

THE REAL ESTATE
LAW REVIEW

SEVENTH EDITION

Editor
John Nevin

THE LAWREVIEWS

THE REAL ESTATE
LAW REVIEW

SEVENTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in March 2018
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
John Nevin

THE LAWREVIEWS

PUBLISHER

Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER

Nick Barette

BUSINESS DEVELOPMENT MANAGERS

Thomas Lee, Joel Woods

ACCOUNT MANAGERS

Pere Aspinall, Sophie Emberson,
Laura Lynas, Jack Bagnall

PRODUCT MARKETING EXECUTIVE

Rebecca Mogridge

RESEARCHER

Arthur Hunter

EDITORIAL COORDINATOR

Gavin Jordan

HEAD OF PRODUCTION

Adam Myers

PRODUCTION EDITOR

Claire Ancell

SUBEDITOR

Gina Mete

CHIEF EXECUTIVE OFFICER

Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2018 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2018, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – tom.barnes@lbresearch.com

ISBN 978-1-912228-18-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW
THE AVIATION LAW REVIEW
THE FOREIGN INVESTMENT REGULATION REVIEW
THE ASSET TRACING AND RECOVERY REVIEW
THE INSOLVENCY REVIEW
THE OIL AND GAS LAW REVIEW
THE FRANCHISE LAW REVIEW
THE PRODUCT REGULATION AND LIABILITY REVIEW
THE SHIPPING LAW REVIEW
THE ACQUISITION AND LEVERAGED FINANCE REVIEW
THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW
THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW
THE TRANSPORT FINANCE LAW REVIEW
THE SECURITIES LITIGATION REVIEW
THE LENDING AND SECURED FINANCE REVIEW
THE INTERNATIONAL TRADE LAW REVIEW
THE SPORTS LAW REVIEW
THE INVESTMENT TREATY ARBITRATION REVIEW
THE GAMBLING LAW REVIEW
THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW
THE REAL ESTATE M&A AND PRIVATE EQUITY REVIEW
THE SHAREHOLDER RIGHTS AND ACTIVISM REVIEW
THE ISLAMIC FINANCE AND MARKETS LAW REVIEW
THE ENVIRONMENT AND CLIMATE CHANGE LAW REVIEW
THE CONSUMER FINANCE LAW REVIEW
THE INITIAL PUBLIC OFFERINGS REVIEW
THE CLASS ACTIONS LAW REVIEW
THE TRANSFER PRICING LAW REVIEW
THE BANKING LITIGATION LAW REVIEW
THE HEALTHCARE LAW REVIEW
THE PATENT LITIGATION LAW REVIEW
THE THIRD PARTY LITIGATION FUNDING LAW REVIEW
THE TRADEMARKS LAW REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

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

AL TAMIMI & COMPANY

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

BELLWETHER GREEN

BERNITSAS LAW

BINDER GRÖSSWANG RECHTSANWÄLTE GMBH

BIRD & BIRD

BONELLIEREDE

CMS REICH-ROHRWIG HAINZ

CORDATO PARTNERS LAWYERS, BUSINESS, PROPERTY AND TOURISM LAWYERS

DE PARDIEU BROCAS MAFFEI

DENTONS

DLA PIPER

ESTUDIO BECCAR VARELA

HERBERT SMITH FREEHILLS CIS LLP

IGLESIAS, POZAS Y PÁEZ

LEE AND LI, ATTORNEYS-AT-LAW

LIEDEKERKE WOLTERS WAELBROECK KIRKPATRICK

MAPLES AND CALDER

N. DOWUONA & COMPANY

NIEDERER KRAFT & FREY

NISHIMURA & ASAHI

ODVJETNIČKO DRUŠTVO BARDEK, LISAC, MUŠEC, SKOKO D.O.O. IN
COOPERATION WITH CMS REICH-ROHRWIG HAINZ

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

PETRIKIĆ & PARTNERI AOD IN COOPERATION WITH CMS REICH-ROHRWIG HAINZ

POPOVICI NIȚU STOICA & ASOCIAȚII

SLAUGHTER AND MAY

SOŁTYSIŃSKI KAWECKI & SZŁĘZAK

TSMP LAW CORPORATION

URÍA MENÉNDEZ

WOLF THEISS

CONTENTS

PREFACE.....	vii
<i>John Nevin</i>	
Chapter 1 BREXIT AND REAL ESTATE.....	1
<i>John Nevin</i>	
Chapter 2 ARGENTINA.....	4
<i>Pedro Nicholson and Delfina Calabró</i>	
Chapter 3 AUSTRALIA.....	14
<i>Anthony J Cordato</i>	
Chapter 4 AUSTRIA.....	24
<i>Tibor Fabian and Markus Uitz</i>	
Chapter 5 BELGIUM	32
<i>Yves Delacroix and Alexandre Emond</i>	
Chapter 6 BOSNIA AND HERZEGOVINA	43
<i>Indir Osmić and Ana Terzić</i>	
Chapter 7 BULGARIA.....	53
<i>Katerina Kraeva and Atanas Mihaylov</i>	
Chapter 8 CAYMAN ISLANDS	65
<i>George Loutas</i>	
Chapter 9 CHINA.....	74
<i>William Mo and Eric Liu</i>	
Chapter 10 CROATIA.....	86
<i>Ana-Marija Skoko and Tamara Jelić Kazić</i>	

Chapter 11	DENMARK.....	96
	<i>Torben Mauritzen</i>	
Chapter 12	ENGLAND AND WALES.....	107
	<i>John Nevin</i>	
Chapter 13	FRANCE.....	120
	<i>Pierre Gebarowski and Guillaume Rossignol</i>	
Chapter 14	GHANA.....	137
	<i>NanaAma Botchway</i>	
Chapter 15	GREECE.....	146
	<i>Nikos A Vouhionis and Christina C Zakopoulou</i>	
Chapter 16	HONG KONG.....	158
	<i>Dennis Li</i>	
Chapter 17	INDONESIA.....	168
	<i>Ayik Candrawulan Gunadi and Rio Armando Girsang</i>	
Chapter 18	ITALY.....	179
	<i>Alessandro Balp</i>	
Chapter 19	JAPAN.....	191
	<i>Norio Maeda, Yasuo Asami and Keisuke Yonamine</i>	
Chapter 20	MEXICO.....	207
	<i>Enrique Iglesias Elizondo, José G Pozas de la Vega and David Páez Gonzalez</i>	
Chapter 21	MONTENEGRO.....	216
	<i>Mihajlo Matković and Tamara Samardžija</i>	
Chapter 22	NETHERLANDS.....	225
	<i>Max van Drunen and Leen van der Marel</i>	
Chapter 23	POLAND.....	236
	<i>Janusz Siekański and Radostaw Waszkiewicz</i>	
Chapter 24	QATAR.....	246
	<i>Nicola de Sylva</i>	

Chapter 25	ROMANIA	257
	<i>Valentin Creata</i>	
Chapter 26	RUSSIA	269
	<i>Sergey Kolobov</i>	
Chapter 27	SCOTLAND	279
	<i>John Bingham</i>	
Chapter 28	SERBIA	294
	<i>Marija Marošan and Đorđe Popović</i>	
Chapter 29	SINGAPORE.....	304
	<i>Jennifer Chia and Yvonne Lian</i>	
Chapter 30	SLOVENIA.....	318
	<i>Dunja Jandl, Ivan Kranjec and Vesna Tišler</i>	
Chapter 31	SPAIN.....	327
	<i>Diego Armero and Rodrigo Peruyero</i>	
Chapter 32	SWEDEN.....	337
	<i>Jan Berg and Carl-Magnus Ugglå</i>	
Chapter 33	SWITZERLAND	346
	<i>Andreas F Vögeli and Oliver Zbinden</i>	
Chapter 34	TAIWAN	355
	<i>Yi-Jiun Su and Yi-Li Kuo</i>	
Chapter 35	UNITED ARAB EMIRATES	366
	<i>Iain Black and Joe Carroll</i>	
Chapter 36	UNITED STATES	378
	<i>Meredith J Kane</i>	
Appendix 1	ABOUT THE AUTHORS.....	393
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	411

PREFACE

I am delighted to introduce the seventh edition of *The Real Estate Law Review*. This edition extends to 35 jurisdictions, and we are delighted to welcome new contributions from distinguished practitioners from around the world. I am very grateful to each and every contributor for their hard work and essential role in the continued success of the *Review*. 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 of their own back yard. The years since the first edition, back in 2012, have confirmed that real estate is a truly global industry. Overseas investors are increasingly prepared to look beyond traditional markets and sectors in order 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 generates uncertainty as the negotiations for leaving the EU continue. 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 this year has seen record levels of investment in central London from overseas buyers.

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

John Nevin

Slaughter and May
London
February 2018

JAPAN

*Norio Maeda, Yasuo Asami and Keisuke Yonamine*¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

The basic ways in which real estate can be held are either holding ownership title to real estate directly or holding a beneficial interest in a trust that holds title to real estate in connection with large-scale commercial investments.

Land and buildings are considered separate and independent real estate. Therefore, one person can hold title to land while another person can hold the title to a building on the land. When different persons own a building and the parcel of land upon which the building is located, the two owners will typically enter into a contract such as a land-lease agreement where the building owner is permitted to use the land.

Joint title to real estate, which is governed by the rules under the Civil Code, is one form of title that can be held by multiple persons. Condominium title to a condominium that is part of a building, which is governed by both the rules under the Condominium Law and by the Civil Code, is another form of title that can be held by a single person separately from other condominium owners of the building.

Trust beneficial interests in real estate are typically issued when a real estate owner places the real estate in a trust. The trustee holds title to the real estate placed in the trust. The owner, on the other hand, holds a trust beneficial interest that represents a contractual relationship with the trustee under a trust agreement. Under this, the beneficiary may instruct the trustee to administer and manage the real estate in the trust and to distribute profits earned from the real estate (after deducting costs and expenses for administration and management of the real estate). Trust beneficial interests are used for various reasons, including delegating administrative duties from the beneficiary to the trustee and deferring taxes related to real estate transfers by transferring the trust beneficial interests instead.

ii System of registration

Ownership title and other property rights with respect to real estate are typically registered in the real estate registry maintained by local registration offices. Trustees are typically the registered owners of real estate that is placed in trust. The general rule is that transactions including the sale and purchase of real estate and creation of a mortgage on real estate take effect upon execution of agreements between the parties, and that no formalities are required; however, the holder of ownership title or other property rights with respect to real estate must have its interest registered in the appropriate real estate registry to assert its rights against a

¹ Norio Maeda is a partner and Yasuo Asami and Keisuke Yonamine are associates at Nishimura & Asahi.

third party. This means that generally, to perfect a right over real property, there must be a valid agreement between the parties and the right must be registered in the name of the holder. The registration is governed by the Real Estate Registration Law.

While registration of a real property right in the name of a certain person does not necessarily mean that the person actually holds the registered right, registration is usually considered strong evidence. Neither the local registration office nor the government guarantees the accuracy of the real estate registry. A registration in the real estate registry only reflects and records the transactional activities that private persons described in their applications for registration.

iii Choice of law

In the context of a cross-border transaction, choice of law rules are provided in the Act on General Rules for Application of Laws. Under the Act, if the subject matter is a property right or other right that can be registered in the real estate registry, the law of the jurisdiction in which the real estate is located shall be the governing law; however, under the Act, any law chosen by the parties can govern a contract. Despite the Act permitting the parties to choose the governing law of the contract, parties usually choose Japanese law as the governing law of a sale and purchase agreement with respect to real estate, because of the rule that Japanese law governs property rights in Japan.

II OVERVIEW OF REAL ESTATE ACTIVITY

Since the early 1990s, various innovative real estate investment structures have been developed in Japan.

The GK-TK structure and the specified-purpose company (TMK) structure (discussed in detail in Section IV, below) are frequently used for real estate investment. Japanese real estate investment trusts (J-REITs) (discussed in Sections IV and VII, below) have made it possible for investors with smaller amounts of capital to invest in real estate through the purchase of listed J-REIT securities. The accumulated capital of the listed J-REITs has made them major players in the Japanese real estate investment market. The flow of capital through listed J-REITs into the real estate investment market has contributed to the growth of the real estate industry.

The increase in flexibility of such investment structures has resulted in a greater influx of domestic and foreign capital into real estate. The response to demand from an increasing number of participants has made the real estate investment market more sophisticated and attractive, so that a number of investors consider the Japanese real estate market an important focus in their global investment strategy.

While the global economic turmoil in the late 2000s affected – and slowed down – activities in the Japanese real estate investment market (including activities by lenders), it also prompted further regulatory developments. The government has brought in various measures to relax regulations and enhance market activities. Since then, we have seen reversal in prices and transaction volume of real estate. The transaction volume for Japanese real estate in fiscal year 2014 recovered to the level nearly as high as that of fiscal year 2007, the previous watermark for high transaction volume prior to the global economic turmoil. After the transaction volume hit the high end in 2014, the transaction volume was lower in 2015 and 2016. However, the transaction volume in 2015 and 2016 remained at the higher end, nearly as high as that of the fiscal year 2006 before the global economic turmoil began.

III FOREIGN INVESTMENT

There are no direct restrictions on acquisitions of commercial or residential real estate in Japan by foreign investors, either directly or through a vehicle. Similarly, establishment of a corporation by foreign investors to invest in commercial or residential real estate is not restricted. In theory, under the provisions of the Alien Land Law, a cabinet order may limit the rights of foreign investors related to land in Japan on the grounds of reciprocity or national security. At the time of writing, however, there has been no such limitation, since no such cabinet order has been issued.

Under the Agricultural Land Act, an authorisation by the relevant authority is required to acquire certain agricultural land. This authorisation can only be granted if the purchaser is qualified as a farmer or a qualified corporation for owning agricultural land. It would not be easy for foreign investors to be granted such an authorisation.

After a foreign investor's acquisition of shares or equity of a corporation, or acquisition of real estate or a right related to real estate, a post-transaction report to the government authority may be required pursuant to the Foreign Exchange and Foreign Trade Law (FEFTL). A post-transaction report of payment or receipt of payment may be required in the case of cross-border payments or payments between a foreign investor and a Japanese resident in accordance with the FEFTL.

IV STRUCTURING THE INVESTMENT

When choosing an investment structure, the legal, accounting and tax implications must be considered, because each can be a driving factor for the choice. The most popular structures and investment vehicles used for real estate investments in Japan are the GK-TK structure, the TMK structure and the J-REIT. The Real Estate Specified Joint Enterprise Act (REJEA) was amended in 2013 to enable a GK-TK structure (see below) to invest into real estate without requiring the GK as the TK operator vehicle itself to obtain a licence.

i GK-TK structure

A limited liability company (GK) is one type of corporate entity under the Companies Act. In some respects, it is similar to an LLC in the United States; however, it is not itself a pass-through entity for tax purposes. When a GK is used as an asset investment vehicle, typically an investor leverages its investment by third-party loans and makes its own investment in the GK through a contractual anonymous partnership (TK) arrangement. The TK arrangement is a bilateral (not multilateral) contractual partnership relationship created for the investment purposes by the TK interest holder, called the TK investor. The other party to the contract is called the TK operator. Under the GK-TK structure, the TK operator is the GK. A TK arrangement qualifies for favourable tax treatment if the TK investor is a passive investor with minimal control over the management of the GK and the contributed funds under the arrangement. If the TK arrangement qualifies, the GK is permitted to deduct distributions to the TK investor from its taxable profits in addition to deducting debt payments. This tax-efficient combination of a GK and a TK arrangement is called a GK-TK structure.

Typically, a GK-TK structure has been used to make investments in trust beneficial interests in real estate, and loans backed by real estate. If a GK holds real estate directly, by raising funds from TK investors, it will generally be subject to a licensing requirement under the REJEA. Therefore, the GK-TK structure has usually been structured to invest in trust

beneficial interests in real estate, not in real estate itself. An exemption from the licensing requirement under the REJEA (newly introduced in 2013) allows the GK-TK structure to invest in real estate itself if certain requirements are satisfied.

A GK-TK structure that is used to invest in a trust beneficial interest in real estate will subject the GK to the strict registration requirement under the Financial Instruments and Exchange Law (FIEL), unless an exception applies. One of the exceptions available under the FIEL is the QII exemption, which essentially requires that:

- a* there is at least one qualified institutional investor (QII) under the FIEL among the TK investors (the requirements to qualify as a QII are now stricter after the amendment to the relevant cabinet order and cabinet office ordinance under the FIEL, which became effective on 1 March 2016);
- b* the number of non-QII TK investors (if any) is 49 or less (non-QIIs are limited to certain categories, which includes a foreign corporation, after the 1 March 2016 amendment to the relevant cabinet order and cabinet office ordinance under the FIEL, while there were no limitations imposed on non-QIIs before the amendment);
- c* none of the TK investors is a disqualified investor as detailed in the FIEL; and
- d* the GK, as the operator of the TK arrangement, files with the government authority a notification regarding the QII exemption (the requirements for the notification to be filed by the GK are now more complex, compared to the previous simple requirements).

As noted above with respect to the relevant requirements, the requirements of the QII exemption were amended in 2016 (further discussed in Section VII, below).

Another exception available under the FIEL is the exemption by outsourcing to a registered discretionary investment manager. Under this exemption, the GK retains a registered discretionary investment manager (a 'registered financial instruments operator' under the FIEL) as its asset manager to manage its trust beneficial interest in real estate on a discretionary basis. This exemption requires, among other items, that:

- a* the GK enters into a discretionary asset management agreement with the registered discretionary investment manager that authorises the manager to make a discretionary investment decision on behalf of the GK on its trust beneficial interest in real estate;
- b* the TK agreement provides that under the asset management agreement described above, the GK authorises the manager to make a discretionary investment decision on its behalf on its trust beneficial interest in real estate;
- c* the TK agreement provides an outline of the asset management agreement described above, including the fees (or the fee arrangement) to be paid to the asset manager from the assets managed under the GK-TK structure;
- d* both the TK agreement and the asset management agreement both described above provide certain duties of the asset manager, such as the asset manager's duty of loyalty and duty of care of a prudent manager both owed to the TK investor in carrying out the investment management of the trust beneficial interest in real estate held by the GK;
- e* the GK manages its assets of the GK-TK separately from its own assets (and its other investment assets managed for other investors, if any) and the asset manager supervises such separate management; and
- f* the asset manager files a notification to the authority of the outsourcing by the GK prior to the GK entering into the TK agreement.

REJEA structure

Since the 2013 amendment to the REJEA, the REJEA allows a GK-TK structure to invest into real estate directly, without the GK as the TK operator vehicle needing to obtain a licence, if certain requirements are met. It is hoped that this GK-TK structure under the REJEA will enhance investment into real estate without the need to involve a trustee in respect of a trust beneficial interest at the underlying real estate level. The most recent amendment in 2017 to the REJEA has also made certain changes to the GK-TK structure and its requirements.

The GK-TK structure under the REJEA essentially requires that:

- a the GK must be established for the sole purpose of distributing proceeds and profits from transactions related to the subject real estate;
- b the GK as the TK operator delegates (1) the management of transactions related to the subject real estate to a real estate specified joint enterprise business operator (REJEB operator) that is licensed to conduct its business under Article 2, paragraph 4, item 3 or Article 2, paragraph 6, item 2 of the REJEA, and (2) the solicitation of investments into the TK operator by the TK investor (or investors) to a REJEB operator that is licensed to conduct its business under Article 2, paragraph 4, item 4 of the REJEA;
- c only investors falling into one of the categories of ‘special investors’, which include a licensed REJEB operator and a QII (as defined under the FIEL), make TK investments in the TK operator, if the TK operator is to conduct the development of land as a site for buildings, construction of a building, or repair or renovation of a building, the cost of which exceeds 10 per cent of the value of the real estate held by the TK operator (or exceeds ¥100 million if the REJEB operator retained by the GK is an operator of a ‘Small-Sized Real Estate Specified Joint Enterprise’ as described in Article 2, paragraph 6, item 2 of the REJEA); and
- d the agreement for (1) as described in (b) above to be entered into between the GK and the REJEB operator must stipulate certain items specified under the REJEA.

Under these requirements, the REJEA allows a licensed REJEB operator to be involved in a TK arrangement investing into real estate, not as a TK operator itself, but as a manager for the TK operator vehicle, as long as the delegation of the management covers (1) and (2) as described in (b) above. To enhance the use of this GK-TK structure under the REJEA, a GK-TK structure satisfying the above-mentioned requirements will benefit from reduced registration and licence tax, and real estate acquisition tax. For more details on the reduction of these taxes, see Section V, below.

Also see Section VII, below, with respect to the 2017 amendment to the REJEA. The REJEB operator mentioned in (b) above can be an operator of a Small-Sized Real Estate Specified Joint Enterprise, newly introduced under the 2017 amendment to the REJEA. After the 2017 amendment to the REJEA, the GK-TK structure can also be set up using the framework of the investment arrangement to be invested only by ‘super professional investors’ as described in Section VII, below, not the GK-TK framework as described above that has been available since the 2013 amendment to the REJEA.

ii TMK structure

A TMK incorporated under the Asset Liquidation Law (ALL) is another type of corporate entity often used as a real estate investment vehicle. This entity may only be used to liquidate or securitise certain assets. This investment platform is used to make investments in real estate, trust beneficial interests in real estate, and loans and TMK bonds that are backed by

real estate. A TMK is typically funded by issuing TMK bonds and preferred shares that meet certain tax qualifications required for the preferential tax treatment of the TMK. If a TMK, its bonds and its preferred shares are properly structured, and the TMK meets certain other requirements under the Tax Code, it is permitted to deduct distributions to the preferred shareholders from its taxable profits in addition to deducting debt payments.

One of the requirements for the preferential tax treatment is that its TMK bonds be purchased by an institutional investor or other similar person or entity (a Tax II or equivalent investor) as defined in the Tax Code. Certain QIIs under the FIEL and certain other QIIs meeting additional requirements fall under the definition of a Tax II or equivalent investor. One of the important steps in setting up a TMK structure is to find a TMK bondholder that is a QII and is a Tax II or equivalent investor.

When using a TMK structure, it is also important for the TMK to comply with strict regulations under the ALL. These regulations include a requirement to file an asset liquidation plan with the government authority. The asset liquidation plan of a TMK outlines how its assets are to be liquidated or securitised. A TMK structure requires close attention being paid to the regulations regarding the asset liquidation plan.

iii J-REITs

A J-REIT is a type of investment fund formed under the Law concerning Investment Trusts and Investment Companies (ITL). A J-REIT established to invest in and manage real estate assets uses investors' funds to purchase real estate assets, in return for which investors receive investment units. The investment units of a J-REIT can be listed and traded on the stock exchange. If a J-REIT's investment units are listed, the J-REIT must comply with the rules of the stock exchange in addition to the ITL. Under the ITL, a J-REIT must retain an asset management company (a registered financial instruments operator under the FIEL) to manage its investment. In practice, all investment decisions for a J-REIT are designed to be made by its asset management company.

Unlike an ordinary corporation, which is subject to corporation tax on its profits, a J-REIT is exempt from taxation if certain requirements are satisfied, including:

- a* the J-REIT is not engaged in any business other than that permitted for J-REITs;
- b* the J-REIT would not be classified as a family corporation as defined in the Tax Code at the end of its fiscal period;
- c* the J-REIT distributes more than 90 per cent of its profits as dividends to the holders of its investment units for each fiscal period; and
- d* more than 50 per cent of the investment units on an aggregate issued amount basis have been offered in Japan.

The basic concept underlying the J-REIT legislation is that unlike a GK-TK structure or a TMK structure, a J-REIT's investments are not limited to certain assets specified at the time of its start-up. By raising long-term funds through a combination of debt and equity financing, a J-REIT can continue to accumulate and replace its investment portfolio for a longer term. At the same time, however, it would distribute most of its profits (more than 90 per cent) to the holders of its investment units for each fiscal period as described above, and therefore may not have sufficient internal reserve funds. When structuring a J-REIT, it is important to mitigate the potential risks of not having sufficient funds to deleverage its debt

during an economic downturn. Since a J-REIT would practically be restricted regarding the amount of reserves it may retain, it should adopt another financial strategy to mitigate the potential risks, such as keeping its debt-to-asset ratio at a conservative level.

V REAL ESTATE OWNERSHIP

i Planning

City Planning Law

The City Planning Law is the primary national law that governs real estate development and zoning.

Under the City Planning Law, land development is strictly controlled in urbanisation control areas. Developers are required to obtain approval from local government authorities for developments in areas designated for urbanisation. Approval is given if the proposed development meets certain requirements under the City Planning Law.

There are various local laws established under the framework of the City Planning Law. Local government authorities are granted the power to control land use in accordance with the City Planning Law and the local laws.

Building Standards Law

The Building Standards Law provides regulations with respect to construction of a building, including regulations with respect to its use and the ratio of its total floor area to its site area.

Under the Building Standards Law, the appropriate local government authority must approve construction work for a building before the work commences. Furthermore, a completion inspection of the building by the appropriate local government authority is required upon completion of work.

ii Environment

Under the Soil Contamination Countermeasures Law, if a manufacturing factory that uses certain hazardous materials ceases its operations, the owner, manager or occupant of the land (the landowner) must examine the land and test for contaminants. In addition, in the case of the development of a large area of land (at least 3,000 square metres), the developer must notify the appropriate local government authority at least 30 days before any change is made to the land. After receiving such notice, if the authority determines that the land may be contaminated in the manner designated by the Soil Contamination Countermeasures Law, it may order the landowner to investigate. The local government authority also may order a landowner to examine land and conduct testing for contaminants if it determines that the land may harm the health of inhabitants in the neighbourhood through underground water or otherwise in the manner designated by the Soil Contamination Countermeasures Law. If the result of an examination of the land reveals that the relevant regulations have not been met, local government authorities will designate the land as a contaminated area and require appropriate measures, including cleaning up the land, to prevent public health from being impaired.

iii Tax

Stamp taxes, registration and licence taxes, and real estate acquisition taxes apply when the ownership title of real estate is transferred.

General

Stamp taxes are paid by affixing a revenue stamp on a taxable document. An agreement to transfer the ownership title to real estate requires a stamp tax of progressive amounts generally ranging from ¥200 to ¥600,000, based on the purchase price provided in the agreement. A range from ¥200 to ¥480,000 will apply to an agreement entered into between 1 April 2014 and 31 March 2018.

Registration and licence taxes are imposed when registering certain matters with respect to real estate with the appropriate local registry. The tax rate to register a transfer of ownership title to real estate is generally 2 per cent. A rate of 1.5 per cent will apply to a registration regarding a transfer of land occurring between 1 April 2013 and 31 March 2019, and a rate of 0.15 or 0.3 per cent will apply to a transfer of ownership title to certain qualified residential buildings that are acquired by an individual by 31 March 2020, to be used for residential purposes.

Real estate acquisition taxes are imposed on a purchaser of real estate at a rate of 3 per cent (for land and for residential buildings), or 4 per cent (for non-residential buildings); provided that the reduced tax rate of 1.5 per cent will apply to residential lands that are acquired by 31 March 2018.

Beneficial treatment

Transfer to a TMK

If a TMK acquires real estate and meets certain requirements, it may qualify for the following tax benefits:

- a* the registration and licence taxes to register the acquisition until 31 March 2019 will be reduced to 1.3 per cent; and
- b* the real estate acquisition tax rate is currently two-fifths of the original rate, and this reduced rate will apply until 31 March 2019.

Transfer of trust beneficial interest

Using a trust structure where the trustee holds ownership title to real estate provides certain tax benefits. Stamp taxes for real estate trust agreements and for sale and purchase agreements for a trust beneficial interest in real estate is ¥200, which is substantially less than stamp taxes for a sale and purchase agreement of the real estate itself. While registration and licence taxes and real estate acquisition taxes will be imposed on a purchaser of real estate, the following reduced registration and licence taxes will be imposed on real estate being placed in trust, and on a trust beneficial interest in real estate being transferred from the initial holder to the purchaser:

- a* on placing the real estate in trust: 0.3 or 0.4 per cent (for land), or 0.4 per cent (for buildings); and
- b* on the transfer of the trust beneficial interest: ¥1,000 for each building and piece of land.

Real estate acquisition taxes are not imposed on real estate when it is placed in trust or on the transfer of the trust beneficial interest.

However, when the holder of a trust beneficial interest in real estate (other than the initial holder) terminates the trust agreement and receives delivery of the real estate from the trustee, registration and licence taxes at a rate of 2 per cent will be imposed upon registration

of the real estate transfer. Upon such a transfer, real estate acquisition taxes will also be imposed on the beneficiary at a rate of 3 per cent (for land and for residential buildings), or 4 per cent (for non-residential buildings).

By applying the tax benefits of a trust structure as described above, a substantial amount of taxes related to a real estate acquisition can be deferred until the trust agreement is terminated and the real estate is delivered to the beneficiary.

Transfer of real estate to a GK-TK structure under the REJEA

If a GK-TK structure under the REJEA (as discussed in Section IV, above) acquires one or more of (1) an old building to be rebuilt or renovated (defined as a building older than 10 years or a building seriously damaged by natural disasters), (2) land used for a building that is to be rebuilt or renovated, and (3) land planned to be used for a building newly built on the land; by meeting certain other requirements, it may qualify for the following tax benefits:

- a* the registration and licence taxes to register the acquisition until 31 March 2019 will be reduced to 1.3 per cent; and
- b* the real estate acquisition tax rate is currently half of the original rate, and this reduced rate will apply until 31 March 2019.

Notwithstanding the above, if a GK-TK structure is used for a Small-Sized Real Estate Specified Joint Enterprise (discussed in Section VII, below), the following real estate acquired by the GK-TK structure may qualify for the following tax benefits if it meets certain other requirements:

- a* the registration and licence taxes for registration of a building acquired until 31 March 2019 for the purpose of rebuilding or renovating will be reduced to 1.3 per cent; and
- b* the real estate acquisition tax rate for a building constructed before 1 January 1982 and acquired for the purpose of rebuilding or renovating, and the land acquired as the site of the building is currently half of the original rate, and this reduced rate will apply until 31 March 2019.

iv Finance and security

Mortgages on real estate are the most frequently used form of security interest in real estate.

In general, once the mortgage is registered, it is granted priority over unsecured creditors; however, even a registered mortgage is subordinate to tax claims against the mortgagor that became due prior to the registration of the mortgage. The registered mortgage will also be subordinate to any previously registered mortgages or other previously registered security interests on the same real estate.

Another form of security interest in real estate that is frequently used is a pledge over a trust beneficial interest in real estate. If real estate is held in the form of a trust beneficial interest in real estate, the lender would create a pledge over the trust beneficial interest and not a mortgage on the real estate itself. Perfection of the pledge is made by obtaining the consent of the trustee with a date certified by a notary public.

TMK bondholders are granted a security interest by operation of law, which is a statutory general security interest on all the current and future assets of the TMK granted in their favour under the ALL. The statutory general security interest will also secure (by operation of law under the ALL) all the TMK bonds subsequently issued. In many cases, therefore, holders of TMK bonds do not create a mortgage or pledge on the real estate or

trust beneficial interest in real estate held by the TMK. This is mainly because the mortgage and pledge securing the bonds need to be held by a trustee in accordance with the Secured Bond Trust Law, and additional costs to establish such a trust arrangement are not considered economically justified in many cases.

VI LEASES OF BUSINESS PREMISES

The Land Lease and Building Lease Law (LLBLL) and the Civil Code regulate real estate leases. The general rule is that the LLBLL is applicable to land leases that are made for the purpose of the lessee owning a building on the land, and to building leases. The LLBLL takes precedence over the Civil Code when their provisions overlap.

i Types of lease

The LLBLL provides for various types of lease, including the following.

Land lease for the purpose of a lessee owning a building on the land

Ordinary land lease

Under the LLBLL, a land lease made for the purpose of the lessee owning a building on the land (other than a fixed-term land lease as discussed below) has a 30-year term, unless the parties agree to a longer term. Such land leases are automatically renewed for a term of 20 years for the first renewal and 10 years for subsequent renewals unless otherwise agreed by the parties. The lessor cannot object to such renewal without a justifiable reason. Generally, a justifiable reason is not easy to establish, and the lessor's refusal to renew the lease is strictly restricted.

Fixed-term land lease

A fixed-term land lease made for the purpose of the lessee owning a building on the land is not renewable under the LLBLL; however, the parties are not prohibited from entering into a new lease agreement at the expiry of the lease. Fixed-term land leases were introduced because concerns of landowners about the strict restrictions on the ability of the owners of land to refuse to renew a land lease were considered to inhibit effective use of real estate. There are three types of fixed-term land leases:

- a* a general fixed-term land lease available for either residential purposes or business purposes (the fixed term is 50 years or longer);
- b* a land lease with a special agreement by which the lessee assigns the building on the land to the lessor (the lease agreement can provide for the lessor's right to obtain the building on the land from the lessee at a reasonable price to terminate the lease after 30 or more years following the commencement of the lease); and
- c* a fixed-term land lease for business purposes (the fixed term is 10 years or more but must be shorter than 50 years).

Building leases

Ordinary building lease

A building lease usually has an agreed term. Under the LLBLL, a building lease with an agreed term (other than a fixed-term building lease as discussed below) is automatically

renewed and the lessor cannot object to the renewal of the building lease without a justifiable reason. Generally, a justifiable reason is not easy to establish and the lessor's refusal to renew the lease is strictly restricted.

Fixed-term building lease

A fixed-term building lease is not renewed under the LLBLL; however, the parties are not prohibited from entering into a new lease agreement at the expiration of the lease term. The parties can agree on the fixed term without restriction on its duration.

ii Typical provisions

There are typical provisions for leases of business premises in Japan regarding increase or reduction of rent, termination, and assignment of lease or sublease.

Rent increase or reduction

Under the LLBLL, if the amount of rent payable becomes inappropriate (e.g., if it differs significantly from the market rent), the lessor or the lessee may request that it be increased or reduced. This applies both to land leases made for the purpose of the lessee owning a building on the land and to building leases. The parties to the lease agreement, however, can eliminate the right to request an increase in rent by agreeing not to increase the amount of rent for a certain period. The right to request a reduction cannot be eliminated from a lease that is not a fixed-term building lease.

Termination

Under the Civil Code, if one party breaches an agreement, the other party can terminate it; however, under Supreme Court precedents, a lessor cannot terminate a real estate lease agreement if the lessee can establish the existence of a special circumstance where a relationship of mutual trust remains between the lessor and the lessee even after the breach. Failure to pay rent for several months would usually entitle the lessor to terminate the lease, because such non-payment would usually be regarded as destroying the relationship of mutual trust.

Assignment of lease or sublease

Lease agreements usually prohibit the lessee from assigning the lease or subletting without the consent of the lessor.

VII DEVELOPMENTS IN PRACTICE

i 2017 amendment to the REJEA

On 1 December 2017, an amendment to the REJEA came into effect. The amendment was made to: (1) ease restrictions under the REJEA and encourage investment into small-sized real estate; (2) revise the rules to enhance investment into and accumulation of improved quality real estate; and (3) formulate an appropriate legal framework for fundraising through crowdfunding.

Establishment of a small-sized real estate investment business

To enable a wide range of local real estate business operators to engage in the revitalisation of vacant houses and stores, a project with a predetermined investment total amount that

is, in general, lower than ¥100 million (¥1 million for each general investor and ¥100 million for each 'special investor') is now categorised as a Small-Sized Real Estate Specified Joint Enterprise. Operators of a Small-Sized Real Estate Specified Joint Enterprise are not required to obtain a licence under the REJEA, but are required to register as an operator of a Small-Sized Real Estate Specified Joint Enterprise in accordance with the REJEA. The operators are subsequently required to renew their registration every five years. This Small-Sized Real Estate Specified Joint Enterprise framework is anticipated to improve the revitalisation of vacant houses and stores in local cities.

Revision of the rules to enhance investment into and accumulation of improved quality real estate

A new type of real estate investment arrangement is introduced under the 2017 amendment to the REJEA. If the investors in such investment arrangement comprise only 'super professional investors', such as REJEB operators and real estate investment advisers with sufficient knowledge and capability to qualify for appointment as a discretionary investment adviser, this investment arrangement does not subject the operator who receives the investment from the investors to the licensing requirements. However, the operator is required to submit a notice to the relevant authority in accordance with the REJEA. This new type of investment arrangement simplifies the procedures required to be taken by operators of a real estate investment business and is anticipated to increase investment into and accumulation of improved quality real estate in Japan.

Formulation of appropriate legal framework for fundraising through crowdfunding

The amended REJEA addresses fundraising through crowdfunding, as there is a material difference in the method in which fundraising through crowdfunding is conducted. As crowdfunding is normally conducted electronically through online portals on the internet, the amended REJEA addresses specific electronic procedures to be taken by the operator of a real estate investment business under the REJEA, including the provision of electronic data to the investors under a designated method, which is an exception to the requirement that the operator deliver paper materials to the investors. The operator soliciting funds through crowdfunding or on an electronic basis is also required to set up an internal framework to monitor its operations to engage in such solicitation, and to ensure that such operations are conducted properly.

ii Residence Lodging Business Act

In response to the increase in the demand for accommodation in large cities owing to the increase of foreign visitors to Japan, a need to utilise home-sharing services provided by private citizens (i.e., services to provide home-sharing services to visitors at a residence, not a hotel or a traditional Japanese inn) has arisen (Home-Sharing Services). However, as the use of the Home-Sharing Services has increased rapidly prior to the establishment of regulations in this area, it is essential that rules to appropriately regulate the Home-Sharing Services be created in order to manage public health, prevent disturbances within local communities, and restrict the illegal operation of hotel businesses.

For this purpose, the Residence Lodging Business Act (RLBA) was passed in 2017 and will come into effect on 15 June 2018.

Effect of the RLBA

The Home-Sharing Services recognised under the RLBA include: (1) provision of Home-Sharing Services to a visitor in the room of a home whose owner is a resident; and (2) in the case of leased premises, provision of Home-Sharing Services to a visitor during the period of solicitation of new tenants after the termination of a lease with the former tenant.

Investors who own and lease real estate have the option to provide Home-Sharing Services to visitors during the period from the termination of a lease with the former tenant until a new tenant is found. This option under the RLBA would not enable real estate investors to use their real estate solely to offer the Home-Sharing Services. Despite the restrictions of the RLBA, there may be a demand in the real estate market in the future for the development of methods to allow investors to maximise the value of their real estate investment through the relaxation of the regulations by allowing more frequent use of the Home-Sharing Services.

In this respect, the Japanese government has designated several special districts where operators are allowed to provide the Home-Sharing Services. Operators may wish to consider using their investment real estate in the designated special districts solely for the purpose of offering the Home-Sharing Services.

Summary of the regulations under the RLBA

The specific regulations under the RLBA can be summarised as follows:

- a* a person who will provide the Home-Sharing Services must file a notice with the prefectural governor before starting the provision of the Services;
- b* the RLBA limits the number of days in which an operator can provide the Home-Sharing Services to 180 days per year for each room. However, the number of days may differ for each local district, and as a result, there is no guarantee that a room can be used to provide the Home-Sharing Services for 180 days anywhere in Japan;
- c* if the owner lives in the same home (i.e., a ‘home-stay’), the owner shall take appropriate measures in order to properly provide the Home-Sharing Services, such as ensuring the protection of health, preventing noise, dealing with complaints, preparing a list of guests, and posting signs;
- d* if the owner does not live in the same home, the owner shall delegate a management company to take the measures described in (c) above in order to properly provide the Home-Sharing Services;
- e* the management company mentioned in (d) above must be registered with the authority under the RLBA; and
- f* the broker of the Home-Sharing Services shall be registered with the authority under the RLBA.

iii Amendment to the Civil Code

The amended Civil Code will come into effect on 1 April 2020. The law of such amendment was already enacted in 2017. The amendment focused on Chapter III, ‘Claims’, one of the five Chapters of the Civil Code that provides the rules of the contract law. Because this Chapter has not undergone any significant changes in the past 120 years, it is expected that this historical amendment will significantly affect the contract practice. While a substantial part of the amendment clarifies the rules through the revision of the language and incorporation of the rules established by court precedents and prevailing interpretations of legal issues

directly into the articles, there are a number of rules that underwent significant change to improve the contract law. The two material rules that underwent significant revision and are expected to have a substantial effect on real estate transaction practice are summarised below.

Warranty against hidden defects and liability for non-conformance with the contract terms in connection with the type, quality and number/amount of the subject of sale

- a* The amended Civil Code changed the term ‘defects’ in the statutory warranty against hidden defects to ‘non-conformance with the contract terms in connection with the type, quality and number/amount of the subject of sale’. After this change comes into effect, the liability of the seller of real estate will, in theory, be determined not by the physical status of the real estate (and other incidental factors), but by both the physical status of the real estate and the intent of the seller and the buyer (without consideration for whether the intent was explicitly expressed in a written contract). The remedies for ‘non-conformance with the contract terms in connection with the type, quality and number/amount of the subject of sale’ will be granted more in accordance with the general default principles of contract law. If non-conformance with the contract terms is found to exist in connection with the type, quality and number/amount of the subject of sale under the amended Civil Code, the remedies available to the buyer will be to require the seller to complete performance of the contract, request a reduction of the purchase price, recover compensation from the seller in an amount that restores the buyer to the same position as if the non-conformance did not occur (but only where the non-conformance is attributable to the seller), or a combination of any of these remedies. The buyer also has the option to terminate the real estate sale and purchase contract. It is important to note that the remedies available to the buyer set forth above refer specifically to the remedies available under law; both before and after the amendment, the warranty against hidden defects and the liability for non-conformance with the contract terms in connection with the type, quality and number/amount of the subject of sale can be eliminated by an agreement between the parties.
- b* The legal nature of the liability for warranty against hidden defects was unique in that the warranty was based on a theory that if a seller delivered to the buyer the specified subject of the sale, such as specific real estate, the seller would be considered to have completed its duty of delivery. In other words, no defective performance of the seller would be considered to exist after the delivery. The warranty is therefore provided under the Civil Code as a special protection for the buyer of the specified subject of the sale. Based on this unique theory and the legal nature of the warranty, the seller’s liability under the warranty will be an amount equal to the buyer’s reliance with respect to the sale and purchase; namely, the buyer can only recover the transaction costs. Termination is a possible remedy for the buyer under the warranty against defects, but only when the hidden defects render the purpose of the sale and purchase unachievable.
- c* It is possible that, in certain transactions, the seller’s completion of delivery of the relevant subject will not be enough for the seller to fulfil its promise, and accordingly, the amended Civil Code has taken the position that in such instance, the seller will be deemed not to have completed performance of its duty in the sale. Therefore, the amended Civil Code imposes a duty on the seller to complete performance of the defective part if non-conformance with contract terms is found to exist in connection with the type, quality and number/amount of the subject of sale. In the case of non-conformance, the buyer will be able to recover compensation in an amount that

restores the buyer to the same position as if the non-conformance did not occur (but only if the non-conformance is attributable to the seller). The liability of the seller in this case is the same amount imposed in conventional cases of non-performance of a contract, and may include lost profits resulting from the non-conformance. In accordance with conventional cases of non-performance of a contract, the buyer will also be able to request complete performance of the contract, and/or a reduction of the purchase price. The buyer may also terminate the contract except in the case where the relevant issue is minor.

- d As the liability set forth in the amended Civil Code is based on a theory that differs from the current Civil Code, it is possible that the liability for non-conformance with the contract terms in connection with the type, quality and number/amount of the subject of sale under the amended Civil Code will differ from the liability resulting from the warranty against hidden defects under the current Civil Code, which may in turn cause confusion in practice. It will therefore be essential that the players in the real estate sale and purchase market sufficiently prepare for the new liability framework.

Requirements to assert the right to invalidate a fraudulent conveyance

- a The amended Civil Code provides clarification with respect to the requirements to assert the right to invalidate a fraudulent conveyance. One of the main purposes of the amendment is to amend the requirements so that they conform to those set forth in the bankruptcy and other insolvency statutes. The amended Civil Code will provide guidance with respect to the issue of invalidation of a sale of real estate by a creditor of a seller with poor financial health.

For example, the amended requirements for invalidation of a sale and purchase transaction made with a reasonable sale price generally require that at the time the sale is conducted: (1) there is an imminent risk at the result of the sale that the seller may conceal or take similar actions with respect to the sale proceeds; (2) the seller intends to conceal or take similar actions with respect to the sale proceeds; and (3) the buyer is aware of the seller's intent described in (2). These are the requirements that must be met under the bankruptcy and other insolvency statutes and are generally considered to provide clear guidance in practice. Introduction of these new requirements will provide stability to the transactional practice in the real estate sale and purchase market.

- b The amended Civil Code also includes provisions that improve the framework used to invalidate a fraudulent conveyance. One of these amendments is with respect to the enforcement of a judgment. Specifically, once the court renders a judgment that invalidates a fraudulent conveyance, the judgment will be binding on the seller and all its creditors. This amendment is expected to clarify the legal relationship among all parties involved in a case of a fraudulent conveyance.
- c The amended Civil Code is expected to improve the framework used to invalidate a fraudulent conveyance and anticipated to provide clarification with respect to the requirements to be met in order to invalidate a sale of real estate by a seller with poor financial health. In turn, this will effectively provide players in the real estate market with more stability in real estate sale and purchase transactions.

VIII OUTLOOK AND CONCLUSIONS

For the past few years, Japanese real estate transactions have maintained a steady volume that is historically high. There have been continuous efforts by the Japanese government to encourage real estate transactions, such as the efforts to create new investment structures using the GK-TK structure that are discussed in Section VII, above. We also see a new emerging business related to real estate (i.e., Home-Sharing Services) for which the government is establishing a regulatory framework (as discussed in Section VII, above). While, in the short term, this new type of business may compete with the traditional hotels (one of the major real estate sectors), in the longer term this is potentially a new frontier even for traditional real estate market players. We expect that the Japanese real estate market will continue to evolve as the government continues its efforts to provide a 'user-friendly' legal framework, such as the recently enacted historical amendment law for the Civil Code (as discussed in Section VII, above). In addition to noting the high volume of real estate transactions in Japan, attention should also be paid to the dynamism seen in various aspects of the Japanese real estate market as we prepare for new trends.

ABOUT THE AUTHORS

NORIO MAEDA

Nishimura & Asahi

Norio Maeda is a partner with expertise in transactions involving the acquisition of, investment into and financing of Japanese real estate assets. He has represented domestic and foreign investors, including investment funds, financial institutions, investment managers and developers from the United States, Europe and Asia in numerous investment and development projects involving sophisticated structures. He has also represented lenders in numerous structured finance transactions involving real estate assets. His expertise extends to the restructuring of distressed real estate asset investments. He is admitted to the Bars of Japan and New York.

YASUO ASAMI

Nishimura & Asahi

Yasuo Asami is an associate with expertise in transactions involving the acquisition of, investment into, and financing of Japanese real estate assets. He also specialises in international trade and corporate acquisitions, as well as handling other general corporate matters between Japanese and Chinese companies. He was admitted to practise in Japan in 2008.

KEISUKE YONAMINE

Nishimura & Asahi

Keisuke Yonamine is an associate who mainly focuses on transactions involving the acquisition of, investment into, and financing of Japanese real estate assets. He was admitted to practise in Japan in 2011.

NISHIMURA & ASAHI

Otemon Tower
1-1-2 Otemachi, Chiyoda-ku
Tokyo 100-8124
Japan
Tel: +81 3 6250 6200
Fax: +81 3 6250 7200
info@jurists.co.jp
www.jurists.co.jp/en



ISBN 978-1-912228-18-8