

Cayman Islands

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THE CORPORATE REAL ESTATE MARKET

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

A significant recent trend has been the demolition of older condominium complexes, built along Seven Mile Beach when the height restriction imposed by the Development and Planning Law was three storeys. These condominium complexes are being redeveloped into seven-storey buildings, creating a substantial profit for the original proprietors and a very different skyline. The Ritz-Carlton Grand Cayman Hotel and The Residences at The Ritz-Carlton Grand Cayman was the first seven-storey development to be completed on Seven Mile Beach in December 2005.

Strong cruise ship traffic, together with the expansion of law firms, accounting firms and other financial services providers has generated significant demand for downtown commercial real estate, which has resulted in increasing costs and activity in George Town. The rental rates in retail developments close to the cruise ship terminals have increased dramatically in the past three years, although they have stalled in the last six to 12 months, with the Cayman Islands feeling some impact from the global recession. Some of these buildings previously used for office accommodation have undergone renovations, to replace offices with retail space commanding considerably higher rents.

Construction continues at a fast pace in Camana Bay, a development owned by the Dart family. A large area of real estate was acquired (and continues to be acquired) by the Dart family, some of which has been combined and is being developed into a self-sufficient town, known as Camana Bay. Cayman International School opened in September 2006 at Camana Bay. The first commercial phase of Camana Bay was completed in 2007, and will include office buildings housing tenants such as Ernst & Young, Goldman Sachs, Cayman National, Digicel, State Street, London and Amsterdam, Citco and offshore law firm Ogier. The development will also include a cinema complex with six cinemas.

Another property developer making an impact is American Stan Thomas, who has been acquiring substantial holdings in the Cayman Islands, particularly along the West Bay Peninsula and Seven Mile Beach area, including the Cayman Islands Yacht Club in late August 2006. There is a large amount of construction taking place and planned for the future. However, the cost of construction is equally high, although the cost of materials has levelled off over the past twelve months with lower oil prices.

REAL ESTATE INVESTMENT

2. Please briefly outline the opportunities for investing in real estate in your jurisdiction. In particular, consider:

- The structures commonly used (for example, property companies and partnerships).
- Are real estate investment trusts (REITs) available? If so, are they commonly used?
- Institutional investors.
- Private investors.

There is generally no restriction on foreign ownership of real estate in the Cayman Islands, but there are legal restrictions designed to protect local businesses, which effectively restrict foreign investment in commercial real estate (*see Question 22*).

However, foreigners willing to persevere will usually be granted the necessary licences, provided the investment is substantial. As the Cayman Islands is geographically quite small, investment opportunities are limited:

- The structures most commonly used are corporate structures.
- REITs and real estate derivatives from Cayman Islands real estate are not generally available nor commonly used.
- Institutional investment in the Cayman Islands is increasing, as the size of projects demands access to large amounts of capital. However, the majority of commercial real estate is held in private hands.
- It is probable that no less than two thirds of commercial real estate is held privately.

REAL ESTATE LEGISLATION

3. Please briefly set out the main real estate legislation that applies in your jurisdiction.

The main laws are the:

- Registered Land Law (2004 Revision).
- Registered Land Rules (2003 Revision).
- Development and Planning Law (2004 Revision).

- Strata Titles Registration Law (2005 Revision).
- Landlord and Tenants Law (1998 Revision).
- Stamp Duty Law (2007 Revision).
- Land Holding Companies Share Transfer Tax Law (2007 Revision).
- Companies Law (2007 Revision).
- Trade and Business Licensing Law (2007 Revision).
- Local Companies Control Law (2007 Revision).
- Governor (Vesting of Lands) Law (2005 Revision).

Also, decisions of the Grand Court of the Cayman Islands and English common law is a source of law, to the extent it is not inconsistent with the laws of the Cayman Islands.

TITLE

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

Real property includes land, all things growing on the land, buildings and other things permanently affixed to the land. Title to land and any buildings on it (if owned by the same entity) are registered together. However, by using the Strata Titles Registration Law, separate lots can be created on the land and within the building, and separate titles are issued for these strata lots.

5. How is title to real estate evidenced, for example by registration in a public register of title? Which authorities manage the public title register?

Title to real estate is evidenced by registration at the Cayman Islands Land Registry, where land parcel files are open to public inspection.

6. Please briefly set out the information and documents registered in the public register of title, for example a description of the real estate, the owner, matters affecting the title and any relevant documents.

The land register for a parcel of land or lease indicates:

- Whether title is absolute or provisional.
- Whether the land is private or crown land.
- The area of the land.
- The name and address of the owner(s).
- Details of any matters to which title is subject and encumbrances affecting the land.

Relevant documents that are registerable include:

- Transfers of land and transfers of leases.
- Charges, cautions, restrictions and inhibitions.
- Third party rights including easements and restrictive covenants.
- Leases where the term is more than two years, while leases for two years or less can be registered voluntarily. Variations of leases are also registerable.

A separate register is opened for leasehold interests and a note of the lease is made in the encumbrances section of the land register for the freehold title.

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

The land register and all documents mentioned in it or contained in the parcel file are open to public inspection.

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

The guarantee is that any proprietor who suffers loss arising from an error in the register which cannot be rectified, is entitled to compensation from the Cayman Islands Government.

Title insurance is not commonly used and generally not available. However, large institutional US lenders sometimes insist on title insurance in large financing transactions, and will obtain it in the US to cover larger commercial developments.

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

Real estate is held as freehold, leasehold or strata title:

- A freehold title is held by the registered proprietor indefinitely.
- A leasehold title is held by the registered proprietor for the term of the lease.
- The Strata Titles Registration Law (2005 Revision) provides for the subdivision of land to create strata lots, each of which is registered with a separate strata title (which is held by the registered proprietors indefinitely). Strata titles are also used for office buildings and shopping centres but most commonly for residential condominium developments.

A contractual licence can also be used to allow occupation of land, but this is a personal right and does not create an interest in the land.

SALE AND PURCHASE OF REAL ESTATE

10. What are the main stages and documents in the sale and purchase of real estate? In particular:

- How is real estate marketed, when does commercial negotiation occur and what pre-contractual arrangements are used?
- When is the sale contract negotiated and executed?
- When are the parties legally bound?
- When is the change of title registered?
- When does title transfer and what are the formal legal requirements to transfer real estate (for example, in writing, and signed by the parties)? Is notarisation required?

Marketing

Corporate real estate is marketed through specialist agents.

Commercial negotiation

Negotiation of corporate transactions is handled by specialist agents.

Pre-contractual arrangements

Pre-contractual arrangements such as letters of interest or heads of terms are commonly used.

Sale contract

A contract is generally negotiated, sometimes with lawyers.

When legally binding

The parties are legally bound on execution of a contract, which is then followed by proper formalities.

Registration and when title transfers

Legal title transfers on registration of the new proprietor at the Land Registry. A change of title is registered as soon as possible, following closing of the sale.

11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate, for example to disclose real estate information, or in relation to title?

The seller does not have such liability, unless liability arises out of a contractual term which does not merge on closing of the sale.

12. Please briefly outline the real estate due diligence that is typically carried out before an acquisition (including title investigation and searches of public authorities).

A Land Register search is obtained by the buyer, together with copies of any instruments registered on title which are considered relevant to the buyer, for example easements or restrictive cov-

enants. Public records relating to real estate are relatively limited in the Cayman Islands. Unless the buyer proposes a new use for the real estate, due diligence is typically limited to the title.

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

Warranties are always subject to negotiation, but generally on the sale of an individual commercial property, the seller will give limited warranties as to title and third party interests and to the accuracy of replies to pre-contract enquiries. More wide-reaching warranties are normally required for the sale of an ongoing business.

The Cayman Islands is not large enough to have large real estate portfolios similar to those in the UK.

14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it? For example, environmental liability, or liability under a lease.

It is technically possible in certain limited circumstances for an owner or occupier to be liable for matters relating to the real estate before it bought or occupied it, such as the slow creation of an action or nuisance. Otherwise, the English rules of privity of contract apply. Also, the buyer of a strata title lot can be liable for unpaid strata levies after acquiring the lot, as this debt attaches to the strata lot.

15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it? For example, environmental liability, defects in the real estate, and contractual liability to the buyer.

A seller or occupier does not generally have any liabilities relating to the real estate after it has disposed of it.

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

The buyer is generally responsible for paying stamp duty, together with other land registry fees in relation to an acquisition of a freehold or leasehold real estate. The buyer may also be responsible for other typical acquisition fees and costs, such as valuation or surveyor reports, together with lender fees where financing is being obtained. This may be subject to negotiation between the parties.

The seller is responsible for paying any marketing costs, for example listing with a licensed real estate agency.

Generally, each party is responsible for their own legal costs.

REAL ESTATE TAX

17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

The Cayman Islands has no equivalent to VAT.

18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase? Who pays? What are the rates? Are there any exemptions?

Stamp duty is payable (subject to certain exemptions) on:

- The transfer of land.
- The transfer or grant of a new lease.
- Any agreement or memorandum of agreement for the purchase of land or strata title, and the assignment of any rights under such an agreement.
- A debenture or mortgage of land.

Generally, the stamp duty in relation to an acquisition of freehold or leasehold real estate is paid by the buyer and, for the grant of a lease, by the tenant. However, this is negotiable between the parties. The current rates of stamp duty payable on a transfer of land, a strata title or lease vary from 4% to 7.5%, depending on whether the buyer is a Caymanian citizen and the location of the real estate.

The current rates of stamp duty payable on a lease or lease agreement are:

- If the term is for less than one year: 5% of the aggregate rent.
- If the term does not exceed five years: 5% of the average annual rent.
- If the term exceeds five years but does not exceed ten years: 10% of the average annual rent.
- If the term exceeds ten years: 20% of the average annual rent.
- If the term exceeds 30 years: the same duty as on a sale based on the full market value of the real estate or interest in it.

Stamp duty is also payable on any mortgage (legal or equitable) or charge on immovable real estate at the rate of 1% or 1.5%, depending on the secured sum.

Stamp duty payable on an agreement or memorandum of agreement for the purchase of land or strata title may be stamped with a minimal fixed duty or with ad valorem duty, depending on whether the agreement confers or grants a right of possession. If the agreement confers or does not specifically prevent any right of occupation, ad valorem duty is payable. Where full ad valorem stamp duty is paid on the agreement or memorandum of agreement, no additional duty will be payable on the transfer, provided the transfer has been executed in conformity with the agreement, and relates to the same real estate as the agreement.

If there is an assignment of any rights of an agreement or a memorandum of agreement relating to the purchase of any land or strata title, depending on the terms of the assignment, either varying, fixed or ad valorem duties are payable.

Share Transfer Tax is also payable on the value of any transfer or issue of equity capital in a land holding company, as referred to in the Land Holding Companies Share Transfer Tax Law (2003 Revision).

There are a few exemptions, which include transfers for natural love and affection between certain family members, transfers to successors entitled under an estate and transfers which do not bring about any change in beneficial ownership. However, all stamp duty exemptions are at the discretion of the Financial Secretary of the Cayman Islands.

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

Methods are not commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios.

HOLDING BUSINESS PREMISES

20. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria? If yes, please give brief details.

There are no targets to reduce greenhouse gas emissions or legislative requirements for energy efficiency, although some companies in the Cayman Islands establish their own environmental policies.

21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties, for example through outsourcing transactions? If yes, please give brief details.

Outsourcing is a commonly used practice for managing corporate real estate in the Cayman Islands.

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

The following restrictions apply:

- A foreign company wishing to purchase or lease real estate in the Cayman Islands must be registered at the Cayman Islands Companies Registry as a foreign company.
- Any foreign company or Cayman company which is foreign controlled, wishing to own an income producing real estate investment, must be licensed under the Trade and Business Licensing Law (2003 Revision) and the Local Companies (Control) Law (1999 Revision).

- Any foreign company or Cayman company which is foreign controlled, wishing to take a lease of premises to carry on a business from those premises, must obtain a licence under the Trade and Business Licensing Law (2003 Revision) and the Local Companies (Control) Law (1999 Revision).

On registration at the Companies Registry, a foreign company or Cayman company which is foreign controlled can give guarantees or security in relation to real estate, ownership or occupation, provided its memorandum and articles of association allow it to do so.

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

A change of control of a company does not affect its holdings of real estate. However, a change of control of a company may trigger liability to pay land holding company share transfer tax.

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

The Cayman Islands Government has the power to compulsorily acquire any land, and compensation is payable. The compensation payable is intended to be market value.

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

No taxes are payable on the occupation of business premises.

REAL ESTATE FINANCE

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

Large real estate portfolios or companies holding real estate are not common in a jurisdiction the size of the Cayman Islands.

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

Real estate is offered by borrowers as security for loans, and financiers most commonly register charges against the borrowers' real estate.

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

The most common forms of security over real estate are charges registered against land and mortgages over shares in a land hold-

ing company. Charges are registered on the title for the land, and mortgages over shares are recorded on the register of shares for the land holding company.

29. Is real estate securitisation common in your jurisdiction? If yes, please give brief details.

Real estate securitisation is only used in a limited number of resort developments in the Cayman Islands.

REAL ESTATE LEASES

30. Are contractual lease provisions regulated or freely negotiable?

Rents or lease terms are freely negotiable.

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

Rent levels are typically reviewed in line with the consumer price index (CPI), by a fixed percentage or by market review. VAT is not payable in the Cayman Islands.

32. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term? If yes, please give details.

There is no typical lease term, although five years is most common. There are no restrictions on the lease term.

Tenants of business premises do not have security of occupation, or rights to renew the lease at the end of the contractual lease term, unless such rights are expressly set out in the lease.

33. What provisions or restrictions typically apply to the disposal of the lease by the tenant (for example, can the tenant assign or sublet the lease with the landlord's consent)?

The tenant can normally assign or sublet with the landlord's consent, which cannot be unreasonably withheld where criteria (such as ability to comply with the head lease) are met.

34. Can tenants usually share their business premises with companies in the same corporate group? If yes, on what terms?

Often affiliates of a tenant are permitted to share premises, provided notice is given to the landlord. The tenant remains liable for its affiliates in relation to the premises.

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

The tenants are responsible for repair of non-structural components, and the landlord is responsible for repair of the structure.

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

The landlord is usually responsible for insuring the premises, and the tenant usually contributes to the insurance costs.

37. On what grounds can the landlord usually terminate the lease? Please briefly outline any restrictions or procedure that applies. Can the tenant terminate the lease in certain circumstances?

The landlord can normally terminate the lease if the tenant has breached a fundamental or essential term of the lease (normally these terms are specified in the lease). There is a notice requirement under the Registered Land Law, under which the landlord is required to first give the tenant written notice of the breach and allow the tenant an opportunity to remedy the breach within a reasonable time, failing which the landlord can terminate the lease.

The tenant can terminate the lease on common law contractual principles if the landlord is in breach of a fundamental or essential term of the lease. Express termination rights for a breach by the landlord are not usually specified in the lease.

Both the landlord and the tenant may have termination rights in certain circumstances, following substantial damage to the premises.

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

Usually, the lease terms allow a landlord to terminate the lease if the tenant becomes insolvent. A landlord also has a statutory right to terminate the lease if the tenant is adjudicated bankrupt (in the case of an individual) or goes into liquidation (in the case of a company) (*section 55(1), Registered Land Law*).

PLANNING LAW/ZONING

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

The Development and Planning Law (2005 Revision) and the Development and Planning Regulations (2006 Revision), together with The Development Plan 1997, provide control mechanisms in connection with the development of land.

REAL ESTATE ORGANISATIONS

Cayman Islands Government

This is the website of the Cayman Islands Government.

W www.gov.ky

Cayman Islands Lands Department

This is the website of the Cayman Islands Lands and Survey Department.

W www.caymanlandinfo.ky

Cayman Islands Planning Department

This website provides information on planning matters.

W www.planning.gov.ky

Cayman Islands Real Estate Brokers Association

This website provides information on real estate matters.

W www.cireba.com

Cayman Islands Chamber of Commerce

This website provides information on commerce in the Cayman Islands and other general information.

W www.caymanchamber.ky

The Development and Planning Law (2005 Revision) also establishes a Central Planning Authority for Grand Cayman and a Development Control Board for the Sister Islands (Cayman Brac and Little Cayman). These statutory authorities have day-to-day control over applications made to obtain planning permission for development and take enforcement actions where necessary.

40. What planning consents (for example, planning permission or building permits) are required and for which types of development?

Planning permission is required for any development of land or change of use. Development of land includes:

- Carrying out building, engineering or other operations in, on, over or under any land.
- Materially changing the use of any land or the use of any building on the land.
- Sub-dividing land.

There are the following exclusions from the above:

- Where renovations, alterations or improvement works are being carried out on the interior of a dwelling house and do not materially affect the external appearance of the dwelling house.
- Enlargements of a dwelling house within certain limits.
- Carrying out certain works by government personnel.

41. In relation to planning consents:

- Which body grants initial planning consents?
- Do third parties have the right to object? If yes, please give brief details.
- In what circumstances is there a public inquiry?
- How long does an initial decision take after receipt of the application?
- Is there a right of appeal against a planning decision? If yes, please give brief details.

Initial consents

Applications are made to the Central Planning Authority for Grand Cayman and the Development Control Board for the Sister Islands (Cayman Brac and Little Cayman).

Third party rights

If they have been entitled to receive notice of a development application, third parties have the right to object.

Public inquiries

On receipt of an application for planning permission, the Central Planning Authority or the Development Control Board can hold an inquiry, to consider whether there are issues of substantial importance relevant to the determination of the application, which may require further evaluation.

Initial decision

An initial decision typically takes between two to three months.

Appeals

There is a right of appeal, but this is restricted to the person who applied for the planning permission and to individuals residing or owning land within a radius of 1,500 feet from the boundaries of the land to which the application relates.

REFORM**42. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.**

The Cayman Islands Government is passing new legislation to license building contractors and subcontractors, and this is currently in the form of the Builders Bill.

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