Title Insurance mitigates legal risk in property acquisition and mortgage finance

Risks: Title Insurance policies may cover both:

- Risks identified in the course of legal due diligence.
- Risks which are existing – but unknown - at the time of the transaction.

Covered Risks include:

- Imperfections in the insured's title to the property (whether freehold ownership, usufruct, or leasehold) resulting in a third party having rights of ownership in part or all of the title.
- Defects, liens and encumbrances on the property, resulting in a third party having an operational right in the property, for example an easement, or economic interest in the property, such as a mortgage.
- Lack of legal access to the property to and from the public road, resulting in loss of value of the property or incurring legal and/or settlement costs to secure legal access.
- Imperfections in planning and zoning permission, as well as in building and occupancy permits, impacting the insured's ability to use the property for the insured use.

Indemnity: The Title Insurance policy indemnifies the insured for financial loss arising out of a Covered Risk.

Legal Defence: In addition, the Title Insurance policy provides for legal defence, at the insurer's expense, against third party claims arising out of Covered Risks.

Policy: The policy typically is issued at the completion of the property purchase or mortgage finance.

- Owner Policy: Indemnifies the purchaser of a property for loss arising out of the Covered Risks.
- Lender Policy: Indemnifies a mortgage lender in the event the owner defaults on the mortgage; the lender forecloses on the property; and the value of the security is impaired as a result of a Covered Risk. In addition to covering title risks, the Lender Policy may cover risks relating to mortgage recording, priority and enforceability.
- Term: Typically the policy covers the insured as long as the insured owns the property and, in the case of a Lender Policy, for the duration of the mortgage loan.
- Premium: Paid once, at issuance. Rate depends on risk evaluation by the insurer.
- Assignment: An Owner Policy normally may be assigned to a subsequent

purchaser of the insured property within five years following policy issuance.

- First Loss Payee: Rights of payment of indemnity under a policy may be assigned to a mortgage lender.

Insured:

Owner Policy:

- Property Developers
- Real Estate Equity Investors
- Property End-Users

Lender Policy:

- Mortgage Lenders
- Providers of mezzanine finance

Properties:

Commercial properties of all types:

- Office
- Industrial
- Logistics
- Hotel & Resort
- Retail
- Multi-Unit Residential
- Mixed use

Portfolio policy:

In addition to a policy on a single commercial property, Title Insurance can cover:

- Portfolio of properties
- Pool of mortgages

These specialized policies facilitate large transactions involving multiple properties or mortgages, expediting the process and enhancing the value of the portfolio.

Underwriting:

Title insurance policies are underwritten based on legal due diligence performed by legal counsel, expert in the law of the jurisdiction in which the property is located.

Lawyers &Notaries

Underwriting and issuance of title insurance do not alter the role of the insured's lawyer or notary, who remain responsible for legal due diligence on the property title, conveyance and registration of the property, and mortgage recording, as appropriate.

Opinion versus Indemnity:

Lawyers provide an opinion, whereas Title Insurance provides an indemnity.

A legal opinion, especially in a large commercial transaction, fundamentally is a disclosure document: Counsel reports on the state of title and related issues, identifies areas of uncertainty or defect, and carves out exceptions (e.g., fraud), thus putting the investor or lender in the position of having to "take a view" on identified risks, as well as risks existing – but unknown – at the time of the transaction.

A Title Insurance policy eliminates the risk for insureds by providing insurance cover in relation to Covered Risks.