Zbinden</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>UNITED ARAB EMIRATES</td>
<td>323</td>
</tr>
<tr>
<td></td>
<td>Iain Black and Joe Carroll</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>UNITED STATES</td>
<td>337</td>
</tr>
<tr>
<td></td>
<td>Meredith J Kane</td>
<td></td>
</tr>
<tr>
<td>Appendix 1</td>
<td>ABOUT THE AUTHORS</td>
<td>353</td>
</tr>
<tr>
<td>Appendix 2</td>
<td>CONTRIBUTORS’ CONTACT DETAILS</td>
<td>369</td>
</tr>
</tbody>
</table>
I am delighted to introduce the eighth edition of The Real Estate Law Review. The continued success of the Review confirms its relevance to real estate practitioners and their clients. Real estate is increasingly viewed on a global basis and readers can only benefit from a general understanding of how individual jurisdictions operate within the global real estate market.

This edition extends to 31 jurisdictions, and we are delighted to welcome new contributions from distinguished practitioners from around the world. I am very grateful to all contributors for their hard work and essential role in compiling this eighth edition. Each chapter provides an invaluable insight into key legal issues and market trends in the author’s jurisdiction and, together, they offer an up-to-date synopsis of the global real estate market.

The Review seeks to identify distinctions in practice between the different jurisdictions by highlighting particular local issues. We believe that this offers investors and occupiers and their professional advisers an invaluable guide to real estate investment outside their own domestic market. Overseas investors are increasingly prepared to look beyond traditional markets and sectors to exploit international opportunities as and when they arise. Often, investors need to act quickly, and we hope that the Review provides an advantageous starting point to understanding cross-border transactions in the light of the reader’s own domestic forum.

International economic and political instability continues to have a significant effect on the global real estate market. In the UK, Brexit-generated uncertainty remains as negotiations for leaving the EU are still ongoing as we approach the 29 March 2019 deadline. However, the continued attraction of UK real estate to overseas investors confirms that each event or development in a particular country must be seen in a global context to ascertain the bigger picture. It is no longer possible to ignore globalisation and view real estate markets in isolation. Brexit notwithstanding, the UK remains a safe haven for investors from around the world, and investment levels in London and the wider UK market remain buoyant.

In addition to all the distinguished authors, I would like to thank the members of the Law Review team for their tireless work in compiling this eighth edition of The Real Estate Law Review.

John Nevin
Slaughter and May
London
February 2019
Chapter 13

GHANA

NanaAma Botchway

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

Ghanaian real estate law combines common and customary law concepts. The vast majority of land in Ghana is still communally owned by stools (stools indicate status, power and succession of chiefs and kings), but a significant amount of land was compulsorily acquired by the state in the colonial and post-colonial era, and some lands are owned by natural persons.

The highest interest in land under Ghanaian land law is the allodial interest. This interest, derived from customary law, is absolute and paramount over all other interests in land and although it is theoretically capable of being held by an individual, it is typically held by a stool, a family or by the state. Title in such lands is usually held by the chief of the stool in trust for the stool or by the family head in trust for the extended family. The allodial holder’s rights exclude certain rights that are vested in the president such as the right to exploit rocks, minerals, ores and fossil fuels found in, under or upon the land.\(^2\)

The second highest interest in land is the freehold. The law recognises both common-law and customary law freeholds. The common-law freehold is the most common form of freehold interest in Ghana outside of the rural areas. As is the case in most common-law jurisdictions, the owner of the freehold may exercise most of the rights of ownership over the land for an indefinite period, excluding the rights indicated above in relation to rocks, minerals, ores and fossil fuels. The customary freehold historically acquired by a member of a community through exercising acts of ownership over vacant communal land still exists but is not that common, and although it may be conveyed for value, the acquirer of such land acquires a common-law freehold interest, not a customary freehold.

Leasehold interests predominate in Ghana. Leaseholds may be held individually or communally and by both natural and legal persons. The tenor of leasehold interests that may be conveyed is restricted to 99 years for Ghanaian citizens and 50 years for non-citizens.\(^3\) As such, foreigners and legal entities, even Ghanaian-registered or wholly owned entities (as citizenship is not conferred upon legal entities) are only legally entitled to leases of up to

\(^1\) NanaAma Botchway is a managing partner at N. Dowuona & Company.

\(^2\) Minerals and Mining Act 2006 (ACT 703), Section 1; Petroleum (Exploration and Production) Act 2016 (Act 919), Section 3.

\(^3\) Constitution of the Republic of Ghana 1992, Article 266(4).
50 years. Most leases are common-law leases that entitle the holder to exercise most of the rights of ownership over the land for a defined term, subject to the leaseholder acknowledging the superior title of allodial or freehold title holder.

Lesser common law interests in land such as easements and licences are also recognised under the law, as are customary law arrangements such as sharecropping rights.

**ii System of registration**

Most interests in land (allodial, freehold, leasehold interests with an unexpired term of two or more years and easements)\(^4\) are registrable with the Lands Commission either under the Land Title Registration Act 1986 (PNDCL 152) or the Land Registry Act 1962 (Act 122). Certain areas within the country have been designated as registration districts and all holders of registrable interests in land situated in these areas must register their interests under the Land Title Registration Act. Currently, the Greater Accra Region\(^5\) and parts of Kumasi\(^6\) in the Ashanti Region are the only designated registration districts in Ghana. The minister in charge of lands may, however, by a legislative instrument, declare any other part of Ghana as a registration district.\(^7\)

Registrable interests under the Land Title Registration Act include allodial, freehold and leasehold interests in respect of lands situated in registration districts.\(^8\) Registration under the Land Title Registration Act confers indefeasible title,\(^9\) namely, title that is free from all adverse claims but subject to encumbrances indicated in the register and certain overriding interests provided in the law. By comparison, registration of an instrument under the Lands Registry Act does not confer title, it simply constitutes notice of the instrument and provides evidence of priority of instruments based on the dates of registration.\(^10\)

The process of registration under the Land Title Registry consists of the completion of a form, the payment of a registration fee and the submission of stamped copies of the documents for registration. Site plans prepared by licensed surveyors must be attached, as well as any required consents. Once the documents are submitted, the administrative process, which includes plotting and entering the interest in the register, public notification of the application and issuance of the certificate, can take anywhere from four months to over a year. The process of registration of an instrument in the Deeds Registry involves many of the same steps as above, but it takes much less time and can be completed within three-to-six months.

---

\(^4\) PNDCL 152, Section 19(1).
\(^5\) Land Title Registration – Declaration of Registration Districts (Accra District) – the registration districts in Accra were created under multiple legislative instruments issued by the Minister of Lands and Natural Resources at various times.
\(^6\) Land Title Registration – Declaration of Registration Districts (Kumasi District K. 1) Instrument 1994 (LI 1590).
\(^7\) PNDCL 152, Section 5.
\(^8\) Only leasehold interests with an unexpired term of two or more years are registrable under the Land Title Registration Act. PNDCL 152, Section 19(1)(d).
\(^9\) PNDCL 152, Section 43.
\(^10\) Act 122, Section 25.
iii  Choice of law

The courts in Ghana apply the doctrine of lex situs in disputes relating to immovable property located in Ghana.\(^\text{11}\) As such, in the resolution of disputes relating to land situate in Ghana, the laws of Ghana shall apply.

II  OVERVIEW OF REAL ESTATE ACTIVITY

The growth of the real estate sector in line with most of the services sectors remained fairly flat in 2017. The high-end residential market slowed, with occupancy rates in luxury apartment developments declining and rents coming under significant downward pressure. With a rapidly growing middle class, rapid and uncontrollable urbanisation and a projected housing total of two million by 2018, the middle- and low-income housing market received more attention and is expected to continue to be an area of focus in the near- to medium-term as the government seeks to actively improve the sector for investors with various measures, including a new proposal to fund affordable housing, along with the repeal of value added tax (VAT) on property sales.\(^\text{12}\) 2018 saw the development of significant middle-income property developments such as Appolonia City, a master planned development located on the outskirts of Accra, and the US$200 million Saglemi Affordable Housing development in Prampram, funded by the Emerging Markets Fixed Income Division of Credit Suisse. In October, the government also announced a collaboration with the Social Security National Insurance Trust to develop 2,000 affordable housing units in the Ashanti region.

The commercial real estate market also saw weakened demand as a result of the recent economic downturn and relatively high rents. As a result, rents came under some downward pressure because of rising vacancy rates and the limited number of tenants seeking space.\(^\text{13}\) 2017 saw the completion of some significant projects such as Dream Realty’s Octagon, a 36,000 m\(^2\) retail, office and hotel development, and a number of flagship head offices by banks such as the prominent 22,000 m\(^2\) Ecobank head office building, the Cal Bank Head office and the Zenith Bank head office. Work commenced on The Exchange, a mixed-use development that includes over 12,000 m\(^2\) of retail space, a 200-key four-star hotel as well as a number of premium residential apartments. The Marine Drive Project, a 241 acre, US$1.2 billion, 10-year phased project for the redevelopment of the Accra waterfront to include new hotels, malls, office and residential facilities was officially commenced with the sod-cutting by the President of Ghana in late December.

III  FOREIGN INVESTMENT

Foreigners are permitted to invest in land in Ghana, but the nature and extent of the interests that they are permitted to own is restricted. Under the 1992 Constitution, any person who is not a Ghanaian citizen may not hold a freehold or higher interest in land in Ghana.\(^\text{14}\) Any

---

\(^{\text{11}}\) Davis v. Randall and Another [1963] 1 GLR 382–386.


\(^{\text{14}}\) 1992 Constitution, Article 266(1).
agreement that purports to convey a freehold interest to a non-citizen is void.\textsuperscript{15} Foreigners and legal entities, whether or not wholly owned by Ghanaian citizens, may therefore only hold leaseholds and lesser interests in land.

Additionally, any person who is not a Ghanaian citizen may not hold a leasehold interest for a term of more than 50 years at any one time.\textsuperscript{16} Any such agreement, deed or conveyance that purports to confer a leasehold for a term exceeding 50 years over land in Ghana will be reduced to a 50-year term. There are no specific incentives available to investors in relation to land ownership in Ghana.

\textbf{IV\quad STRUCTURING THE INVESTMENT}

Most major real estate investments are structured using special purpose vehicles incorporated in Ghana. The entity of choice is the private company limited by shares. This entity has the advantage of limiting the liability of the investor to the investment in the company’s shares, but also the disadvantage of being tax inefficient because it has a separate legal personality for tax purposes. With corporate tax rates at around 25 per cent, this disadvantage is not insignificant; however, in the absence of any other entities often used in real estate investments around the world, such as limited partnerships, S corporation\textsuperscript{17} or US limited liability companies, the Ghanaian limited liability company is basically all that there is. Although partnerships are in theory available, because only natural persons are permitted as partners, along with the absence of any protection from liability, this makes the partnership an unattractive option notwithstanding its relative tax efficiency. Similarly, trusts are not used very often in Ghana because the trust law is antiquated and the relative lack of legal precedent on the operation of trusts and the rights and obligations of trustees makes them unattractive from an investment standpoint.

Private limited liability companies may have no more than 50 shareholders and may be either partly or wholly foreign owned. Under the Ghana Investment Promotion Centre Act 2013 (ACT 865), foreigners are required to invest certain minimum amounts of capital in limited liability companies. If the company is jointly owned by Ghanaians and foreigners, the foreigners are required to invest a minimum of US$200,000 in cash or in kind in the entity. If the entity is wholly foreign owned, the foreign owners are required to invest a minimum of US$500,000 in cash or in kind. The investment must be transferred into Ghana from abroad and, if paid in cash, must be converted into Ghana cedis. Once converted, the investment amount may be used as working capital.

Ghanaian company law permits the creation and issuance of a variety of securities by limited liability companies, but investors typically only issue ordinary shares, referred to as common shares in other jurisdictions and occasionally, preference shares. Ordinary shares are issued with no par value and different classes may be issued. Subject to certain limitations, different governance and other rights may be granted to shareholders within the same class. Interest-bearing shareholder loans are permissible and are subject to thin capitalisation and transfer pricing regulations.

\textsuperscript{15} 1992 Constitution, Article 266(2).
\textsuperscript{16} 1992 Constitution, Article 266(4).
\textsuperscript{17} A type of corporate entity available in the United States.
Investors in limited liability companies may be natural persons or legal entities. Foreigners are permitted to act as directors and there is no requirement that any directors in a company be Ghanaian; however, at least one director must be in Ghana at all times.

The process of incorporation of a limited liability company takes about two weeks. All would-be shareholders and directors in a limited liability company are required to register with the Ghana Revenue Authority and be issued with tax identification numbers. Following incorporation, the company must be registered with the Ghana Investment Promotion Centre before it commences operations. This registration process typically takes no more than two weeks.

The special purpose vehicles used are typically asset holding companies that are operated by a parent, affiliate or third-party company under an asset management agreement or similar arrangement. These agreements are subject to transfer pricing regulations, and where they are entered into with a foreign asset manager, certain terms in the agreements may be subject to further regulation and registration with the Ghana Investment Promotion Centre.

V  REAL ESTATE OWNERSHIP

i  Planning

Zoning plans and schemes exist that are supposed to guide the development of each locality in Ghana. In practice, however, there is limited compliance with the zoning rules in many areas, particularly in Accra, which has resulted in the proliferation of commercial, residential and light industrial developments, all within areas earmarked for residential development only. Under the zoning law, a local plan is required for each specific physical development.\(^\text{18}\) Within a local plan, each individual parcel of land is prescribed a permissible use. A vendor or lessor of land must ensure and demonstrate that the land is zoned for the specific purpose which the lessee or buyer requires the land\(^\text{19}\) by attaching evidence of the approved land use to the instrument of transfer. Estate developers are also required to draw up local plans according to approved standards. Developers seeking to set up real estate development in phases must prepare a local plan for the area concerned.\(^\text{20}\) A local plan should be drawn up and adopted before the approval of a development scheme in respect of the layout of land for more than 20 individual plots, each of which is not less than 110 m\(^2\) and for major redevelopment schemes in urban areas.\(^\text{21}\)

A developer may apply to change the use of all or part of a parcel of land by applying to the town and country planning division of the local district authority.\(^\text{22}\) The request must be accompanied by a report prepared by a professional planner. A change of use must not significantly alter the original intention of the plan or zone, and not cause disruption to the surrounding land uses by way of significantly increasing traffic generation or increasing noise or odour, or increasing the risk of fire or explosion or undermining the image of the area or

\(^{18}\) Land Use and Spatial Planning Act 2016 (Act 925), Section 72.
\(^{19}\) Land Use and Spatial Planning Act 2016 (Act 925), Section 93.
\(^{20}\) Land Use and Spatial Planning Act 2016 (Act 925), Section 74.
\(^{21}\) Land Use and Spatial Planning Act 2016 (Act 925), Section 72(3).
\(^{22}\) Land Use and Spatial Planning Act 2016 (Act 925), Section 93.
being a risk to public health, etc.23 The process of re-zoning can take a significant amount of time, and as such investors must take this into consideration in acquiring properties that must be re-zoned prior to development.

ii Environment

To obtain a building permit from the local district authority for large-scale and significantly impacting activities, an environmental assessment registration form, together with a site plan and zoning letter from the town and country planning department of the authority, must be submitted to the Environmental Protection Agency (EPA). Following submission, the EPA will, within 25 days, request that the applicant conduct a detailed environmental impact assessment study (EIA) to fully understand the environmental impacts of the proposal and how any negative impacts will be mitigated. A decision on the EIA is made with the assistance of a cross-sectoral technical review committee within 50 days of submission. Large-scale and significantly impacting activities listed in the Environmental Assessment Regulations 1999 (LI 1652) include housing; resort and recreational development; and power generation and transmission.24

A building permit will not be issued for the development of environmentally contaminated land until the levels of toxicity on it are remediated to levels acceptable to the EPA. The party responsible for the remedying of contaminated land is subject to agreement between the vendor and purchaser. The EPA shall issue penalties for operating large-scale activities as above-mentioned, without the requisite permits.

iii Tax

Stamp duty is payable on all documents conveying interests in land. The duty assessable is a function of the value of the property conveyed. For properties valued under 10,000 cedis, the duty is assessed at 0.25 per cent of the value of property conveyed.25 For properties valued between 10,000 cedis and 50,000 cedis, duty is assessed at 0.5 per cent of the value, and for all other properties the duty is assessed at 1 per cent of the value. Any instrument by which property is conveyed must be presented for stamping within two months of its execution.26

Following recent amendments to the law,27 all commercial rent and other charges such as common area maintenance charges and utility charges are subject to VAT at a rate of 12.5 per cent. However, a supply of any property used or intended for use as a dwelling is exempt from VAT.28 Although the VAT is an end-user tax that may be passed on to the tenant, the landlord is liable for the collection and payment of the tax. The landlord is, however, permitted to offset the aggregate VAT paid on certain goods and services acquired by the landlord in providing his or her services (input VAT) against the VAT collected on rent and utility payments from tenants (output VAT), and is only required to pay the excess of the output VAT over the input VAT. The payments are made on a monthly basis, along with

24 Environmental Assessment Regulations 1999 (LI 1652), Regulation 3, Schedule 2.
26 Stamp Duty Act 2005 (Act 689), Section 12(1).
27 Value Added Tax (Amendment) Act, 2018 (Act 970), Section 1.
the submission of a return. In addition to VAT, commercial rent and other charges are also subject to NHIL\textsuperscript{29} and GETFund\textsuperscript{30} levy at a combined rate of 5 per cent.\textsuperscript{31} The NHIL and GET Fund Levy are no longer deductible as input taxes.\textsuperscript{32}

Withholding tax is also payable on commercial rent received as investment income at a rate of 15 per cent. As such, in the absence of a withholding tax exemption, commercial tenants that are legal persons are required to deduct withholding tax from their rent payments and to provide the landlord with a withholding tax certificate issued by the Ghana Revenue Authority as evidence of payment of the amounts withheld.

iv Finance and security

Large-scale real estate transactions are typically financed using term loans with comprehensive security packages, including a mortgage, a charge over the shares of the project or asset owning company, fixed and floating charges over any other assets of the project company and assignments by way of security of the various project development agreements. Mortgages must be in writing, properly attested before the registrar of the High Court, stamped and registered at a number of registries to be enforceable.

The mortgage, as well as any other security, will need to be registered at the Collateral Registry\textsuperscript{33} within 28 days of creation. Where the mortgagor or chargor of the security is a company incorporated in Ghana, the mortgage and other charges must be registered at the Registrar Generals’ Department within 28 days of the creation of the charge;\textsuperscript{34} and last but not least, all mortgages must be registered under PNDCL 152\textsuperscript{35} or Act 122,\textsuperscript{36} depending on whether the mortgaged property is situated in a registration district.

The registration of a mortgage is mandatory for the presumption of validity of the mortgage instrument and to give effect to the charge created. The courts have held that, in the absence of registration, a mortgage is ineffective and unenforceable and the possession of the title deeds or part performance by the mortgagee does not create an equitable mortgage.

VI LEASES OF BUSINESS PREMISES

Leases in Ghana must be written and must be signed by the person making the transfer or his or her agent. A description of the property is required to give effect to the transfer. To be enforceable and to be used in evidence in a court of law in Ghana, the instrument of transfer must be stamped and where the term of the lease is longer than two years and the property is situated in a registration district, the lease must be registered under Act 152.

The terms of commercial tenancies typically range between two and five years, although longer terms are permissible. Rent is typically assessed according to the square area let, and

\begin{itemize}
  \item National Health Insurance Levy.
  \item Ghana Education Trust Fund.
  \item National Health Insurance Act, 2012 (Act 852), Section 47(1) and Ghana Education Trust Fund Act, 2000 (Act 581), Section 3A.
  \item National Health Insurance (Amendment) Act, 2018 (Act 971), Section 1 and Ghana Education Trust Fund (Amendment) Act, 2018 (Act 972), Section 2.
  \item Borrowers and Lenders Act, Section 25.
  \item Companies Act 1963 (Act 179), Section 107(1).
  \item PNDCL 152, Section 72.
  \item Act 122, Section 24.
\end{itemize}
commercial rents currently range between US$20 per m² per month and US$45 per m² per month. Owing to the depreciation of the Ghana cedi, many commercial landlords will stipulate the rent in US dollars (in spite of the fact that this is not permitted under the Foreign Exchange Act 2006 (Act 723)), but rents are payable in the Ghana cedi equivalent. Rents are typically payable quarterly or semi-annually in advance, but it is not unusual for landlords to require a year or more in advance.

Tenants are typically required to pay common area maintenance charges of between US$3.50 and US$5 per square metre per month in addition to rent. These fees are also payable quarterly or semi-annually in advance. Tenants are also usually responsible for their phone and electricity charges. Charges for the consumption of water are usually included in the common area maintenance fees. Where a landlord intends to increase rents, the Rent Act 1963 (Act 220) requires that the tenant be notified in writing prior to the increase of the new rates of the rent and the date from which the new rates will be applicable. In practice, tenancy agreements typically include rent escalation provisions of 5–10 per cent on an annual or biennial basis.

Lessees are usually permitted to sublet, undersign or assign the lease with lessor’s written consent prior to the transfer. Termination and eviction for breach are only permissible by agreement or by court order.

VII DEVELOPMENTS IN PRACTICE

One of the most relevant developments in real estate law in Ghana is an administrative policy introduced by the Lands Commission requiring site plans to be marked by bar codes to allow ease of identification. The policy was introduced pursuant to the Survey (Supervision and Approval of Plans) Regulations that require licensed surveyors to carry out surveys, and for the Director of Surveys to approve of surveys. It is a pilot initiative that the Commission may roll out to other parts of the country, depending on its success. The intention is to digitise and upload accurate information on the land surface of Ghana as well as the relevant information on the parties possessing interests in the land. It is also to simplify the registration process and streamline the recording of such information. From our discussions with officers at the Lands Commission, it seems that currently, this policy is only being implemented in Accra, and is yet to be rolled out to other parts of Ghana.

The new Ghana Building Code (the 2018 Code), was launched in October 2018 by the Ghana Standards Authority. The lengthy (over 1,000 pages) document replaces the 2012 Building Code (the Old Code). It contains more detailed provisions on areas previously regulated by the Old Code and regulates aspects of the building and construction industry that were hitherto unregulated. The Department of Building Inspection of the District Assemblies was the body charged with enforcing the Old Code, but the 2018 Code will be enforced by the Works Department of the District Assemblies. Prior to the launch of the 2018 Code, individual permits were required for alterations to electrical, gas, mechanical or plumbing installations in a building but the 2018 Code\(^\text{37}\) enables applicants to obtain an annual permit for qualified tradespersons to make any such alterations in the building or structure in question. The regulations applicable to occupancy and use have also been significantly amended. There are now regulations pertaining to different classifications of residential, industrial, educational, and mercantile groups, among others. There are now

\(^{37}\) Clause 1.6.1.1.1.
specific rules for the construction of temporary structures, malls, underground buildings, special amusement buildings, motion picture projection rooms, storage areas depending on the nature of materials stored, medical facilities and many others. The 2018 Code now makes provision for the regulation of building site waste management, the preservation of natural resources, storm water management, landscape irrigation and outdoor fountains, and also takes into consideration, the management of vegetation, soils and erosion control and transportation impact. There are also comprehensive requirements for parts of buildings such as kitchens, courtyards, bathrooms, boundary walls, staircases which were previously not included in the Old Code. In the wake of recent tremors in some parts of Accra, the 2018 Code has been criticised for not providing sufficient regulation relating to earthquakes and other natural disasters.

Another significant development that may have an impact on the real estate industry is the recently held referenda on the creation of six new regions in Ghana. Previously Ghana had 10 regions. Three of those regions have now been split into two distinct regions and one has been split into three regions. It was argued that there was a need for the new regions to be created, to accelerate stalled development in those areas. This recent development is noteworthy, because it implies that branches of the relevant state institutions will need to be set up in the new regions. For instance, it could possibly mean that state institutions such as the Lands Commission may require the re-registration of land in those areas with the appropriate regional branches once they are set up.

VIII OUTLOOK AND CONCLUSIONS

The outlook for the real estate sector looks positive owing to projections for improved national economic performance and specific government initiatives aimed at stimulating the development of the low-income housing sector and the development of real estate investment funds and other sources of financing for real estate investments. There are also a number of legislative reforms that are under consideration that would improve the regulatory landscape for real estate investors.

In 2018, the government announced its intentions to initiate reforms that encourage pension and insurance firms to invest in private equity and real estate insurance funds (REIFs). The government has plans to exempt collective investment schemes and REIFs from taxes to attract funds from pension funds, sovereign wealth funds, endowments, insurance companies, mutual funds and high net-worth individuals, both local and international, to finance real estate transactions.

Ghana also has a Real Estate Authority Bill that, if passed into law, could change the critical aspects of the real estate industry in Ghana. The purpose of the Bill is to regulate real estate transactions including the sale, rental and leasing of real estate as well as overseeing and licensing real estate agents. It establishes the Real Estate Authority as its governing body. Once passed into law, it will require real estate agents to pass a qualifying exam before being licensed to practice. This means those seeking to use the service of an agent must ensure they are dealing with a duly licensed agent, and that anyone seeking to operate in the real estate industry must pass through the outlined procedure to become a licensed agent.

The Bill will also initiate the issuance of real estate transfer certificates and will provide standard forms for certain types of transactions such as purchase agreement and sales agreement forms. The real estate transfer certificate to be issued by the authority will signify
the completion of a real estate transaction. Interestingly, only licensed agents would be able to apply for the real estate transfer certificate that must be presented by the proprietor of land for the registration of his or her interest in the property.

There is also a proposed Land Bill (2018), which would revise and consolidate most of the laws on land, land administration and land management. The Bill, if passed, would complement the Lands Commission Act, 2008 (Act 767), the Administration of Stool Lands Act, 1998 (Act 481) and the Land Use and Spatial Planning Act, 2016 (Act 925). Some of the notable changes that the law would introduce include, excluding non-lawyers from preparing conveyancing documents to lawyers, the transfer and registration of interests in land by electronic means, the service of notices by electronic means. The Bill also establishes offences in relation to the registration process, so as to discourage fraud and ensure accountability. It also eliminates the payment for the consent to assign, sublet, part with possession, mortgage, or for change of use, renewal of lease, surrender of lease and any other transaction relating to leased land or interests in land.
Appendix 1

ABOUT THE AUTHORS

NANAAMA BOTCHWAY

*N. Dowuona & Company*

NanaAma Botchway-Dowuona is the founder of N. Dowuona & Company. Her areas of focus are energy and infrastructure, corporate and commercial and property and construction. She is ranked as one of five elite lawyers in Ghana by *Legal 500* and is recommended by *Chambers and Partners* and the *IFLR 1000*.

NanaAma has advised on numerous significant investments and divestments, and noteworthy projects in Ghana and other parts of Africa, such as: (1) the US$200 million sale of Fan Milk International (a regional West African diary product company whose Ghanaian subsidiary is listed on the Ghana Stock Exchange) by the founding Danish private equity investors to the Abraaj Group; (2) the development of the US$100 million mixed-use Movenpick Ambassador Hotel Project; (3) the Volta Lake Transport Company’s US$300 million Eastern Corridor Multi-Modal Transport Project; and (4) the proposed construction of a new LPG pipeline from the port of Tema to the Tema Oil Refinery.

NanaAma is a graduate of Princeton University’s Woodrow Wilson School Undergraduate Program, New York University’s Stern School of Business, where she received an MBA in finance and accounting and Columbia University School of Law, where she received a JD and was named a James Kent Scholar, the highest honour awarded in recognition of academic excellence. NanaAma is also a member of the International Bar Association and the Ghana Bar Association.

N. DOWUONA & COMPANY

Solis House, GL-056-7567
Adembra Road
East Cantonments
Accra
Ghana
Tel: +233 302 632043/4
+233 302 73888
Fax: +233 302 632046
nanaama@dowuonalaw.com
www.dowuonalaw.com

© 2019 Law Business Research Ltd