Non-resident Ownership of Commercial and Industrial Property:

A review of policies from around the world

January 2018

The Real Estate Institute of British Columbia

COMMUNITY DEVELOPMENT INSTITUTE
UNBC

Acknowledgements

The Real Estate Institute of British Columbia (REIBC) and the Community Development Institute (CDI) at the University of Northern British Columbia would like to thank and acknowledge all of the people who participated in and provided feedback for this study. This includes reviewers and representatives from the jurisdictions profiled in the study.

REIBC acknowledges the support of the Real Estate Foundation of British Columbia.

Non-resident Ownership of Commercial and Industrial Property: A Review of Policies from Around the World can be accessed on the websites of REIBC and the CDI.

www.reibc.org/research.html
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January 2018

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Overview

This is the second of two reports that provide a review of policies and approaches from around the world aimed at limiting non-resident ownership of property. While the first report, *Policies on Non-resident Property Ownership*, focused on residential real estate, the purpose of this report is to provide a review of policies for commercial and industrial real estate. (For the purpose of this report, commercial and industrial property will be referred to as "commercial" unless otherwise noted).

Information has been gathered and triangulated from a variety of sources and wherever possible validated by government agencies. The intent of the review is not to evaluate the success or effectiveness of these different approaches, but rather provide insight into the array of mechanisms and policies that have been established in other jurisdictions to address challenges that are being faced with respect to foreign investment.

This study examines policies from the same jurisdictions as the first report, which included countries in North America, South America, Asia, Europe, and Oceania, to determine not just whether restrictions exist, but if there is any continuity between the level of restrictions for residential and commercial property.

In contrast to policies and regulations in place in many jurisdictions to restrict or limit the purchase of residential properties by foreign owners, many of the same jurisdictions have no defined policies to guide the purchase of commercial real estate by foreign investors, and, in some cases, policies have been amended to make the process easier—to encourage new foreign investment. However, there are also examples of some jurisdictions that have been exploring new policies or regulations that would begin to impede foreign investment.

Jurisdictions examined by this study were found to apply the same approaches to commercial and industrial real estate that were identified in *Policies on Non-resident Property Ownership*:

1. The Restrictors and Leviers: Those with the most extensive policy frameworks that restrict foreign owners and make it more expensive for foreign owners;

2. The Restrictors: Those that just impose limits or restrictions on the types of commercial and industrial property that could be bought and owned by foreigners;

3. The Leviers: Those that do not restrict foreign owners from owning commercial property, but make it more expensive for non-resident buyers; and

4. Open Doors: Those that grant foreigners exactly the same rights and obligations as citizens and residents with respect to acquiring and owning commercial real estate.

APPROACH TO NON-RESIDENT BUYERS	DEFINITION	JURISDICTION
Restrictors and Leviers	Jurisdictions that restrict foreign owners and make it more expensive for foreign owners	Australia, Mexico
Restrictors	Jurisdictions that impose limits or restrictions on the types of commercial property that could be bought and owned by foreigners	China, Denmark, New Zealand, Costa Rica
Leviers	Jurisdictions that make it more expensive for non-resident buyers	Hong Kong, Singapore, United Kingdom, United States
Open Doors	Jurisdictions that grant foreigners exactly the same rights and obligations as citizens and residents with respect to acquiring and owning commercial real estate	Switzerland, France, Japan, Nicaragua

1 Introduction

In 2016, the Province of British Columbia legislated a 15% property transfer tax to be applied to foreign nationals and foreign-controlled corporations purchasing residential properties in Metro Vancouver. This was in response to increasing concerns over housing affordability due to data on housing sales that showed foreign nationals invested more than $1 billion in BC property between June 10 and July 16, 2016.

Since that time, there appears to have been a surge in the sale of commercial real estate in British Columbia and Metro Vancouver. In March 2017, the Real Estate Board of Greater Vancouver reported a 47% increase in the value of commercial real estate in 2016.[1] It is unknown what influence the new property transfer tax has had on commercial sales by non-resident buyers.

At this time, there do not appear to be any policies in BC to restrict or limit non-residents from purchasing commercial real estate. To develop a better understanding of what policy approaches are available and employed, the Real Estate Institute of BC contracted with the Community Development Institute at the University of Northern British Columbia to complete this comparative review of policy approaches from jurisdictions around the world aimed at limiting non-resident ownership of commercial property. This review is the second of two studies focused on non-resident ownership: the first, *Policies on Non-resident Property Ownership*, completed in January 2017, offered a comparative review of policies and jurisdictions around the world aimed at limiting non-resident ownership of residential property.

2 The Restrictors and Leviers

2.1 Australia

Similar to its residential property policies, Australia has among the most robust and focused policy framework pertaining to non-resident commercial property ownership. They are only one of two jurisdictions that fall under the "Restrictor and Levier" category.

The Government of Australia Foreign Investment Review Board (FIRB) implemented a new policy framework on July 1, 2017, which was implemented to streamline the foreign investment framework to enhance transparency and consistency and improve the treatment of low-risk commercial transactions to enable the system to operate more efficiently and reduce regulatory burden.[2]

Foreigners who wish to invest in commercial real estate in Australia may be required to notify and receive a "no objections" notification before acquiring an interest in the land. Different rules apply depending on whether the land is vacant or not, whether the proposed acquisition falls into the category of sensitive commercial land that is not vacant, and the value of the proposed acquisition.[3]

In addition to the notification requirement, the FIRB also sets the fees for foreign investment applications and notices. The fees are dependent on the value of the acquisition and the activity taking place and range from AUD 2,000 and AUD 101,500. For example, a foreign investor who wishes to purchase vacant commercial land with a value of AUD 20 million would be required to pay a notification fee of AUD 25,300.[4]

AUSTRALIA

Foreigners who wish to invest in commercial real estate in Australia may be required to notify and receive a "no objections" notification before acquiring an interest in the land.

2.2 Mexico

Similar to Mexico's residential property regulations, those for commercial property allow foreigners to purchase and own such property, although there are restrictions and costs. Foreigners can purchase commercial property through Mexican corporations, which must consist of a minimum of two shareholders, though neither is required to be a Mexican citizen. Corporations can purchase property anywhere in Mexico, including within the restricted zone. However, property that is owned by a corporation is considered commercial property and is subjected to higher water, electricity, and telephone rates.

With regard to property within restricted areas, defined as areas within 100 km of the border and 50 km of the coast, special requirements exist. Originally, the Mexican Constitution prohibited foreigners from purchasing land in these areas, but this has now changed.[5] Mexican corporations cannot own single-family residential property and those wishing to purchase residential property have to do so through a trust agreement known as a fideicomiso.[6]

MEXICO

Foreigners can purchase commercial property through Mexican corporations, which must consist of a minimum of two shareholders, though neither is required to be a Mexican citizen.

The Mexican Tax Authority may choose to perform an appraisal after the purchase of a commercial property. If the appraisal value is 10% greater than the declared value, the difference between the two is subject to a 20% appraisal tax. In addition, commercial property transactions are subject to a Value Added Tax and a 2% acquisition tax.[7]

3 The Restrictors

3.1 China

China has a set of complex laws and policies that restrict the ownership of property to individuals, regardless of whether they are citizens or foreign, as all land is owned by the state. Real estate transactions that take place in China involve a transfer of Land Use Rights. Land Use Rights can be acquired through transfers, leases, and mortgages, but more recently are obtained through a public tender process or an auction process, especially for new developments. The results of public tender or auction processes are publicly listed on the government's website. Land Use Rights for developments for commercial, tourist, or recreational purposes are issued for 40 years, while Land Use Rights for industrial purposes are issued for 50 years.[8]

However, unlike its approach to residential property policies, China is open and supportive of foreign investments for certain commercial and industrial projects and produces the *Catalogue for the Guidance of Foreign Investment Industries* (the Catalogue) that divides projects into three types: encouraged, restricted, and banned. Since 2015, the trend has been for removal of restrictions for certain industries. The 2017 version reduced the number of special administrative measures restricting foreign investment from 93 to 63. Industries that are listed as restricted are subject to restrictions such as shareholding limits and must receive prior approval from the Ministry of Commerce.[9]

Industries that are listed as "encouraged" benefit from special incentives, such as reduced tax rates, and foreign investors are given equal treatment to domestic Chinese investors. Encouraged industries can still be subject to certain restrictions on foreign investments if they are also on the negative list. For examples, some industries may be encouraged but also could be restricted to joint ventures with a Chinese partner entity.[10]

CHINA

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3.2 Denmark

As the commercial and tourist hub for Scandinavia and Northern Europe, Denmark has seen the arrival of an increasing number of international investors, particularly related to the acquisition of retail assets in the capital of Copenhagen.

Much the same as its policies regulating residential use, Denmark policies for who can own commercial property are very strict. Generally, foreigners need to apply to and have permission from the Minister of Justice to purchase real estate used for commercial purposes, unless the person has resided in the country for at least five years or is an EU national working in Denmark. Due to the restrictions put on foreigners, many who are interested in purchasing commercial real estate often establish a public limited company registered in Denmark, known as an Anpartsselskab (ApS) to avoid the need for permission. The need for a permit does

DENMARK

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not apply to corporations registered in EU member states as long as the purpose of purchasing the real estate is business related.[11]

There are very few taxes to consider when purchasing commercial real estate in Denmark. In principle, the sale and purchase of real estate is not subject to Danish VAT, which is charged at a flat rate of 25%. However, anti-avoidance rules state that VAT will be applied if a building has been substantially rebuilt. In addition, the sale of building sites, the first sale of new buildings complete with land, and the delivery of built-up sites are subjected to the 25% VAT.[12]

3.3 New Zealand

The regulations that govern foreign ownership of residential real estate are similar for commercial real estate as well. New Zealand tracks the rate of foreign ownership by requiring that non-resident owners register with the Department of Inland Revenue. There are relatively few barriers to purchasing commercial property in New Zealand, unless the property is considered to be "sensitive" as defined by the overseas investment legislation. This legislation is intended to protect New Zealand's environmental, cultural, and historical assets. Sensitive land is defined as land of a particular type, such as farm land or land held for conservation purposes, which exceeds a particular area threshold. Land may also be considered sensitive if it adjoins land of a particular type and exceeds an area threshold. An example would include three hectares of farm land that is adjoined to a recreation reserve on the edge of a lake.[13]

NEW ZEALAND

New Zealand tracks the rate of foreign ownership by requiring that non-resident owners register with the Department of Inland Revenue. There are relatively few barriers to purchasing commercial property in New Zealand, unless the property is considered to be "sensitive" as defined by the overseas investment legislation.

Foreigners interested in investing in sensitive lands or acquiring large businesses or shares in large businesses must receive approval from the Overseas Investment Office. All applications are assessed on a case-by-case basis and are tested against four core investor criteria, which include business experience, financial commitment, good character, and absence of ineligible individuals listed under the Immigration Act 2009.[14]

3.4 Costa Rica

There appears to be no difference between regulations for foreign ownership of residential property and commercial property.

COSTA RICA

Foreigners are afforded the same rights as residents when owning, purchasing, and selling commercial real estate in Costa Rica.

Foreigners are afforded the same rights as residents when owning, purchasing, and selling commercial real estate in Costa Rica. The one exception is with beachfront properties restricted by the Maritime Zone Law. Costa Ricans and foreigners alike are prohibited from owning property or building on any beach lands that lie within the first 50 metres of the maritime zones unless government permission is granted. Use of land between the 50-metre mark and the 200-metre mark is restricted by the Maritime Zone Law; 50 metres from the mean high tide line cannot be used for any reasons by private parties. The next 150 metres can be leased from the local municipalities or the Costa Rican Tourism Institute (ICT) for specific periods and particular uses, such as tourism installations. Concessions in this zone cannot be given to foreigners or foreign-owned companies.[15]

4 The Leviers

4.1 Hong Kong

Though part of China, Hong Kong operates under a different real estate regime. The stable legal and banking systems in Hong Kong have drawn may overseas business firms to establish their regional headquarters in the city, which in turn has significantly increased the demand for Hong Kong's commercial real estate, including office, shopping malls, and retail stores. As Hong Kong is often considered one of the most expensive cities in which to purchase property, the HK government established several mechanisms to control ownership of property by foreigners. This has resulted in the implementation of stamp duties to raise the price of ownership as well as cancelling programs that offer incentives for investment by foreign owners.

HONG KONG

In Hong Kong there are no specific incentives for foreign investment, no restrictions to foreigners owning and operating businesses, and no residency requirements for directors or shareholders.

There are no specific incentives for foreign investment, no restrictions to foreigners owning and operating businesses, and no residency requirements for directors or shareholders. Previously, a program known as Capital Investment Entrant Scheme, a program which facilitated the entry of residence by capital investment, was in place. However, this program was suspended by the HK government in January 2015.[16]

An Ad Valorem Stamp Duty (AVD) was introduced by the government and applied to both residential and commercial properties. For commercial properties, the AVD ranges between 1.5% and 8.5% depending on the value of the property in question. In addition, foreigners are subjected to a Buyer's Stamp Duty of 15% of the market value or stated consideration of the property (whichever is higher). This is imposed on top of the AVD.[17]

4.2 Singapore

Over the past few years, foreign investors have been attracted to invest in Singapore's commercial real estate market, which has seen an influx of overseas investments for the first time since the global financial crisis in 2008. The influx of foreign funds is partly due to the view that Singapore is a safer investment destination where investment is fairly protected due to the strength of the Singapore dollar.[18]

SINGAPORE

There are no restrictions of foreign ownership on commercial property in Singapore. There are also fewer taxes that are applied to the sale of commercial property.

Unlike residential property, there are no restrictions of foreign ownership on commercial property in Singapore. There are also fewer taxes that are applied to the sale of commercial property. While a Buyer's Stamp Duty (BSD) is charged on the sale and purchase agreement, there is no Additional Buyer's Stamp Duty (ABSD) on commercial property. The BSD rate is 1–3% based on the value of the consideration.

Foreigners who own industrial property and who acquire the property and sell or dispose of the property within three years from the date of acquisition are subjected to a Seller's Stamp Duty of 5–15%. This was implemented to stop speculation on industrial land.

Due to land scarcity, most properties in Singapore are leasehold tenures and can be arranged in 30-, 60-, 99-, and 999-year agreements. An Ad Valorem Stamp Duty is payable on leases, and the rates are dependent on the lease/tenancy and vary with the average annual rent (AAR). Lease periods of four years or less are charged 0.4% of the total rent for the period of the lease. Lease periods of more than 40 years or any indefinite term are charged 0.4% of four times the AAR for the period of the lease. Leases where the AAR does not exceed SGD 1,000 are exempt.[19]

4.3 United Kingdom

Unlike residential property, there has been much less attention to foreign ownership of commercial property in the United Kingdom. There are no restrictions on foreigners purchasing commercial real estate in the United Kingdom; however, the market is very competitive. Based on a report from the British Property Federation, 28% of the UK's commercial real estate is owned by foreigners. This has started some discussion on policies to level the playing field between corporate Non-Resident Landlords (NRLs) and UK landlords by bringing NRLs into the corporation tax.[20]

UNITED KINGDOM

There are no restrictions on foreigners purchasing commercial real estate in the United Kingdom; however, the market is very competitive.

Currently, there are additional taxes that foreigners need to consider when purchasing commercial property. Buyers must pay a stamp duty land tax at a rate of 4% of the price paid for a commercial real estate asset where the price is greater than GBP 500,000. Value added tax (VAT) does not automatically apply to the purchase of land, although in a few cases (such as newly built properties) the seller must charge VAT. Sellers will often elect to charge VAT so that they can recover any VAT incurred in relation to the property. Generally, VAT is charged at a rate of 20%. These taxes are in place for residents and foreigners alike.[21]

In Scotland, there are no restrictions on foreigners to purchase real estate and no special set of laws apply for the sale of commercial property.[22]

4.4 United States

At the federal level, the United States has the same policies for foreign ownership of commercial and residential properties. There are no blanket prohibitions on foreign ownership but there are many laws that may impose additional restrictions. For example, the Committee of Foreign Investment (CFIUS) can block foreign investment transactions that could impact US national security and can cause divestiture of completed transactions in some circumstances. Another example is the US Patriot Act, which has regulated investment in the US to have potential foreign buyers make certain disclosures.

The most significant law that impacts foreign ownership of commercial property is the Foreign Investment in Real Property Tax Act (FIRPTA). As of February 2016, foreign buyers of US property interests are required to withhold 15% of the full purchase price on real estate interests. When the property is disposed of, 15% of the selling price is withheld by the Internal Revenue Service (IRS).[23] Many individual states have their own withholding restrictions on foreign investment as well. California, Colorado, Georgia, Hawaii, Maine, Maryland, Mississippi, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, and West Virginia each have an additional withholding tax between 2% and 8.8% that is on top of the FIRPTA.[24]

UNITED STATES

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5 Open Doors

5.1 Switzerland

In Switzerland, the main legislation that restricts the sale of real estate to foreigners is commonly known as the "Lex Koller." The Lex Koller has been in place since 1997 and the act places various limits on the types and locations of residential real estate that can be purchased by foreigners. Commercial property has been exempt from the Lex Koller and foreigners have been able to enjoy the ability to purchase commercial properties for any intended purpose, including renting the space to another party.

In March 2017, the Swiss Federal Council presented a proposal to make amendments to the Lex Koller, some of which will impact foreign ownership of commercial properties. These amendments include the prohibition of foreigners to acquire Swiss commercial properties, except for self-use. In addition, under the proposed amendments, if commercial real estate is no longer used personally by the foreign buyer and the buyer's personal use did not exceed ten years, the property must be sold within two years.[25]

The public consultation period for the new amendments ended on June 20, 2017. There has been no formal change to the act at this time.

SWITZERLAND

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5.2 France

France is considered to be an attractive environment for investment, which has increased the real estate acquisitions by foreigners since the mid 1990s. In 2007, 65% of real estate acquisitions in France were made by non-French investors and most of those acquisitions were in the office sector, followed by retail and then warehousing and commercial premises.

Similar to policies for residential real estate, there are no restrictions in place that limit the ability of foreigners to purchase commercial property. In France, direct investment in commercial real estate can be carried out without ownership of a company registered in the country. However, if the property is used for business activities, the sale of the purchase must be reported to the Ministry of Finance under the foreign exchange regulations, which is not publicly listed and remains confidential. While there are specific legal and tax regimes that apply to the transfer of title of different kinds of real estate, there are no provisions linked specifically to the industrial, office, or retail sectors. French law recognizes the right to receive the income and produce from real estate without outright ownership.[26]

FRANCE

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5.3 Japan

Over the past decade, there has been an increase in real estate acquisitions in Japan by foreign investors. Though domestic investors have dominated the market, foreign investors invested over one trillion yen into Japan's property market in 2014—a 29% increase over the prior year and the highest level since the 2008 global financial crisis. Japan was considered the largest real estate investment market in the Asia-Pacific in 2014.[27]

Similar to policies set in place for residential real estate, Japan places no restrictions on foreigners owning commercial property. An owner of real estate may freely utilize and dispose of real estate with no duration restriction. However, land and buildings are treated as separate and the owner of the land may lease the property to a separate party to construct a self-owned building.

There are no specific incentive regimes in Japan with respect to the investment in real estate by a foreigner. As the acquisition of real estate by a non-resident is considered a capital transaction under the Foreign Exchange and Foreign Trade Control Act, foreigners are required to notify the Ministry of Finance with their name and acquisition cost within 20 days of purchase. However, this requirement is waived when a foreigner who runs a non-profit business in Japan acquires the property to execute its business activities or intends to use the space as a place of business.[28]

JAPAN

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5.4 Nicaragua

Foreign Investment Law 344 establishes equal treatment of foreign and domestic investment in Nicaragua, applying to residential and commercial real estate. Article 5 of the law recognizes fundamental guarantees for foreign investors, such as equal treatment—meaning all foreign investors shall receive the same treatment as national investors. It also guarantees rights and freedoms such as free access to the country, no minimum or maximum investment amount, access to financing from local banks, and the right for foreigners to own and use property without limitations. If foreign investors wish to obtain the benefits of Foreign Investment Law 344, they are required to register and update the nature and amount of their investment in the Statistical Registry of Foreign Investment Office of the Ministry of Development, Industry and Trade (MIFIC).[29]

NICARAGUA

Nicaragua guarantees rights and freedoms such as free access to the country, no minimum or maximum investment amount, access to financing from local banks, and the right for foreigners to own and use property without limitations.

6 Summary

	COUNTRY	APPROACH TO NON-RESIDENT OWNERSHIP OF COMMERCIAL REAL ESTATE
RESTRICTORS AND LEVIERS	Australia	Foreigners wishing to purchase commercial real estate may be required to notify and receive "no objection" notification from the Foreign Investment Review Board, depending on certain criteria. In addition, foreigners are required to pay a notification requirement that ranges from AUD 2,000 to AUD 101,500.
	Mexico	Foreigners purchasing commercial property in Mexico are subjected to several restrictions and costs. A foreigner wanting to purchase land located along the Mexican borders and coastlines must set up a Mexican corporation. In addition, the Mexican Tax Authority may choose to do an appraisal after the purchase of commercial property and charge a 20% appraisal tax on the difference in value if it is greater than 10%.
RESTRICTORS	China	Despite the complex laws that restrict ownership of property, China is supportive of foreign investments into certain commercial and industrial projects and classifies them as: encouraged, restricted, and banned. The trend has been for removal of restrictions, and those listed as "encouraged" receive benefits such as special incentives and reduced tax rates.
	Denmark	Denmark has very strict policies governing who can own commercial properties. Foreigners must apply and have permission from the Ministry of Justice to purchase real estate used for commercial purposes, unless the person has resided in the country for at least five years.
	New Zealand	There are no restrictions on foreigners purchasing commercial property unless the property is on land considered to be sensitive. Applications from foreigners to purchase sensitive lands are tested against four core investor criteria: business experience, financial commitment, good character, and absence of individuals listed as ineligible under the Immigration Act 2009.
	Costa Rica	Foreigners have equal rights as residents to purchase, own, and sell commercial real estate in all areas except beachfront properties.

LEVIERS	Hong Kong	Foreign residents are charged various stamp duties on commercial properties that include an Ad Valorem Stamp Duty and a Buyer's Stamp Duty. There are no specific restrictions on foreigners owning and operating businesses in Hong Kong and, recently, residency programs that encourage residence by capital investment have been suspended.
	Singapore	There are no restrictions on foreign ownership of commercial property in Singapore, and there are fewer taxes applied to the sale of commercial property. Stamp duties may be applied to leases as well.
	United Kingdom	Foreign buyers are required to pay additional land tax at a rate of 4% of the price where the price is over GBP 500,000.
	United States	Properties disposed of by foreigners are subject to a withholding tax of 15% of the selling price. Many states charge an additional withholding tax.
OPEN DOORS	Switzerland	There are currently no restrictions in place for foreign buyers who wish to purchase commercial property. However, proposed amendments have been introduced to the Lex Koller to impose restrictions on foreign-owned commercial property.
	France	There are no limitations or restrictions for foreigners purchasing commercial real estate. However, the sale of properties that are used for business activities must be reported to the Ministry of Finance.
	Japan	There are no restrictions for foreigners purchasing commercial property in Japan. However, as the acquisition of real estate by non-residents is considered a capital transaction, foreign buyers are required to notify the Minister of Finance within 20 days of purchase.
	Nicaragua	Foreigners have equal rights to nationals under the law to purchase, own, and use property without limitations.

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