

Law and Practice

Contributed by Griffiths & Partners (Providenciales - HQ)

Authors

Griffiths & Partners offers more than 20 years' experience dealing with real estate in the Turks and Caicos Islands, and overseas. The real estate team assists with the sale and purchase of residential and commercial property on the Islands, from individual parcels of land to multimillion-dollar villas, as well as advising on large-scale commercial developments, mortgages and financing, leasing and share transfers, and joint venture agreements. The firm regularly advises on development agreements with the government and acts for local, institutional and overseas lenders in relation to secured lending in the Islands. There are no restrictions on foreign ownership of property on the Islands and the firm is able to lead its overseas clients through all the stages of identifying, financing and acquiring property. The firm provides guidance and close support throughout the development process, from site acquisition and planning, through the construction stage to completion, and thereafter the management and onward disposal or letting of the property.

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Chris Smith qualified as a UK solicitor in 2014 and worked at Macfarlanes LLP in London until joining Griffiths & Partners in early 2020. Chris

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Joanna Martinez is a property, real estate and transactional lawyer with experience that covers the lease, sale, and purchase of various types of property, together with corporate/commercial transactions. She covers all aspects of real estate and corporate/ commercial law. A member of the Griffiths & Partners team since 2019, Joanna was admitted as an attorney in the Turks and Caicos Islands in 2018.

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1 General

1.1 Main Sources of Law

The main sources of real estate law in the Turks and Caicos Islands (the Islands) are local legislation, local case law and case law from Commonwealth jurisdictions.

1.2 Main Market Trends and Deals

In recent years, the real estate market in the Islands has seen huge growth in the development of managed villa properties, such as Beach Enclave, Wymara Villas, Blue Cay Estate, H2O Lifestyle Resort, the Residences by Grace Bay Resorts and others, along with individual ultra high-end luxury bespoke villas. The Ritz-Carlton Hotel (which includes two resident towers) also opened in 2021.

There are a number of large-scale mixed condo/villa developments which have already completed phases and have opened to residents, such as Grace Bay Resort's Rock House and South Bank residential resort and marina, with others in the pipeline or under construction, including The Strand, the Bight Hotel, and Vista/Hyatt ANDAZ. The real estate market continues to grow rapidly, producing strong sales and increasing land prices.

We are now also starting to see increased activity over on North and Middle Caicos, with plans to revolutionise Sandy Point into a resort and marina, together with some other hotel and villa community projects, which will further boost the real estate market in the Islands.

Luxury condos along the famous Grace Bay Beach, and in Leeward as well as on private islands such as Parrot Cay and Ambergris Cay, continue to be in high demand at increasing prices.

The Islands have recovered quickly following the COVID-19 pandemic, with tourist numbers significantly higher than pre-pandemic levels, and expected to keep rising. We are also continuing to see a number of purchasers who are seeking a safe-haven second home should we experience a comparable pandemic in the future.

The real estate market continues to see considerable activity and property prices are continuing to rise year on year. In 2022, USD553 million of sales were made in the Islands, which is the second highest sales year ever (after 2021).

1.3 Impact of Disruptive Technologies

Disruptive technologies such as blockchain, decentralised finance (DeFi) and proptech are rarely (if ever) used in the Islands. It is highly unlikely that any

of these technologies will have a significant impact in the Islands in the next 12 months given the nature of the real estate market; however, it will be interesting to see how things develop in the coming years.

1.4 Proposals for Reform

There are currently no proposals for reform.

2 Sale and Purchase

2.1 Categories of Property Rights

Real estate can be held as freehold title absolute or leasehold.

The Strata Titles Ordinance allows for the registration of a strata plan against a land parcel to create individual strata lots, each of which is registered with its own derivative title, with the remainder held as “common property” by a strata corporation. Strata titles are used as the preferred structure for condominium developments.

2.2 Laws Applicable to Transfer of Title

All transfers of title of real estate are primarily governed by the Registered Land Ordinance.

2.3 Effecting Lawful and Proper Transfer of Title

Transfers of real estate must be registered at the Turks and Caicos Islands Land Registry. Title is acquired, and only perfected, upon registration.

The land register is conclusive as to ownership, appurtenant rights and matters encumbering the title (with the exception of certain “overriding interests”), and it is state guaranteed (although it can be rectified to deal with matters such as error and fraud). Title insurance is not necessary, nor is it available in the domestic market.

Due to the [COVID-19](#) pandemic, there were some limitations in the functionality of government offices and in-person availability for real estate transactions. This resulted in new procedures for the completion of transactions, such as payments being moved to online payments and some transactions being completed virtually. However, due to these limitations, the turnaround time for completion of registration increased slightly.

2.4 Real Estate Due Diligence

The purchaser's attorney will typically:

- review the title documents and advise on any adverse matters that would affect the intended use and enjoyment of the property;
- review any leases, if the property is subject to leases;
- raise any relevant enquiries with the seller (ie, about the state and condition of the property, any disputes, compliance with laws, overriding interests, and services);
- consider whether any additional enquiries should be raised with public or other bodies (depending on the nature of the transaction); and
- consider recommending a physical inspection or survey of the property by the purchaser and a professional.

During the pandemic, with the international borders being closed, clients were purchasing property on the basis of remote viewings. Now that travel has opened up again, most clients are able to visit Turks and Caicos to view the property in person and instruct any inspections and surveys as necessary.

2.5 Typical Representations and Warranties

Typically, a property sale and purchase agreement will contain a basic set of warranties as to good title and the absence of knowledge of any claims or disputes, but generally the position is that purchasers must satisfy themselves as to the state and condition of the property, its suitability for the intended purpose and that the necessary consents for development or existing structures are available and/or in hand. This position has not changed since the [COVID-19](#) pandemic.

Common purchaser remedies for misrepresentation or breach of warranty would include an action for damages, misrepresentation and/or rescission of the agreement, and a refund of any deposit paid. We do not typically see time limits or liability caps in respect of representations and warranties given

by a seller in a contract. Representation and warranty insurance is not available in the domestic market.

2.6 Important Areas of Law for Investors

Any investor should consider the primary sources of law, including the Registered Land Ordinance, the Planning Ordinance and the Stamp Duty Ordinance. Other laws may apply, depending on the nature of the transaction and how it is structured.

While actual title to land must be held by an individual or a Turks and Caicos limited liability company, there are generally no restrictions on foreign ownership of real estate in the Islands.

2.7 Soil Pollution or Environmental Contamination

Given the nature of the Islands, soil pollution and environmental contamination are not currently commonly encountered issues. Although uncommon, environmental liabilities can be dealt with contractually between the parties by way of warranty and representation.

The Planning Ordinance gives powers to the Planning Department to serve stop/enforcement notices where it considers that the amenity of an area is adversely affected by reason of, inter alia, the condition of any structure or by the condition of the land. Notice can be served on the owner or occupier of the land or building, or the person responsible for causing the condition of the land or building.

There is currently no material environmental legislation and therefore sale contracts are typically silent in this regard.

The National Parks Ordinance establishes whether land forms part of a national park or is a site of historical interest. If so, the ordinance sets out certain limitations on development of such land.

On application for planning permission, the director of planning may require an environmental impact report/survey to be carried out.

2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

There is a zoning plan for the Islands that is maintained and can be referred to in order to ascertain the applicable zoning. Any development of land requires a grant of planning permission. Development includes not only the undertaking of physical development but also change in the use of any building or other land, or the subdivision of land.

Development Agreements

It is common for larger developments to seek and enter into development agreements with the Crown and government to assist with a development project. The level of concessions and assistance afforded in such agreements will be determined by reference to general development guidelines, and an assessment of the benefits of a development to the Islands. The first port of call for parties wishing to secure development concessions or assistance would be the Islands' investment agency, Invest TCI.

2.9 Condemnation, Expropriation or Compulsory Purchase

The government may compulsorily acquire any land, but this is not common. Compensation is payable, typically at the property's market value.

2.10 Taxes Applicable to a Transaction

Stamp duty is payable on:

- the transfer of land, which as a matter of contract is usually paid by the buyer, although the law makes both the seller and buyer liable;
- the grant of a new lease, which as a matter of contract is usually paid by the tenant;
- a debenture or a charge (mortgage) over land, which is usually paid by the borrower; and
- the transfer of shares in a landholding company (share transfer duty, rather than stamp duty), in which duty as a matter of contract is usually paid by the buyer, although the law imposes the liability on the company whose shares are being transferred.

Stamp duty on land is paid on the consideration stated in the instrument, or the market value of the property conveyed or transferred, whichever is higher.

The current rates of stamp duty on a purchase of land or property in the **Island's** commercial and tourism hub, Providenciales, (the rates vary for land or property on other islands in the Turks and Caicos Islands) are:

- USD25,000 to USD250,000 – 6.5%;
- USD250,001 to USD500,000 – 8%; and
- USD500,001 and above – 10%.

Stamp duty payable on a land charge is 1% of the secured sum up to a maximum of USD50,000.

The current rate of stamp duty payable on leases is as follows.

- If the term is not defined or is uncertain, or where the term is for seven years or less:
 - a) USD50 where the annual rent exceeds USD2,000 but does not exceed USD5,000; and
 - b) 1% where the annual rent exceeds USD5,000.
- If the term exceeds seven years but does not exceed 35 years:
 - c) USD2 if the annual rent does not exceed USD100;
 - d) USD10 for annual rent over USD100 but less than USD500;
 - e) USD40 where the annual rent exceeds USD500 but does not exceed USD2,000;
 - f) USD100 where the annual rent exceeds USD2,000 but does not exceed USD5,000; and
 - g) 2% where the annual rent exceeds USD5,000.
- If the term exceeds 35 years:
 - h) USD8 if the annual rent does not exceed USD100;
 - i) USD40 for annual rent over USD100 but less than USD500;

- j) USD160 where the annual rent exceeds USD500 but does not exceed USD2,000;
- k) USD400 where the annual rent exceeds USD2,000 but does not exceed USD5,000; and
- l) 8% where the annual rent exceeds USD5,000.

Transfer duty on the transfer of shares in a landholding company is calculated as $A/B \times C \times 8\%$, where A = the total number of shares being transferred, B = the total number of issued shares in the landholding company concerned and C = the fair market value of the land owned by the company in the Islands.

Limited exemptions include:

- a transfer by way of gift to, or in trust for, the spouse, parent or child of the person conveying the land;
- where the permanent secretary of finance certifies that the lease or transfer is not made for valuable consideration to a sibling or grandparent or grandchild;
- transfers to a group company; and
- transfers between trustees where no change in beneficial ownership occurs.

2.11 Legal Restrictions on Foreign Investors

There are generally no restrictions on foreign ownership of real estate in the Islands, although certain formalities may apply to different types of purchasers.

3 Real Estate Finance

3.1 Financing Acquisitions of Commercial Real Estate

The most typical forms of security for the financing of real estate are:

- legal charge;
- debenture (corporates only);

- legal or equitable mortgage/charge over shares in a company that holds the real property;
- assignment of any rental income;
- assignment of any sale contracts and/or any development contracts (usually for developments);
- assignment of insurance proceeds; and
- guarantees from directors, shareholders, related companies or individuals.

All legal charges over real property must be registered at the Land Registry and all security interests granted should be recorded in the company's register of mortgages and charges, and recorded with the Deeds Registry.

Assignments by way of security are usually created by deed and notice must be given to the counterparty to perfect the security.

Due to the relatively small size of the Turks and Caicos **Islands'** real estate market, it is generally not common to see large portfolios of real estate held by funds or investment trusts.

3.2 Typical Security Created by Commercial Investors

For the most typical forms of security for the financing of real estate, see **3.1 Financing Acquisitions of Commercial Real Estate**.

3.3 Restrictions on Granting Security Over Real Estate to Foreign Lenders

There are no restrictions on granting security over real estate to foreign lenders.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Stamp duty is payable at 1% of the secured amount (with a current cap on stamp duty on security instruments of USD50,000) on debentures and legal or equitable mortgages, or charges for immovable or movable property.

Where the amount of money to be advanced on the security of any property by way of mortgage is unlimited, the security is to be available for such an

amount as the ad valorem duty paid thereon extends to cover. If any advance is made in excess of the amount covered by that duty, the original instrument may be stamped up with the additional ad valorem duty required to cover the total amount then to be secured.

A mechanism exists to avoid “double duty” on separate security instruments that secure the same debt. In such cases, the ad valorem duty may be paid on the primary security instrument and the other security instruments can be described as “collateral”, “auxiliary”, “additional” or “substituted”, and attract a fixed rate of duty of USD10.

Most other instruments and documents are subject to a fixed rate of stamp duty in comparatively nominal amounts. Registrable instruments (such as legal charges over real estate) are also subject to relatively immaterial registration fees.

It is customary for stamp duty and registration fees to be paid by the borrower.

3.5 Legal Requirements Before an Entity Can Give Valid Security

There are no legal rules or requirements that must be complied with before an entity can give valid security. They must, however, be empowered to do so or not restricted from doing so by their constitutional documents. Often only board approval is necessary, although the entity’s constitutional documents should be checked for any further requirements or approvals. It would be prudent to obtain shareholder approval in any case where an entity is guaranteeing or pledging assets as security for another party’s liabilities.

3.6 Formalities When a Borrower Is in Default

In terms of charges registered against Turks and Caicos real estate, the security is enforceable pursuant to its terms in conjunction with the provisions of the Registered Land Ordinance.

The Registered Land Ordinance provides a statutory power of sale by public auction, power to lease and power to appoint receivers. Commonly, a legal charge will vary and extend the statutory provisions to give the lender wider powers. To the extent that the powers contained in the legal charge vary or are in addition to those created by the Registered Land Ordinance, they may

not be acted on without the order of the court, and a court order is required to exercise a power of sale by private treaty. If a court order is required, this can typically take up to **three** months to obtain.

Where a lender has entered into a facility with a company, as opposed to an individual borrower, a separate fixed and floating charge, known as a debenture, is taken over all assets of the borrower company and contains wide ranging powers including the appointment of a receiver. This provides a lender with a quicker route to gaining control in the event of default. We typically also see a share pledge agreement entered into between the parties so that if the borrower defaults, the lender can enforce the provisions of the share pledge agreement and have the shares in the borrower company transferred to it. The lender then becomes the legal holder of the shares in the company that owns the property and circumvents the need to obtain a court ordered power of sale if they wish to sell the property by private treaty. This route is **seldom** used as a transfer duty of 8% of the market value of the underlying real estate assets would be payable on the transfer of the shares.

Priority of legal land charges is determined by registration at the Land Registry.

The lender's ability to foreclose or realise on collateral on real estate lending is not recognised under local law. A foreclosure can be achieved in effect where the debt equals or exceeds the market value of the underlying assets, but as with a share transfer, the transfer of real estate attracts a duty (of 10%) and is rarely used as it is not an efficient route to enforcement.

3.7 Subordinating Existing Debt to Newly Created Debt

Generally, a debt secured by a legal charge properly stamped and registered at the Land Registry will, in respect of the proceeds of realising such asset, rank in priority to any subsequently registered legal charge, any floating charge or any unsecured debt. It is possible for lenders to subordinate debt contractually, although this is not common.

3.8 Lenders' Liability Under Environmental Laws

There are no statutory provisions in relation to environmental liability in the Islands. However, once the lender has taken possession of the premises, a

civil action for environmental harm can be brought. A lender can also seek an environmental indemnity from the borrower. Because of the **Islands'** lack of heavy industry, however, environmental issues have not, thus far, been a major legal concern in real estate transactions.

3.9 Effects of a Borrower Becoming Insolvent

Security interests created by a borrower in favour of a lender will not be rendered void if the borrower becomes insolvent. Security may, however, be set aside; eg, where it constitutes a preference or a transaction at an undervalue.

3.10 Consequences of LIBOR Index Expiry

Interest rates on most domestic lending transactions are calculated by reference to a domestic bank's prime lending rate. To the extent that facilities reference the London Interbank Offered Rate, lenders and borrowers would be advised to review their terms to ensure that an alternative method for calculating interest has been included.

4 Planning and Zoning

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

The main legislation is the Physical Planning Ordinance and there is a development plan in effect for the Islands that is reviewed and updated periodically. Land in the Islands is also subject to zoning restrictions.

Definition of "Development"

Any development of land requires a grant of planning permission. "Development" encompasses the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land, or the subdivision of land, but is subject to a number of exclusions, including any works for maintenance, improvement or other alteration that only affect the interior of a building or do not materially affect the external appearance of the building.

Planning Permission

Planning permission may be refused, granted unconditionally or can be subject to such conditions as the relevant authority deems fit.

The Planning Department is responsible for reviewing and considering applications to obtain planning permission. The director of planning is empowered to take enforcement action where necessary.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

Planning permission is required for any proposed development or material change in use of any building or land. However, planning permission will not be necessary if certain exclusions apply; eg, if the works are carried out for maintenance, improvement or other alteration, and affect only the interior of the building or do not materially affect the external appearance of the building.

A permit is also required under the Building Code Regulations before the construction or change to a building or structure or any work that requires planning permission is carried out. All such works must be carried out in the manner authorised by the permit.

On completion of any development, a certificate of occupancy is issued which confirms that the works have been carried out in accordance with the planning permission and Building Code Regulations and that the property can be legally occupied.

4.3 Regulatory Authorities

Responsibility for the regulation of development and designated use of individual parcels of real estate lies with the Planning Department.

4.4 Obtaining Entitlements to Develop a New Project

An application for planning permission may need to be advertised in the newspaper and the Turks and Caicos Islands Government Gazette, and notices may need to be posted on the land as well as sent to adjoining owners within 200 feet. Generally, this notification regime does not apply to routine applications to build a house, but rather to larger-scale commercial and residential developments, changes of density, changes of use and so on.

Third parties have the right to object and objections will be taken into account by the planning director when considering applications.

4.5 Right of Appeal Against an Authority's Decision

An applicant can appeal a planning board decision. Such appeals are heard by the Planning Appeal Tribunal.

4.6 Agreements With Local or Governmental Authorities

Planning permission may be granted subject to such conditions as the relevant authority sees fit. A prudent developer would engage with utility suppliers at the outset of a project to incorporate their input into their plans. Planning permission runs with the land, although any agreements will be personal to the parties.

4.7 Enforcement of Restrictions on Development and Designated Use

Where any development of land (other than material changes in use) has been carried out without the applicable planning permission or not in compliance with any conditions attached to a grant of planning permission, the director of planning may, within six years of the alleged breach, serve an enforcement notice on the owner or occupier of the land.

Non-compliance with an enforcement notice is an offence and attracts a fine.

If the steps required to be taken by the enforcement notice are not carried out within the allotted period, the director of planning may enter the property and take those steps, and may recover the costs as a debt from the owner of the land.

5 Investment Vehicles

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Title to real estate must be held by a Turks and Caicos limited liability company or by a natural person, although the upstream ownership structure is not regulated.

5.2 Main Features of the Constitution of Each Type of Entity

A Turks and Caicos Islands company's constitutional documents will set out its governance framework, including the powers of its board of directors, who ordinarily manage the day-to-day operation of the business. In relation to a company incorporated as a company limited by shares, the liability of its shareholders is limited to the amount (if any) unpaid on their shares.

5.3 Minimum Capital Requirement

There are no minimum capital requirements for a company.

5.4 Applicable Governance Requirements

The company will typically have one or more directors who manage the day-to-day business of the company. The constitutional documents set out the governance framework, along with the Companies Ordinance (as revised).

5.5 Annual Entity Maintenance and Accounting Compliance

Turks and Caicos Islands companies are obliged to pay annual fees, which typically amount to USD1,500 to USD2,000, inclusive of the company agent and government fees.

6 Commercial Leases

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

A person or company wishing to occupy another party's real estate for a limited period may do so by contractual licence with the owner or, more commonly, by entering into a lease.

6.2 Types of Commercial Leases

Given the size of the jurisdiction, there are no specific different types of leases.

6.3 Regulation of Rents or Lease Terms

Rents and lease terms are freely negotiable. Certain landlord and tenant covenants are implied in a lease by Sections 52 and 53 of the Registered Land Ordinance, unless otherwise expressly provided for in the lease.

In the wake of the COVID-19 pandemic, no legislation was enacted that affected the terms of lease agreements in regard to rent relief, late-payment assessments or eviction moratoriums. However, some landlords, both residential and commercial, gave their tenants rent reductions or abatements as an incentive to continue occupying the property while the pandemic was at its height.

The Turks and Caicos government did assist persons in the hospitality sector affected by the closure of the airport and hotels by granting a stimulus cash grant.

6.4 Typical Terms of a Lease

A lease term of five years (or less) is typical.

The tenant is typically responsible for repairing the demised premises and the landlord is usually under obligation to insure and maintain the building and the common parts, and will usually recover these costs from the tenant in addition to the rent.

Rent is commonly paid monthly, in advance or arrears.

6.5 Rent Variation

It is typical for commercial leases to make provision for rent to be reviewed.

6.6 Determination of New Rent

Typically, rent is reviewed in relation to the market rent at the time of the review, based on a set of assumptions and disregards.

6.7 Payment of VAT

No value added tax (VAT) is payable in the Turks and Caicos Islands.

6.8 Costs Payable by a Tenant at the Start of a Lease

Stamp duty (see **2.10 Taxes Applicable to a Transaction**), any registration fees (nominal) and a security deposit are typically paid by the tenant at the start of the lease.

6.9 Payment of Maintenance and Repair

The landlord typically recovers their costs from the tenant through rent or communal service charges.

6.10 Payment of Utilities and Telecommunications

Where tenants have not purchased their electricity, water, gas and telecommunications services directly from suppliers, they will typically pay a share of these services provided by the landlord by reference to the size of their demised premises, or the landlord will separately meter each premises.

6.11 Insurance Issues

Typically, the landlord will be responsible for insuring the building and common parts (passing costs on to tenants through rent or common area charges) and the tenant will insure the contents. Typical insured risks would include fire, earthquake, hurricane, flood and civil commotion.

Business interruption insurance policies are not available in the domestic market in order for tenants to recover rent payments or other costs as a result of office closures and clean-up costs during the [COVID-19](#) pandemic.

6.12 Restrictions on the Use of Real Estate

It is usual for a landlord to restrict the use of the demised premises and common areas. Planning permission and zoning constraints would also apply.

6.13 Tenant's Ability to Alter and Improve Real Estate

A lease will ordinarily prohibit the tenant from making alterations or improvements to the real estate without the prior consent of the landlord.

6.14 Specific Regulations

There are no specific regulations and/or laws that apply to leases of particular categories of real estate. Parties generally have the freedom to contract as they wish, although the Registered Land Ordinance does imply certain covenants on the landlord and tenant, unless modified in the lease.

6.15 Effect of the Tenant's Insolvency

The terms of the lease usually allow a landlord to terminate the lease if the tenant becomes insolvent. At the time of writing, specific insolvency legislation is in the course of being implemented.

6.16 Forms of Security to Protect Against a Failure of the Tenant to Meet Its Obligations

It is common for a landlord to take a security deposit at the outset of a lease and the landlord may require guarantees from directors, shareholders or related companies.

Security deposits are freely negotiable but would likely include at least one rental payment. Security deposits are not regulated and so the terms of the lease would govern.

6.17 Right to Occupy After Termination or Expiry of a Lease

Unless expressly provided for in the lease, tenants do not have security of occupation or a right to renew at the end of the term. However, where a tenant continues to occupy the premises with the consent of the landlord after the termination of the lease, the tenant will be deemed to be a tenant holding the premises on a periodic tenancy on the same conditions as those of the expired lease, **in so far** as those conditions are appropriate to a periodic tenancy.

6.18 Right to Assign a Leasehold Interest

There is an implied term in the Registered Land Ordinance CAP 9.01 that tenants are only permitted to assign their leasehold interest with the written consent of the landlord which should not be unreasonably withheld. However, it is up to the landlord and the tenant to agree the position, eg, some leases may include an absolute prohibition on assignment.

To the extent assignment is permitted, the landlord may be able to impose certain conditions, eg, the assignee giving a direct covenant to the landlord to comply with the tenant covenants in the lease or obtaining a suitable guarantee.

The landlord may be able to withhold consent in certain circumstances, eg, if there is a material breach of the lease or, in the landlord's reasonable opinion, the assignee will not be able to comply with the tenant covenants in the lease.

6.19 Right to Terminate a Lease

Typically, a lease would provide the option for the landlord to terminate the lease in the event of a material breach by the tenant (subject to any negotiated cure periods) or the insolvency of the tenant. The landlord or tenant would ordinarily be given the right to terminate the lease if the leased premises are substantially destroyed or damaged and not repaired within a specified period. Tenant break options are generally uncommon, but could be negotiated.

6.20 Registration Requirements

Leases are presented for registration in the prescribed form or any form approved by the registrar. They are accompanied by a statement of truth for the value of the purchase price or other consideration and an acknowledgement of receipt of consideration. Leases are only deemed to have been properly executed if signed by a natural person (for an individual) or, in the case of a corporation, if the common seal is affixed on the lease in the presence of an officer/member of the corporation or, if the corporation does not have a common seal, it is signed by an authorised person.

Leases are recorded on the register of title if they are for:

- a specific period of two years or more;
- for the life of the lessor or lessee; or
- if a lease is for a term of less than two years but contains an option whereby a further term is granted, which would result in a total term exceeding two years.

Leases that are for a period of less than two years or that are not compulsorily registrable but which are capable of being registered, can be registered if they are in a prescribed form. If the lease is a sublease, every lease superior to that sublease should be in the prescribed form and registered in priority to the sublease.

For the registration of the lease on the register of title, there is a fee of USD25 and it is usually paid by the tenant.

6.21 Forced Eviction

It is common for a lease to contain forfeiture clauses that allow the landlord to evict the tenant. However, the tenant has a statutory right to apply to the court for relief against forfeiture and so the timeframe for the forfeiture process can vary.

6.22 Termination by a Third Party

The Turks and Caicos Islands government can compulsorily acquire any land, but this rarely occurs.

Compensation is payable, typically at the market value of the interest acquired.

7 Construction

7.1 Common Structures Used to Price Construction Projects

There is no commonly accepted market standard of contract and so parties are free to agree terms as they see fit, with the format and complexity of the contract often being driven by the sophistication of the parties and the type of project.

Most larger construction contracts will, however, typically follow a US style (such as the American Institute of Architects), a UK style (such as the Joint Contracts Tribunal), a combination of the two, or even the contractor's (or developer's) own standard terms.

7.2 Assigning Responsibility for the Design and Construction of a Project

See **7.1 Common Structures Used to Price Construction Projects**.

7.3 Management of Construction Risk

See **7.1 Common Structures Used to Price Construction Projects**.

7.4 Management of Schedule-Related Risk

See **7.1 Common Structures Used to Price Construction Projects**.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

See **7.1 Common Structures Used to Price Construction Projects.**

7.6 Liens or Encumbrances in the Event of Non-payment

See **7.1 Common Structures Used to Price Construction Projects.**

7.7 Requirements Before Use or Inhabitation

Certificates of occupancy must be obtained from the Planning Department before any new buildings are occupied.

8 Tax

8.1 VAT

VAT is not applicable in the Islands.

8.2 Mitigation of Tax Liability

There are no commonly used methods employed to mitigate stamp duty on large real estate portfolio purchases.

8.3 Municipal Taxes

No municipal taxes are paid on the occupation of business premises.

8.4 Income Tax Withholding for Foreign Investors

Income and capital gains are not directly taxed in the Islands.

8.5 Tax Benefits

As mentioned in **8.4 Income Tax Withholding for Foreign Investors**, income and capital gains are not directly taxed in the Islands.