1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, it is permitted and is the normal form of ownership of real estate in most of South Africa. In South Africa it is called freehold title. In some rural areas communal land is administered by traditional chiefs but this is still largely outside of the Deeds Registries System and consequently not commercially important.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Deeds of Transfer are normally used to convey ownership, but there are situations where a change in ownership is recorded by an application to endorse the title deed.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Ownership of real property is recorded in Deeds Registries which are Government run offices in most provinces. The full names, identity number and marital status of natural persons, the full names and registered numbers of companies, close corporations and trusts
have to be disclosed for all parties to a real estate transaction. All properties are identified on cadastral diagrams, general plans or sectional plans prepared by land surveyors and approved by Surveyor General Offices run by the Government. All properties have their own number and their exact location in relation to survey beacons is described. Ownership records are public information and anyone may approach the Deeds Registries for information about ownership, mortgagees and servitudes. Most law firms and real estate agents have online access to search the records of the Deeds Registries.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Although the South African system of Deeds Registration is a negative system with no state guarantee of title, the system is very efficient and accurate and in the great majority of cases the records reflect the correct ownership. Title insurance is unheard of as it is unnecessary. Title opinions are seldom necessary. A certificate by a Conveyancer is usually all that is required. Cases where the records do not reflect the correct owner are where the State has expropriated real property but the title has not been endorsed regarding the change in ownership, where someone has acquired ownership by acquisitive prescription but has not yet had the change in ownership registered and where an owner has married in community of property and not yet had the title endorsed to reflect the spouse’s share in the ownership of the property.

5. What are the most common form of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles are limited liability companies (including close corporations), trusts and partnerships. The taxation rates of trusts have been increasing over the last number of years and trusts are becoming less popular.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

The Department of Finance is considering bringing in regulations to govern REITs to enable the current South African Property Loan Stock Companies and Collective Property Investment Trusts to become REITs similar to REITs in the rest of the world. Both forms of underlying entity will be taxed in the same way. The aim is to attract more foreign investments into this form of investment in commercial real property.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The transfer of ownership in real property attracts transfer duty in terms of the Transfer Duty Act No.40 of 1949 or Value Added Tax in terms of the Value Added Tax Act No.89 of 1991. Where the real property is part of the Seller’s business enterprise, the transaction is normally subject to VAT at 14% of the purchase price, which the Seller has to account for in his VAT returns. However, if real property is part of a business that is sold as a going concern to
someone who is also registered as a VAT payer, the transaction is zero rated for VAT purposes. If the transaction is not subject to VAT, it is subject to transfer duty which is payable by the purchaser. A company or trust pays transfer duty at 8% of the purchase price. A natural person is exempt from transfer duty if the price is less than R500 000,00, subject to transfer duty at 5% up to a price of R1 million and subject to transfer duty at 8% above a price of R1 million.

A dealer in real property would have to pay income tax on the profits of a real estate transaction. Where the property is a capital asset, the Seller would have to pay Capital Gains Tax on the capital gain. Non-resident sellers are subject to a withholding tax for capital gains for sales with purchase prices over R2 million.

8. **What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

Stamp duty is payable on the transfer of shares in a company that owns real estate. If the real estate is “residential” as defined in the Transfer Duty Act, transfer duty is payable on the purchase price even though there is no transfer of ownership registered in the Deeds Registry.

9. **How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?**

The taxation of real estate transactions is governed by national statutes and not by provincial or municipal statutes.

Municipal rates are levied on all real properties annually by municipalities in terms of the Municipal Property Rates Act No.6 of 2004. The municipal valuation of each property determines on what value the rates are calculated. Each municipality determines how much is payable on the valuation of each property.

Zoning, town planning and building regulations are set by local municipalities and varies significantly depending on the relevant municipality.

10. **Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?**

No, disclosure of beneficial owners is not required.