The Real Estate Law Review

Eleventh Edition

Editor
John Nevin

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THE REAL ESTATE LAW REVIEW

ELEVENTH EDITION

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PREFACE

Since a mystery disease, then known as 2019-nCoV, first appeared in Wuhan back in December 2019, coronavirus (covid-19) has continued to be the dominant global issue. The covid-19 pandemic has affected the economy like nothing this generation has previously experienced. Every major jurisdiction has been forced into a series of lockdowns, with the very real possibility of more to come. Fundamentally, the pandemic has been a terrible human tragedy with, at the time of writing, more than 250 million cases globally and over 5 million deaths. Although there is still some way to go, we are starting to see light at the end of the tunnel. The covid-19 pandemic will undoubtedly affect the global economy for some time to come. It will also leave its mark on how we live, work and play, including on each and every aspect of the global real estate market.

Another global event saw the great and the good, as well as a healthy number of protestors, converge on Glasgow for COP26. Despite the absence of some key world leaders and criticism that more could have been achieved, key pledges have been made to fight the climate change emergency. The year 2021 may be remembered as the year the world finally acknowledged that something needs to be done and now. The built environment accounts for more than its fair share of carbon emissions and the property industry is beginning to wake up to the fact that significant changes are necessary. How we design, build and use buildings is an important part of the transition towards net zero carbon. Environmental, social and governance (ESG) has finally become a very real issue with all parties, from governments through landlords, tenants and funders to individual workers, having a vested interest.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012, but nothing more significant than the covid-19 pandemic, a truly global crisis. This eleventh edition of *The Real Estate Law Review* will continue to prove its worth by providing readers with an invaluable overview of how key markets across the globe operate and how they react to major world events. The covid-19 pandemic and COP26 have served as reminders that it is not possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 24 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effect on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

The covid-19 pandemic is a truly global issue affecting every jurisdiction and, of course, its real estate market. Although it has been overshadowed by the covid-19 pandemic, Brexit and

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the associated economic and political fallout from leaving the European Union has continued to be a concern for the UK economy and its property industry. Rising costs, a critical shortage of labour and materials as well as crippling supply chain issues have threatened to destabilise the post-pandemic recovery. On a positive note, investment volumes have bounced back and we are seeing increased interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. Although global real estate investment has picked up, the recovery has been uneven across countries, markets and sectors. The United Kingdom will be anxious to maintain its position at the top of global shopping lists. The world's growing cache of investment capital is likely to prompt a surge in investment activity once international travel and business confidence stabilises. The United Kingdom seems certain to remain attractive to overseas investors looking for a safe haven for their funds. The next few years will undoubtedly be challenging as we continue on the journey to recovery, but opportunities will arise, and real estate will remain a key part of global investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this eleventh edition of *The Real Estate Law Review*. I would also like to thank the members of the *Law Review* team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2022 and beyond.

John Nevin
Slaughter and May
London
February 2022

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Chapter 22

SPAIN

Belén Simbor and Andrea Sandi Badiola[1]

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

The most common type of ownership in Spain is absolute property. It is similar to the common law concept of freehold and grants the titleholder absolute rights to transfer, use and encumber real estate.

Spanish law also recognises other types of ownership and real estate rights that can be used or considered when exploring investments in commercial real estate. These are as follows:

a surface rights: these types of rights are similar to common law ground leases and temporarily separate land ownership from ownership of the construction to be built over it. They grant the tenant the right to build and own a construction over third-party land in exchange for consideration and for a limited period (up to a maximum of 99 years), after which ownership of the construction reverts back to the landowner. Surface rights are sometimes used by renewable energy companies setting up solar and wind farms, as they allow the beneficiary of the surface right to reduce the project cost (by not having to purchase the land) and to mortgage the construction over the land. It is also becoming increasingly common for public authorities to grant surface rights over public plots of land in favour of private developers for them to build social-housing units on the land; and

b administrative concessions: these rights are usually granted over public land that cannot be owned by individuals or companies (i.e., sea and riverside areas, harbours, docks or green areas). The public administration owning the land grants the right to use, develop and operate the public land to a third party in exchange for consideration and for a limited period. Even though it will not acquire ownership over the land, the third party will also benefit from other rights typically vested in freehold owners, such as the right to transfer or encumber the administrative concession. These rights, however, are subject to certain limitations (usually requiring the prior authorisation of the public administration owning the land and an obligation by the new holder to continue honouring the terms and conditions of the concession).

Spanish law recognises other types of rights over real estate, such as usufruct, which provides the legal right to use and obtain benefit from property owned by a third party in exchange for consideration and for a limited period, but they are very rarely used in commercial transactions.

1 Belén Simbor is a senior associate and Andrea Sandi Badiola is an associate at Uría Menéndez.

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ii System of registration

Freedom of form applies to real estate transfers, requiring only a valid written contract and the delivery of possession of the property. In practice, however, transfer of real estate is always carried out by the execution of notarial transfer deeds because they are the only documents suitable for recording the transfer in the Land Registry. Although registering notarial transfer deeds with the Land Registry is not compulsory (except when related to mortgages or surface rights), it is advisable, as registration grants protection to good-faith third-party purchasers who acquire title from a registered owner in exchange for consideration.

If the transfer of ownership is effected by notarial deed after registered with the Land Registry, notary and registry fees must be paid. Notary fees are calculated mainly based on the value of the recorded transaction; for transactions in excess of €6 million, however, notarial fees can be freely negotiated and agreed beforehand with the relevant notary chosen by the parties.

Registry fees, although calculated based on the transaction, are capped at €2,200 per registered plot and are not negotiable. Other than taxes (see Section VI.iv), there are no significant costs linked to the transfer of ownership over real estate.

Transactions with no actual transfer of ownership (e.g., conditional sales subject to conditions precedent) are usually formalised in a private contract rather than a transfer deed, avoiding notary and registry fees. The notarial deed will be formalised on completion (e.g., if the private sale and purchase has been subject to conditions precedent, following fulfilment of the same).

iii Choice of law

In commercial real estate transactions, the acquisition of assets is typically structured through a Spanish special purpose vehicle (SPV) (see Section IV.i). Since the seller will most likely be a Spanish company, it is commercial practice to choose Spanish law as permitted by the principle of freedom of choice established in Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I).

Certain Spanish autonomous regions have also developed civil laws that might apply to transactions over real estate located in their territories (e.g., Catalonia, Galicia) depending on the circumstances of the case.

II OVERVIEW OF REAL ESTATE ACTIVITY

Following the covid-19 outbreak, the Spanish economy, in particular the real estate sector, progressively recovered during 2021. Although the Spanish real estate market commenced the year with lower figures than usual, investment levels progressively improved following the advent of the vaccine and the stabilisation of the health situation in Spain, and there is an upward trend in investment. In particular, 2021 was a good year for the logistic and private residential sectors, and the recovery of the tourism sector led to increased investment in hotel assets, especially at the end of the year.

III FOREIGN INVESTMENT

The acquisition of commercial real estate in Spain by foreign institutional investors or funds is typically structured through a Spanish SPV owned by a foreign company (see Section IV.i). The acquisition or incorporation of the SPV by the foreign company will require prior

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authorisation in the cases detailed below. If no authorisation is required, the investment must be reported to the Ministry of Economy and Finance by filing form D-1A within 30 days of the date that the shares are acquired or issued. The purpose of this filing is to record for statistical purposes corporate information on the foreign company (corporate name, registered address, nationality), the Spanish SPV (corporate name, registered address, share capital and reserves, whether the foreign shareholder has the ability to appoint its directors) and the value of the transaction. If the foreign company is a tax-haven resident acquiring more than 50 per cent of the Spanish SPV's share capital, form DP-1 must be filed prior to the acquisition of the Spanish SPV (again, for statistical purposes rather than authorisation) followed by form D-1A as indicated above.

The range of acquisitions of real estate – or of companies owning real estate – that require prior clearance from the Spanish Council of Ministers – or, under certain circumstances, from a lower-tier authority – was extended in 2020 following new regulations that control foreign direct investments based on public order, public health and public security reasons. These regulations apply to non-EU and non-EFTA residents, as well as EU/EFTA investors beneficially owned by non-EU and non-EFTA residents. To determine whether an authorisation will be needed, an assessment must be made both from an objective standpoint – namely, confirming whether the investment falls within the sectors subject to screening (e.g., investments in state defence-related properties or properties located near defence sites; real estate that is crucial for critical infrastructures such as transport or health) – and from a subjective standpoint, namely, confirming whether the investor:

a is controlled by the government, including state bodies, or armed forces of a non-EU/EFTA country;

b has already made an investment affecting national security, public order or public health in another EU Member State; or

c is subject to ongoing judicial or administrative proceedings for engaging in illegal or criminal activities.

IV STRUCTURING THE INVESTMENT

Each investor is different and has its own goals, targets and demands when considering real estate investments.

Real estate investments can be made by acquiring the property directly (asset deal) or indirectly by purchasing the share capital of the legal entity owning the real estate (share deal).

i Asset deals

When a real estate investment is structured as an asset deal, then normally a Spanish SPV directly purchases the asset. If the SPV is owned by a foreign company (typically, a company incorporated in the European Union), it must comply with the substance, business purpose and beneficiary ownership tests in order to be able to benefit from certain tax favourable regimes.

On the Spanish tax side, the acquisition of a property by the Spanish SPV would generally be subject to VAT, which may be recoverable under specific conditions, and stamp duty if certain requirements are met (see Section VI.iv) and not to non-recoverable transfer tax. The Spanish SPV will be subject to Spanish corporate income tax (CIT), generally at a rate of 25 per cent, on its net income (including, by way of example, rental income and capital gains derived from the transfer of a property). Interest (with certain limitations established

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in Spanish law), amortisation and expenses are generally deductible if they are linked to the company's business activities and duly registered from an accounting perspective and provided that the transfer pricing rules are complied with.

ii Share deals

In accordance with the current drafting of Article 314 of Royal Decree 4/2015, of 23 October 2015, approving the revised Securities Market Law, only transfers of shares intended to avoid the payment of taxes applicable on the transfer of real estate will be subject to transfer tax or VAT. In relation to this, the law presumes that there exists the intention to avoid payment of the indirect taxes applicable to the transfer of real estate in the following cases:

a when, as a consequence of a secondary market transfer of shares, control of a company (defined as an equity stake higher than 50 per cent) is acquired and the company's assets consist of at least 50 per cent of real estate assets located in Spain that are not linked to a business or professional activity, or if, following the change of control, the purchaser's stake in the company increases;

b when, as a consequence of a secondary market transfer of shares, control of a company is acquired and the securities forming part of the company's assets allow control over another entity with assets comprising at least 50 per cent of real estate assets located in Spain not linked to a business or professional activity, or if, following the change of control, the purchaser's indirect stake in the company increases; or

c when there is a transfer of shares and the transferred securities have been received in exchange for contributions-in-kind of real estate assets upon the incorporation or share capital increase of a company, provided that the real estate assets are not linked to a business or professional activity and no more than three years have elapsed between the contribution date and the transfer date.

The above are rebuttable presumptions. Therefore, if any of them is met, the Spanish tax authorities do not need to prove the intention to avoid taxes. Conversely, taxpayers are also entitled to evidence the absence of an intention to avoid taxes even if the transactions carried out fall under any of the presumptions. It is worth clarifying that the tax authorities are not precluded from evidencing the existence of an intention to avoid indirect taxes in potential scenarios other than those covered by the above-mentioned presumptions.

Note that if the transfer of shares is subject to tax (i.e., because the anti-avoidance clause applies), it will be subject to VAT or transfer tax, depending on the tax that would apply to the direct transfer of the real estate assets owned by the company whose shares are being transferred (and not always to transfer tax, as established under the former regime).

iii Sale of the property

Profits generated from real estate investments are subject to general direct taxation rules.

Capital gains from the transfer of property are subject to the general Spanish CIT rate (i.e., 25 per cent) on the difference between the price of the transaction and the tax value of the assets. Other municipal taxes may apply.

In the case of a share deal, the direct taxation on the sale would depend on whether the shareholder of the transferred entity is tax resident in Spain or not. If the shareholder is not resident in Spain for tax purposes, capital gains on the sale of shares in companies, the assets of which are mainly real estate properties, are generally subject to non-resident income

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tax at the general 19 per cent rate on the difference between the market value and the tax value of the shares. However, if the holding company is resident in Spain, capital gains on the transfer of shares in subsidiaries may be partially (95 per cent) exempt from taxation in Spain if the CIT participation exemption applies. Pursuant to the participation exemption, 95 per cent of the capital gains derived from the transfer of the shares of a Spanish entity by another Spanish entity will be exempt from Spanish CIT (the remaining 5 per cent of the income will be included in the Spanish shareholder's CIT base, resulting in an effective tax rate of 1.25 per cent), provided that:

a the shareholder holds a minimum direct or indirect stake of 5 per cent in the share capital of the company;
b the shares are held for a minimum of one year; and
c the subsidiary company carries out a business activity for Spanish CIT purposes.

The Spanish tax authorities and Spanish tax law and regulations also require the incorporation of the holding company for valid economic reasons and not merely as a conduit company with the main objective of avoiding taxation on the capital gains realised on the transfer of its subsidiary.

V REAL ESTATE OWNERSHIP

i Planning

In Spain, the autonomous regions have exclusive competence for planning matters (except for some very basic aspects that lie in the hands of the central government). Spain has 19 different regional jurisdictions and, as a consequence of their differing needs, geography and economic development, some regions have a more liberal approach than others.

While regulatory power lies with the regions, its implementation is handed over to the municipalities (although the most important matters are subject to control by the regions). This requires the cooperation of a number of administrations and other parties, including local authorities (who ultimately decide if and under what conditions land can be developed), regional authorities (who play a supervisory role) and, to a lesser extent, the central government authorities (who legislate and supervise matters such as main roads, harbours, coastal areas, aviation liens and airports). Because of the different authorities and pieces of legislation involved, planning matters in Spain are complex (particularly the purchase of land for subsequent development) and should be carefully addressed with a planning expert.

ii Environment

For a piece of land to be declared polluted, the contamination detected must exceed the parameters set out by Royal Decree 9/2005, which vary depending on land use (e.g., industrial and residential). The competent authority to declare soil polluted is the environmental department of the regional government where the site is located.

Whenever a piece of land is formally declared polluted, the polluter will be ordered to carry out the cleaning and remedial activities required for the decontamination of the site; if several polluters are involved, they will be jointly and severally liable. As a general rule, in the absence of the polluter, the obligation to carry out cleaning and remedial activities falls on the owner and thereafter on the possessor of the site.

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Finally, if an activity classified as potentially polluting (as listed in Annex I to Royal Decree 9/2005) has been carried out on a piece of land, the circumstances must be declared by the owner in the public deed of transfer and thereafter be recorded with the Land Registry.

This information will only be removed from the Land Registry on completion of the remedial activities and subsequent validation of the decontamination works by the relevant regional government.

iii Tax

Value added tax and transfer tax

As a general rule, the first transfer of non-residential properties by sellers in the course of their business activity is subject to value added tax (VAT) at a rate of 21 per cent; first transfer of residential properties is subject to VAT at a rate of 10 per cent.

Second and subsequent transfers of built and finished properties by sellers in the course of their business activity are, however, technically subject to but exempt from VAT, and thus subject to transfer tax at a rate that ranges between 2 and 11 per cent of the purchase price (depending on the autonomous region where the property is located and the tax benefits applicable). The VAT exemption can be waived by the parties when the seller and the buyer are VAT registered and the purchaser is entitled to a total or partial VAT credit allowance. If the exemption is waived, VAT (not transfer tax) will be levied on the transfer.

Meeting the requirements to waive the VAT exemption is critical, as input VAT incurred upon the acquisition of real estate is, generally, fully deductible. This is not the case with transfer tax, which is a sunk cost for the acquirer.

If the VAT exemption is waived, the reverse charge mechanism would apply, and the acquirer of property would be considered to be the VAT taxpayer having the obligations to charge itself the VAT derived from the acquisition and to directly declare the VAT arising from the acquisition of the property (thus generally resulting in a neutral scenario, as output and input VAT will be compensated in the VAT return).

Stamp duty

Stamp duty is levied upon execution of the transfer notarial deed if the transfer of real estate is subject to and not exempt from VAT, in which case stamp duty will be levied at a rate of between 0.25 and 2 per cent, depending on the autonomous region in which the real estate is located. If the transfer is subject to but exempt from VAT and the exemption is waived, stamp duty will be levied at a rate between 0.25 and 3 per cent, depending on the autonomous region in which the real estate is located.

Stamp duty is paid by the acquirer. Stamp duty is also paid on many other transactions, including the creation of mortgages and certain other charges in the Land Registry, at a rate that ranges between 0.25 and 1.5 per cent.

Real estate tax

Real estate tax (RET) is a municipal tax levied annually on owners of Spanish real estate. This tax is based on the cadastral value of the real estate assigned to each property based on the data and information existing in the cadastre. The cadastral value is updated every 10 years and adjusted to the current market value. RET will only be due if the cadastral value of the real estate is assessed and formally notified to the taxpayers.

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The RET rate for urban real estate depends on the relevant municipality regulations and ranges between 0.4 and 1.1 per cent of the cadastral value.

iv Finance and security

Spanish law sets forth a wide range of security packages similar to those used in other jurisdictions (e.g., mortgages, pledges of the bank accounts held by the borrower to administer the income generated by the property, pledges of receivables held or to be held by the borrower, such as the lease rent, insurance compensations, VAT refund rights and pledges over the borrower's shares).

Mortgages are the preferred and most commonly used security interest. They enjoy significant privileges and can be granted over any type of real estate. The mortgagee may enforce the collateral to the exclusion of most other creditors following relatively simple and expeditious foreclosure proceedings. A mortgage can secure all kinds of payment obligations, including, in particular, principal, interest, default interest and fees in respect of loans and credit facilities. In the case of insolvency of the borrower, the lender is not able to foreclose on the mortgage (provided the assets are needed for the activity of the borrower) until one year after the date that the insolvency was declared or the date a composition agreement with the creditors was approved.

To be valid and enforceable, a mortgage must be formalised in a notarial public deed and recorded with the relevant Land Registry. This triggers the obligation to pay notarial and registry fees, as well as the obligation to pay stamp duty at a rate ranging between 0.25 and 1.5 per cent of the maximum amount secured by the mortgage (typically 120 to 140 per cent of the loan principal).

v Licences

Although requirements vary across municipalities, and it is becoming more and more common for the authorities to simplify the requirements by enhancing the use of sworn declarations to start constructing or operating real estate, usually the licences and permits required to construct and operate commercial properties are as follows:

a a works and activity licence, which must be obtained prior to starting construction works;

b a first occupancy licence, which verifies that the construction complies with the terms authorised by the works licences; and

c operating licences, which will verify that the use carried out in the building complies with the relevant zoning regulations, as well as health and safety and environmental matters.

Other permits and licences may be required by the regional governments depending on the activity to be carried out. For instance, some regions require a commercial licence for an operator to open a large retail scheme (i.e., those exceeding a minimum sales surface area foreseen in the relevant legislation) or a tourism authorisation in the case of hotels.

VI LEASES OF BUSINESS PREMISES

Freedom of contract governs lease agreements for business premises, as opposed to leases over residential properties, where the room of manoeuvre of the parties is limited, being the legal regime generally mandatory and mainly pro-tenant. The only exception to this general principle is in matters regarding lease bonds (the tenant must provide a bond equal to two months' rent), which cannot be waived or agreed upon differently by the parties. Any matter

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not contemplated by the parties in the lease agreement is governed by the provisions related to business premises under the Spanish Lease Act and, on a subsidiary basis, by the Spanish Civil Code.

i Initial lease term

The lease term can be freely agreed by the parties, and the average term depends on the type of property being leased. For instance, lease agreements in a shopping centre or retail park would usually be agreed for a five-year term (subject to renewals), while a lease of a single-tenant office building or large unit in a shopping centre would be agreed for a longer term (10–15 years) and even above 15 years in sale and leaseback transactions.

ii Renewals

There is no statutory right of renewal, and the parties may either expressly exclude or include the possibility of renewal in the lease agreement. It is market practice to include a term providing that any lease renewals be subject to a market rent review. If there is no express provision and the tenant continues to lease the premises with the landlord's consent for 15 days after the lease has expired, the Civil Code allows the tenant to renew the lease for a term equal to the periodicity of the rent payment (e.g., a month if the rent were paid monthly).

iii Rent review

The Spanish Lease Act does not regulate rent reviews, and parties generally agree annual reviews according to the Spanish consumer price index, published monthly by the National Statistics Institute. Market rent reviews are usually agreed as a condition of renewal and are even found in long-term leases (e.g., a 15-year lease will have a market rent review in year seven).

iv Service charges

There are no legal restrictions on the landlord's ability to recover service charges from tenants, and the amount to be recovered very much depends on the tenant's bargaining power. The tenant's contribution to service charges is usually calculated on the surface area occupied by the tenant's premises. Anchor tenants may benefit from caps to service charge contributions or even be able to agree a fixed monthly contribution. Triple-net leases are not uncommon in Spanish commercial lease practice and are usually required by investors' sale and leaseback transactions. Recoverability of RET is usually an important issue when negotiating leases, as it represents a big cost for the owner.

v Lease bond

Upon execution of the lease agreement, the tenant has to provide a bond equal to two months' rent and the landlord must deposit it with the competent authority. The lease bond cannot be reviewed (upwards or downwards) during the first seven years when the landlord is a legal person. From the eighth year onwards, the lease bond will be reviewed in accordance with the terms of the lease contract. Failing that, it will be reviewed following the rent-review provisions in the contract, so that the lease bond is always equal to two months' rent.

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vi Assignment and subletting

Unless otherwise agreed by the parties, tenants may sublet or assign the premises to any third party without the landlord's consent, with the landlord's right to increase the rent by 10 per cent for partial sublets, and 20 per cent for total sublets or assignments.

vii Maintenance and repair

Even though the Spanish law on urban leases contains provisions on maintenance and repair duties, it is commercial practice to replace these (on the freedom-of-contract principle) with more landlord-friendly provisions. Typically, the parties agree that the tenant must repair any damage to the premises and perform any actions necessary to keep the premises in a good state of maintenance and repair, and that the landlord must carry out any such works affecting the structure and façade of the premises. The tenant is not entitled to carry out repairs that may affect the structure or common elements of the premises without the landlord's written consent.

viii Insolvency

The Spanish Insolvency Act provides for the continuation of the lease agreement in the event of the tenant's insolvency, as it expressly states that the declaration of insolvency does not affect any existing agreement that provides for reciprocal obligations that both parties have yet to perform.

Rent under the lease agreement that has accrued after the declaration of insolvency will be payable to the landlord directly against the insolvency estate, as it will not be subject to the moratorium or reduction rules laid down in the insolvency proceedings. An insolvent tenant may reinstate the lease agreement and stop eviction proceedings by the landlord before the declaration of insolvency at any time before the eviction takes place by paying all amounts due, including the landlord's court costs up to that time. This right to reinstate the lease is allowed only once.

ix Tax

Spanish real estate leasing activity of business premises is subject to and not exempt from Spanish VAT. Additionally, according to the CIT Law, income obtained by Spanish companies from the leasing of Spanish business premises is generally subject to CIT at a 25 per cent rate.

VII DEVELOPMENTS IN PRACTICE

The real estate market registered a large number of investment transactions during 2021, including:

a the acquisition by Bankinter Investment of the Montepino logistics asset platform (composed of 22 logistic assets and 13 projects under development) from CBRE Global Investments;

b the purchase by Kanan of a portfolio of five office buildings in Barcelona owned by Axa and leased to the autonomous region of Catalonia; and

c the acquisition by Allianz of two office buildings located in the 22@ district (Barcelona) owned by Meridia and leased to Everis.

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In terms of corporate transactions carried out in the real estate market, the most noteworthy were the acquisition by Neinor Homes of the developer company Quabit, resulting in the biggest development company in Spain, and the acquisition by Allianz of the residential Real Estate Investment Trust (SOCIMI) Elix.

In addition, the recovery of foreign tourism and the appearance of good investment opportunities have led to a very significant recovery of the hotel sector from the third quarter of 2021, and this trend is expected to continue in 2022. Furthermore, transactions involving the PRS and build-to-rent markets and alternative assets, such as data centres, are also contributing to the recovery of the Spanish real estate market.

VIII OUTLOOK AND CONCLUSIONS

In 2022, the health situation is expected to stabilise as a result of the immunisation of the population through vaccines, which will almost certainly lead to a significant recovery of the Spanish economy, in particular the real estate sector.

As a result of the changes in the consumption patterns following the covid-19 outbreak, it is expected that the investments in last mile logistic assets will continue to grow during the following months. Furthermore, the retail sector is also likely to present options for investment in Spain, given how counter-cyclical real estate for food distribution and other basic necessities has proven to be during the pandemic. In addition, the upward trend in hotel sector transactions (acquisitions of not only luxury hotels in prime cities, but also boutique hotels in secondary locations and coastal portfolios) is likely to continue in the next year.

On the residential side, the investment is expected to be marked by the predominance of the rental market through investments in PRS or Build to Rent, as well as co-living. Notably, the Spanish government is in the process of submitting to the Congress the bill on the right to housing (*Ley Estatal por el Derecho a la Vivienda*) whose purpose is allegedly to facilitate access to housing. Although the parliamentary process for the approval of the law will be long and modifications to the draft bill are therefore foreseen, it is worth noting that, among other legislative changes, the draft includes regulations aimed at limiting rental prices in the 'stressed market areas', the declaration of which is the responsibility of the regional governments.

Regarding the office market, although it keeps facing challenges with the rise of teleworking, we can envisage new transactions mainly in Barcelona and Madrid. Finally, opportunities are likely to arise in transactions relating to 'alternative real estate assets' (e.g., co-living, student residences or data centres).

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Appendix 1

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Belén Simbor is a senior associate in the Madrid office of Uría Menéndez. She joined the firm in November 2011 and during 2016 was temporarily assigned to the London office of the firm. Ms Simbor advises on real estate transactions, such as asset deals, sale and purchase of loan portfolios, M&A transactions involving companies with a real estate component and other real estate-related agreements, such as lease, construction or commercialisation contracts.

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Andrea Sandi Badiola joined Uría Menéndez in 2015 and has been an associate of the firm since 2019. Her professional practice is focused on advising on real estate transactions through the acquisition of assets (e.g., hotels, shopping centres and office buildings) or companies with an underlying real estate component. She has expertise in advising Spanish and foreign companies on the drafting and negotiation of lease agreements for commercial premises and hotels, as well as agreements related to construction projects (e.g., construction and technical services agreements).

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