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INTERNATIONAL LAWYERS NETWORK



LÓPEZ-IBOR ABOGADOS
BUYING AND SELLING REAL ESTATE IN SPAIN

ILN REAL ESTATE GROUP



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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER SPANISH LAW

I. PROCEDURE OF A REAL ESTATE TRANSACTION

1. Brokers

- A. In Spain, both parties are free to hire a Broker to conduct the conveyance process of real estate properties, representing their interest during the operation. It is not mandatory, however, to sign a service provision agreement between the Broker and the party parallel to the sale and purchase agreement. Whether there is a separate agreement usually depends on the level of closeness between them, i.e. if the broker is a close person to the party, they may verbally agree some terms. However, if the real estate operation is complex or if the Broker also advises legally the party, they usually sign a service provision agreement and agree on professional fees.
- B. Each party pays the fees of the Broker they have hired. Seller usually bears all the costs regarding the professional fees of the broker(s) when selling a property and in the fewer cases, when the Buyer looks for a very specific investment or property, hires a Broker to search and identify that specific property to buy, and the Buyer pays the fees of his Broker.

2. Formal procedure of a real estate transaction

Before any formal transfer begins, it is highly advisable to take some initial checks relating the property's current legal, tax/economic and town-planning situation: Legal information is normally

obtained from the Land Registry (by requesting excerpts relating current liens and charges; Tax/Economic information may be obtained from the Town Hall and from the "ownership association" ("*comunidad de propietarios*"), if any, as under Spanish Law, who acquires a property is liable for the amounts owed to the ownership association and the payment of local property tax; and Town Planning information, may be obtained by requesting from the Seller or the Town Hall the Activity License/First Occupation License ("*Licencia de Actividad/Licencia de Primera Ocupación*") for commercial/housing purposes or in the event of land, Town Planning information ("*cedula urbanística*").

3. Standard Forms of Agreements

- A. Offer to Purchase sets forth Buyer's offer of price and other terms and conditions such as Due Diligence period when applicable, it may be verbal or written, Seller may accept or reject.
- B. Once the Offer to Purchase has been accepted by the Seller, the most common way to Purchase a property in Spain is to sign an Arras Agreement between Buyer and Seller (unless the due diligence of the property is clear and the Buyer has the funds to buy, in such case, the parties may directly sign a Purchase and Sale Agreement). The Arras Agreement sets forth the date for closing, contingencies for inspections, financing, payment terms, reps & warrants, etc. A minimum of 10% of the agreed price must be paid upon signature of the



Arras Agreement, but the Parties may agree to increase this percentage. Upon completion, this amount shall be deducted from the total price.

There are two types of Arras Agreement according to Spanish Civil Code, each of them provides different enforceable scenarios. E.g., if the Seller refuses to sell upon closing date, the Seller must pay the Buyer two times (x2) the received arras amount or even enforce the Seller to sell or the Buyer to buy.¹

- C. In Spain, real estate transactions are notarized by means of a Purchase and Sale Public deed. This public deed is registered in the Land Registry and that the ownership title is recorded as well as any lien or encumbrance (e.g. mortgage) so anyone has certainty about who is the owner and the existence of any liens or encumbrances that may affect the property. Land Registry info is publicly accessible. The Buyer must consider that notarial and Land Registry fees shall be accrued.

Once executed, the last requirement before its registration is the clearance of all taxes related to the transaction. (Please see Section III for further details).

4. Form of Deed

Spanish law establishes a property conveyance system (*teoría del título y del modo*) based on two requirements, namely, a valid agreement between the parties (title) and the subsequent handing over of the property (traditio).

Therefore, for the conveyance of the ownership of a real estate property to occur, both requirements must be fulfilled.

In practice, this system entails an agreement to convey and, afterwards, granting a deed before a Public Notary, since this granting is considered a handing over by law and notary documents provide legal recognition and protection. Therefore, the most secure form of transferring real estate property in Spain is via the granting of a Public Deed of Sale before a Spanish Public Notary.

- 5. **Spanish legal system in Spain permits different sorts of ownership like ownership of the whole land and construction or ownership for example only of one unit or lots of units (condominium) of the improvements.**

In Spain there are different ways to own property: it is possible to own the whole piece of land or only a fraction of the land (plot) after segregating the land.

It is also possible to own the building without owning the land where it was built if the land / building is subject to an allotment permit / horizontal property regime.

Residential property in Spain is typically held under freehold tenure, granting the owner full ownership rights, obviously there may be more than one owner, and the owner may be a natural and/or a legal person. However, it is important to note that these rights can be restricted through the establishment of in rem rights or other legal structures, which

¹ These contracts may have nuances in some parts of Spain.



may impose encumbrances or grant contractual rights to third parties.

6. Spanish legal system permits joint ownership of real property

Joint ownership is permitted. Under the Spanish Horizontal Property Law, buildings with more than one owner have common spaces which are property of all owners.

Spanish regulation tends to be more protective with the lessee rather than the lessor and, therefore, establishes some mandatory provisions that benefits the lessee, i.e. the mandatory validity period of urban lease agreements is 5 years if the landlord is a natural person or 7 years if the landlord is a legal person, unless the lessee is interested in an anticipated resolution.

As explained above, certain entities like trusts, unknown to Spanish Law, may have serious problems to formalize their property, as their registration as owners in the Land Registry is not permitted. Aside from this, practically all legal entities may own real property.

7. The ownership of a building is implied in the ownership of the land.

Under the right of accession (art. 358 et sq. of the Spanish Civil Code), the owner of the land owns a building unless otherwise proven. If the building was built by another party, such a third party has the right to compensation for the necessary expenses or, alternatively, the owner of the land can ask such a third party to buy the land.

Surface rights may be granted over a plot to build and develop. In this case, plot and buildings would have different owners, but once the Surface rights

expire, all that is built over the plot will revert to the owner of the plot.

8. Registration of the Property

The Land Registry, with delegations at every Spanish region, is the formal registry where title over property is protected. Legal principle *Prior tempore potior iure* ("First registered has the better right") grants protection to the registered over any other transaction which is not.

The Good faith purchaser who acquires a property from the person who appears in the Registry with the faculty to transfer, shall be maintained in acquisition, once registered his right, no matter the right of the transferee is lately annulled or resolved (Article 34 of the Spanish Mortgage Law).

9. Special aspects to consider if the real estate transaction is organized as share deal

The transfer of shares is exempt from VAT and transfer tax. Nevertheless, transfer tax/VAT can be incurred on the transfer of shares in companies when the transfer of the shares is made with the purpose of avoiding the payment of the tax that would have been paid in case of transfer of the real estate. The law considers there are tax avoidance reasons where 50% or more of the assets consist, directly or indirectly, of real estate located in Spain and are not used for business activities, and, as a result of the transfer, the buyer acquires control over the company (i.e., more than a 50% stake in its share capital) or increases its stake once it has obtained control. Transfer tax is payable at a rate ranging between 6% and 11% of the value of the underlying real estate assets at the time



of the transfer. Transaction costs include notarial fees, requisition fees, legal and other fees relating to due diligence, and agency fees.

In addition, it is very important to conduct a full due diligence of the entity you are willing to acquire in order to detect relevant contingencies and take those into account when negotiating the terms of the transaction, otherwise, the buyer might be exposed to several and relevant liabilities.

The in rem right of usufruct grants the beneficiary with the legal right to use someone else's property temporarily and to keep any profit made from it, with the obligation to preserve its form and substance. This right may be temporal or absolute and it is common in Spain to grant usufructs, especially in inheritance situations. The existence of this in rem right narrows the owner's faculties with respect to the property.

Understanding the implications of usufruct rights requires familiarity with Spanish law, and missteps could lead to legal disputes or reduced control over the investment.

Real estate property can be jointly owned by different natural/legal persons and under different legal figures.

10. Buyer's Inspections

A. The main aspect of the Buyer's inspections, regardless acquiring commercial or residential real estate property, is to set forth a Due Diligence process. As stated in point I, the basic terms and schedule of the Due Diligence that the Buyer shall carry out usually are already established in the Offer to Purchase. In

fact, it is a common practice in Spain to condition the viability of the operation to the success of the Due Diligence carried out by the Buyer. So, if the Due Diligence leads to a different status of the property from the one stated by the seller, frustrating the transaction, the seller shall bear the cost of the Due Diligence carried out by the buyer.

B. In the post-closing stage of the operation, in the event of unexpected liabilities that the acquirer shall assume, the Due Diligence clause of the purchase agreement is key. If this liability is a result of missed information that the seller should have provided for the Due Diligence to be complete, the buyer may claim the amount to which the liability consists.

Therefore, the Due Diligence operates as a mechanism to exercise the Seller's liability in the event of discrepancies between what was stated in the Due Diligence, as a result of the investigation of the real estate property, and the post-closing reality of the property.

C. The Due Diligence process consists of several inspections performed by the buyer, including, but not limited to, analysing: the technical structure, the legal status, i.e. title, encumbrances, claims against the property, etc. or the tax situation of the property. Due to Spain's abundant real estate regulation, it is crucial to analyse if the property complies with the local regulations and holds the necessary licenses, otherwise the owner would be liable,



and the Administration may start a claim/sanction process.

Also, it is important to bear in mind that in case the real estate properties are built in condominiums, these are regulated under the Horizontal Property Law. Under this regime, the owners of the properties also own, jointly with other co-owners, the common areas of the condominium (fitness zone, pool, green spaces, etc). Therefore, real estate owners are affected by the bylaws of the owners' association to which the condominium is affected. The Due Diligence should also focus on observing these bylaws and understanding the property's situation regarding the condominium.

- D. If the Seller is a legal person, the Due Diligence has further specialties and analysing the corporate situation of the Seller is key to obtain the whole picture of the operation.

II. FINANCING TOOLS OF THE TRANSACTION

Typically, in Spain, investors finance transactions with mortgage loans but is also possible to finance transactions by means of vendor loans also called owner financing. It can be a good option for buyers who don't qualify for a traditional mortgage.

The advantages of using owner financing for buyers who are not able to secure a mortgage are a faster and cheaper closing with flexible downpayments, and the disadvantages are higher interests and sometimes due-on sale clauses if the seller has a mortgage on the property.

Spain has a very competitive mortgage market and as a result, there's plenty to

choose from when it comes to loans. However, non-residents buying Spanish property with a mortgage have more limited access to loan types and conditions. Resident buyers are often offered up to 80% LTV (loan-to-value) but for non-residents, LTV is much lower, some banks only finance 50% of the purchase.

What should be considered when thinking about the financing of a purchase project in Spain?

It depends on the way the deal is structured. Often the owner holds the ownership of the property until they are paid in full, which happens when the buyer either makes the final payment or refinances with a mortgage from another lender.

When taking out a Spanish mortgage the buyer must be aware that the transaction involves several costs. These are levied in addition to the taxes and fees charged as standard on a purchase. It used to be the case that the buyer took on all costs associated with a mortgage, but in recent years, consumers have successfully won high-profile court cases against the banks and reclaimed mortgage costs. We recommend seeking advice before signing your mortgage to make sure you fully understand which costs are to be paid.

III. COSTS FOR TRANSACTION

What tax aspects are directly involved in a purchase of real property, for example real property transfer tax and what is the percentage of it?

Several taxes are involved in a Commercial Real Estate transaction.

- Value Added Tax –VAT: (“Impuesto sobre el Valor Añadido IVA”): The supply, leasing or letting of Commercial Real Estate or of a building for first occupation



is subject to Spanish VAT. Second and further supplies of a building or of parts thereof are exempt from VAT. However, in so far as commercial real estate is basically aimed at developing business activities and most buyers of this kind of real estate also qualify as taxable person for VAT purposes as they are generally dedicated to the development of business activities, said buyers by waiving to the tax exemption, are allowed to exercise a right of option for taxation under VAT for these supplies, leasing and letting of commercial property. By way of this mechanism, buyers are entitled to deduct and to obtain reimbursement of the VAT paid with the property acquisition provided that statutory requirements are complied with. Should these requirements fail, the transaction would be subject to Property Transfer Tax. Finally, the building activity is also subject to VAT. There are different applicable VAT rates depending on the nature of the transaction, the general tax rate is 21%.

- The Property Transfer Tax (“Impuesto sobre Transmisiones Patrimoniales – ITP”): This tax is imposed, among other acts, over the second and subsequent transfers of property. When dealing with Commercial Real Estate Transfers, this tax is rather unusual as buyer generally exercise the right of option for taxation under VAT. If requirements under VAT regulations fail, the transfer of the property will then be subject to this tax. The tax rate is different depending on each Spanish region and calculated (percentage) according to the purchase price that appears in the Public Deed of transfer. Percentages applied by the

different Spanish regions move between 4% and 10%.

- Public Document Tax (“Actos Jurídicos Documentados –AJD”): This tax is applied to the execution of agreements or rights when they are granted as notarial, trade and/or administrative documents in Spanish territory (or abroad if they have legal or economic effects in Spain). Rates applied depend as well on the Spanish region it is executed and on the final Tax applied to the transaction (VAT or Property Transfer Tax). When VAT is applied to the transfer of property, the rates of this tax move between 0.4% and 1.5% of the purchase price.
- Tax on the Increase in Value of Urban Land (“Impuesto sobre Incremento del Valor de los Terrenos de Naturaleza Urbana-IVTNU”): This is a local tax which is levied on the implicit value increase that urban land gains by time elapse, therefore, this tax is calculated considering the time passed since the last transaction -exceeding of one year-. The taxable amount is based on the property cadastral value (not the sale and purchase price) of the land and the effective rate increases from 3,7% to 3% depending on the property holding period.

In addition to the precedent, if the buyer takes out a mortgage loan, these are the associated fees and costs:

Valuation fee

In order to approve a mortgage loan, the bank first needs to conduct a valuation on the property. This is a compulsory step, and costs vary depending on the property price. Expect to pay between a few hundred euros and several thousand. Note that the



valuation is usually conducted by a valuer named by the bank, not one chosen by you.

Mortgage fee

All banks charge a fee for setting up a mortgage and approving the loan. The fee is levied on the amount loaned so the more you borrow, the higher the mortgage fee. It's worth comparing fees charged by different banks and opting for a lower one, particularly if your loan is substantial. Banks generally charge between 0.5% and 2% of the loan, with the average around 1%. In 2020, the European Court of Justice ruled that the mortgage fee is unnecessary and should not be paid by the buyer, although Spanish jurisdiction has yet to follow suit.

Subrogation fee

If you are buying a property in Spain that already has a mortgage, you may want to take over the loan yourself. Fees to transfer a loan from the vendor to the buyer are around 0.5% of the loan's value.

Stamp duty

Known as *Impuesto sobre Actos Jurídicos Documentados* in Spanish (AJD), this tax is charged on a mortgage loan. AJD is levied as a percentage on the loan and the amount varies depending on the region of Spain.

Notarial fees

The notary charges a fee for the title deeds and notary services when you buy a Spanish property. Buying with a mortgage involves an extra section on the title deeds with the subsequent additional charge.

Land Registry fees

As is the case with notary fees, Land Registry fees also rise when a mortgage is involved because the loan must be registered as a charge against the property.

Paperwork costs

The bank will employ a *gestoría* (professional company providing paperwork services) to pay the mortgage taxes and fees and to register the title deeds. The cost of this varies depending on the size of the mortgage loan and the work involved. Some banks operate with a particular *gestoría* and give buyers no opportunity to choose an alternative.

Insurance policies

When you take out a mortgage in Spain, you must also contract insurance for the property covering both the building itself (*continente* in Spanish) and its contents (*contenido*). The bank supplying the mortgage loan will offer to provide insurance cover as well, you are not obliged to take out insurance with them, but in practice, you are likely to get better terms and conditions for your mortgage if you do.

Your bank may also offer life and mortgage insurance policies. Neither are mandatory for a mortgage loan in Spain, but you may wish to look into these for additional financial security. Always check the terms and conditions of insurance policies and beware of clauses that oblige you to take out a policy with your bank for the duration of the loan. Insurance offered by banks is not necessarily the cheapest on the market.

If you are a seller, you will also need to obtain an energy efficiency certificate of the property to be transferred and bear its cost, which may vary depending on the type of property.

Can the seller get his money out of your country after the transaction (repatriation of funds)?

There is no restriction to the repatriation of funds. However, in the case of transfers of



real property situated in Spanish territory by taxpayers without a permanent establishment in our Country, the purchaser shall be obliged to withhold and pay to the Tax Authorities 3% or make the appropriate payment on account of the agreed consideration, as payment on account of Non- resident Income Tax imposed on the capital gain obtained from the sale of the property. If the amount withheld exceeds the effective tax due, the non-resident taxpayer is entitled to claim reimburse of such excess.

If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be considered?

The tenant has a pre-emption right over the leased property unless expressly waived. Once this is cleared, property may be sold to any other third party. The buyer may not terminate the lease agreements currently in force as the transfer of a property means that the acquirer succeeds in all of the previous owner's rights and obligations. According to the Spanish Urban Leasing Act ("*Ley de Arrendamientos Urbanos*"), lease agreements in force can only be terminated without cost when the property is going to be used to live by its owner or its family.

Are you allowed to change the use of a building from residential use to office space or do you need official approval for doing so or is it not allowed at all?

Every property has a "license of use" indicating if it is for residential or commercial use. This license may be changed or amended by approval of the Town Hall (according to the Urban Plan and the individual features of the property) and by approval of the "ownership association"

("comunidad de propietarios") if the building has more owners.

To get a feeling as to the amount of costs involved, what costs should be considered if a foreign investor bought an existing building (and land) for a purchase price of EUR 5 million, in particular.

- **notarial costs:** Notary Public's costs will be around EUR 10,000-25,000.
- **land register:** Inscription of the transfer of Property before the relevant Land Registry may be around EUR 5,000-12,500.
- **real property transfer tax:** EUR 200,000 (4%) - 500,000 (10%) Value Added Tax general tax rate if applicable: EUR 1,050,000 (21%)

Public Document Tax when transaction is subject to VAT: EUR 20,000 (0.4%) - 75.000 (1.5%)

- **advising lawyer (due diligence):** EUR 5,000-8,000, depending on the type of property. Due diligence over the land subject to zoning regulations would be more costly as this is a complex area of the law.
- **estate agent:** Estate agent usual rate may vary between 3% and 8% of the transaction value, depending on the case.
- **others:** It depends on the financing of the transaction, for illustrative purpose, read question 8 above (e.g., *Paperwork "gestoría" costs, insurance costs*).

IV. CLOSING COSTS/ADJUSTMENTS

As a result of the abovementioned, Spanish real estate operations imply some additional costs consisting in Notary and Registry fees that ensure the effectivity of the conveyance



of the property. These amounts are, usually, borne by the buyer.

However, the main cost that private individuals must take into consideration is the Property Transfer Tax [*Impuesto de Transmisiones Patrimoniales (ITP)*], which taxes acquisitions for consideration of goods. The Property Transfer Tax varies depending on the region where the property is located, as each autonomous community in Spain has the authority to set its own rates within a specified range. Generally, the tax rate ranges from 6% to 10% of the property's purchase price or market value, whichever is higher. This variability can significantly affect the total cost of acquiring the property.

V. OTHER CLOSING DOCUMENTS

Energy Performance Certificate (*Certificado de Eficiencia Energética*): Required by law, this document can influence the marketability and value of the property.

Occupancy Certificate (*Cédula de Habitabilidad*): Necessary for confirming that the property meets all legal standards for habitation, crucial for both residential and commercial investments.

Title Insurance (*Seguro de Título*): While optional, it provides additional protection against title defects, an important consideration for foreign investors who may be less familiar with the Spanish legal system.

Activity License (*Licencia de Actividad*): *when the property to be acquired is not residential, e.g. a commercial premise or office building.*

VI. RECORDING REAL ESTATE DOCUMENTS

Regarding the necessity of recording real estate documents, it is important to keep in mind that, despite having conveyed the real estate property according to the (*teoría del título y del modo*) system, the new owner of

the property will not be able to enforce its legal title as holder of the property until the Public Deed of the property transmission is correctly registered in the Land Registry. Thus, the recording of the Public Deed grants *erga omnes* effect regarding the real estate property and the registered owner of it can enforce its position against any third party.

To sum up, the Land Registry ensures that the buyer's ownership is legally recognized and protects against future claims. The registration process usually takes 15 business days.

In the event of financing the operation, the mortgage registration is mandatory. Therefore, the creation of this lien on the property is not effective until the mortgage registration is fulfilled.

VII. COSTS FOR HOLDING REAL ESTATE

What tax aspects are directly involved when holding a property, for example yearly land tax after the transfer of ownership and what is the percentage of it?

- Property Tax ("*Impuesto sobre Bienes Inmuebles – IBI*") is a yearly paid tax, managed by the Town Halls and calculated using the property cadaster value estimated by the Cadastral Office (Dependent of the Ministry of Economy/Tax Authority). The effective tax rates vary from each Town Hall as they are entitled to fix their own final rates within the range from 0,4% to 1,1% of the cadastral value. Non-payment can lead to legal action, as it is a tax with real affectation, i.e., if it is not paid, the property can be seized by the Town.
- Special Tax on Property of Non-Resident Entities. Foreign entities holding real estate which do not fall within the following categories shall pay this annual



tax. The taxable consideration is 3% of the real property cadastral value. Foreign entities exempt from this tax are: i) international public Institutions and foreign States, ii) entities entitled to apply a double tax treaty entered into with Spain containing information exchange clause, provided that the final individuals direct or indirectly holding the share capital of such entity are also resident in a country with a double tax treaty entered into with Spain containing information exchange clause, iii) foreign entities carrying out economic activities (other than mere holding or leasing of immovable property) in Spain on a regular basis; iv) listed companies and v) non-profit organizations recognized by countries with a double tax treaty entered into with Spain.

- Wealth Tax (*"Impuesto sobre el Patrimonio"*). Under certain circumstances when the commercial real estate cannot be regarded as engaged in business or economic activities for the purposes of the Wealth Tax, this fiscal charge is imposed annually on individuals holding property in Spain. The effective tax rate varies depending on the value of the estate wielded by the individual in Spain. The tax is only applicable to individuals, not to entities holding the commercial property. However, there is some controversy at the moment between the Spanish Government and certain regions like Madrid and Andalucía where they had implemented certain tax allowances which are now challenged by the Spanish Government.
- Local Taxes for public services such as i.e., garbage collection; right of use of public property, etc. are generally payable annually. Considerations and

prices vary from each Town Hall where the property is located. These local taxes are payable by the real estate owner.

Owners' Association Costs (Gastos de Comunidad): Applicable to condominium ownership, these comprises costs of maintenance of common areas and services. They can significantly impact the profitability of the investment.

Rental income tax on rental income

Property Insurance

VIII. FOREIGN INVESTORS

Relevant regulations

When acquiring Spanish real estate properties, either for personal or investing purposes, foreign investors must navigate several crucial regulations:

Spanish Civil Code (Código Civil Español): Provides the foundational legal framework for property rights and contractual obligations. Understanding its provisions is essential for ensuring compliance in property transactions.

Mortgage Law (Ley Hipotecaria): Ensures legal security in transactions involving mortgages. Foreign investors must be aware of the implications of mortgage registration, especially regarding priority of claims and the enforcement of mortgage rights.

Urban Planning Laws (Leyes de Ordenación Urbanística): Regulate land use and development. Foreign investors must conduct due diligence on whether a property complies with local planning laws, as non-compliance can lead to significant financial penalties or limitations on property use.



Tax Laws: Foreign investors must also consider potential double taxation issues, depending on their country of residence.

- Property Transfer Tax (ITP): Typically, between 6% and 10% of the purchase price, depending on the region of Spain.
- Capital Gains Tax (*Impuesto sobre el Incremento del Valor de los Terrenos de Naturaleza Urbana*): Applies to the profit made on the sale of a property.

Also, there are two requirements that it is important to highlight:

Número de Identificación de Extranjeros (N.I.E.) is a unique identification number assigned to foreign individuals who engage in activities of tax, social, or economic significance in Spain. Regulated by Ley 36/2006, it serves as a tax identification number for foreigners. To obtain an N.I.E., individuals must provide an apostilled copy of their passport, an apostilled notarized power of attorney authorizing the application, and proof of the necessity for the N.I.E. In urgent cases, a temporary N.I.E. may be issued, and the N.I.E. does not entail any ongoing obligations.

The **Número de Identificación Fiscal (N.I.F.)** is required for foreign legal entities involved in economic activities or with fiscal relevance in Spain, as per **Ley 58/2003 (Ley General Tributaria)**. This number is crucial for fulfilling tax obligations. To secure an N.I.F., entities must present an apostilled document proving their existence, the N.I.E. of their representative, an apostilled notarized power of attorney, and proof of the necessity for the N.I.F. A temporary N.I.F. can be issued in urgent situations to commence activities.

Why is it a good time to invest in Spain?

- **directly in real estate:** during the last two years, prices have gone down 30% on average so far and analysts believe they will stabilise by the end of 2023. It is an excellent time to invest directly in real estate. Even more, Spanish Banks provide mortgage financing at reasonable rates.
- **through other clear and secure financial products?** Current economic situation seems to have understood that Spain does not offer this kind of products at the moment. However, large multinational corporations based in Spain but with great activity overseas are having an excellent performance and keep growing each year (banking, telecommunications, energy).
- **In commercial real estate or in residential property?** The current situation invites us to invest in real estate transactions in many different ways (Sale-and-leasebacks, leasing, and sub-leasing, etc.).

Particularly in Madrid, the education sector is very active at the moment, transforming offices buildings into college buildings in the city centre.

The living sector is attracting a lot of investment, especially in co-living and senior living. The logistics sector has increase available space by 1.6 million square meters in 2022.

Hotels have been reactivated since 2021 expecting to open 130 new hotels in Spain by 2024 Agribusiness is also increasing every year.

Data centres also experimenting high potential.



Back to office after pandemic and retail are recuperating 2019 figures.

Energy optimisation and procurement strategies to reduce cost and manage risk are producing a lot of building refurbishment and transformation into A category buildings.

Is any individual person and legal entity allowed to buy property in Spain or are there restrictions with regard for example to nationality or registered office or legal entities? If there are restrictions, are there ways to organize a domestic entity for the purchase on a valid legal structure notwithstanding?

Spain has no restrictions to investment in this sense; all the same, investments from financial havens will be subject to notification to Spanish Authorities (previous to purchase). When completing transaction, current anti money-laundry regulations require the Notary Public to identify and record every (UBO) individual person holder of more than 25% of the legal entity party of the transaction (including all individuals' holders of the legal entities which hold the company, and so on).

Just to mention that the trusts, as legal entities, are not recognized under Spanish law. In this sense it is advisable to use other corporate figures to invest (especially in real estate as the Land Registry would not register transaction or property as the trusts are unknown to the Registrar).

If a foreign investor buys a plot of land in Spain to run a business there, what kind of official approvals are needed and what time and effort are needed normally to get it?

To invest in Spain, and operate in general, foreign companies need to obtain a Spanish Tax Id. No. ("*NIF*"), needed to operate in

Spain. This number may be obtained by filing a standard form before the Tax Authority and provisional number –valid to operate- is obtained in a short term (several days). Definitive number is issued within a month. Depending on the business that the foreign investor is willing to conduct, further licence may be needed. If the investor is an individual, he or she shall obtain a ("*N.I.E.*").

Do foreign investors have to be entered into a transparency register or how are money laundering aspects to be checked and verified for the relevant authorities?

Regulation of foreign investment in Spain is now more complex, which is why it is necessary to obtain legal advice to determine whether a transaction is subject to authorization or whether there are additional requirements. This counsel is crucial if we consider that the lack of prior authorization results, among others, in the investment being void and having no legal effect, as well as the application of significant fines.

On September 2018, Law 10/2010 on the prevention of money laundering and the financing of terrorism was urgently modified to implement the 4th Anti-Money Laundering Directive, in order to comply with the ultimatum of the European Union. Also Order JUS/319/2018 of 21 March was issued to create the Spanish Transparency Register (*Registro de Titularidades Reales*). Additionally, although a new single Register of Real Property Ownership has been introduced by Royal Decree-Law 7/2021 of 27 April, it has not yet been implemented, as further regulation is necessary and is still pending to be passed.

Legal entities are responsible for filing UBO information with the Transparency Register (*Registro de Titularidades Reales*) when filing



their annual accounts. Breach of the obligation to identify the UBO under Law 10/2010 may constitute a serious or minor infringement, entailing sanctions.

Assistance to foreign investors in Spain

López-Ibor Abogados S.L.P. personally knows several estate agents and advisors and works closely with them. These agents and advisors are well-known top-tier real estate firms who now the market and may advise when and where great opportunities can be found.

López-Ibor Abogados S.L.P. has also advised numerous clients throughout the entire real estate development process.

López-Ibor Abogados S.L.P. has advised in a great number of successful real estate transactions in all legal aspects including the drafting of all kind of property transfer agreements, finance of the transaction, tax issues, administrative requirements, and registration of the transaction.

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