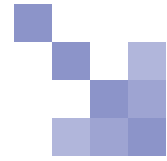


# Luxembourg

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## THE CORPORATE REAL ESTATE MARKET

### 1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Data provided by Property Partners, real estate consultants in Luxembourg, shows that take-up in the Luxembourg office rental market has continued to increase, with many high profile businesses continuing to expand into this area.

At the end of 2008's third quarter, take-up in office space stands at 165,000 square metres compared with 128,103 square metres for the same period in 2007. Vacancy rates are at around 2.05% (compared with 2.88% at the end of 2007). To increase the supply of office space further, a number of new developments and renovations are currently underway. This is expected to lead to the creation of 150,000 square metres of extra office space in 2009.

In line with most market trends around the world, the real estate investment market in Luxembourg has slowed compared with previous years. There is still a broad range of investors, however, with the largest coming from key regions such as Germany, Belgium, the UK, Iceland and Ireland.

## REAL ESTATE INVESTMENT

### 2. Please briefly outline the opportunities for investing in real estate in your jurisdiction. In particular, consider:

- The structures commonly used (for example, property companies and partnerships).
- Are real estate investment trusts (REITs) available? If so, are they commonly used?
- The role of institutional investors.
- The role of private investors.

A range of structures are available, which are regulated, lightly regulated or unregulated. The choice depends on factors such as:

- The investor's requirements.
- The type of investment.

- The funding to be raised.
- Specific tax considerations.

### Regulated structures

Regulated real estate investment vehicles include:

- Undertakings for collective investment (UCIs).
- Specialised investment funds (SIFs).
- Companies that invest in risk capital (*sociétés d'investissement en capital à risque*) (SICARs).

**UCIs.** UCIs are governed by Part II of the Law of 20 December 2002, and are the most common vehicles used for investing in real estate. Real estate UCIs (real estate investment funds (REIFs)) must:

- Invest exclusively in real assets.
- Publicly place shares or units via a public or private offering.
- Apply the principle of risk diversification.

REIFs can adopt a multiple portfolio structure (umbrella fund) under which each portfolio has its own specifications, such as a particular investment policy.

REIFs can be set up as corporates (*société d'investissement à capital variable* or *société d'investissement à capital fixe*) or as contractual mutual funds (*fonds commun de placement*) (FCP).

The FCP is commonly used. It is managed by a management company acting for the FCP in the interests of the unit holders. While Luxembourg law does not provide for REITs as such, FCPs are similar entities.

REIFs are subject to specific investment and leverage restrictions (*IML* (former abbreviation of the name of the supervisory authority, *Commission de Surveillance du Secteur Financier*) (CSSF) Circular 91/75).

**SIFs.** SIFs were introduced by the Law of 13 February 2007 on specialised investment funds. They are increasingly perceived to be one of the best tools for investment in the real estate sector.

SIFs are available to "informed investors" (that is, institutional or professional investors, or those entities investing at least EUR125,000 (about US\$197,255)). SIF promoters and investment managers do not need to be supervised by the financial supervisory authority, *Commission de Surveillance du Secteur*

*Financier* (CSSF). However, those persons directly responsible for the management of a SIF must be approved by the CSSF.

A SIF vehicle must comply with specific investment restrictions, involving a set minimum amount of risk diversification (*CSSF Circular 07/309*).

**SICARs.** “Qualified investors” (institutional, professional or “informed” investors), who invest their assets in venture capital and private equity, can use the SICAR structure (introduced by the Law of 15 June 2004, as amended, regarding SICAR).

Real estate investments must comply with certain risk capital characteristics to be considered eligible. SICAR vehicles do not need to comply with risk diversification requirements and can, therefore, invest 100% of their assets in one target investment.

Investment in real estate assets by a SICAR must comply with specific CSSF requirements (*CSSF Circular 06/241*). Under these requirements, real estate assets acquired must fall into the category of a “risk capital” asset (that is, an “opportunistic” or “development” asset).

The Luxembourg Parliament adopted on 15 October 2008 new legislation amending some provisions of the current SICAR regime, in particular by introducing the possibility for SICARs to be composed of multiple compartments. This will become effective on publication in the Luxembourg official gazette, which is expected to be before the end of October 2008.

### Unregulated structures

These real estate investment vehicles can be one of two types:

- **Securitisation vehicles.** The option of securitisation was introduced by the Law of 22 March 2004. A wide range of assets can be securitised (including real estate, tangible or intangible, movable or immovable assets). Securitisation vehicles can be used for the acquisition of real estate or the refinancing of real estate transactions.
- **Corporations.** Corporations remain the most commonly used structures for the acquisition of real estate. The following types of companies exist (*Law of 10 August 1915, as amended, on commercial companies*):
  - public limited company (*société anonyme*);
  - private limited company (*société à responsabilité limitée*);
  - partnership limited by shares (*société en commandite par actions*);
  - limited partnership (*société en commandite simple*);
  - cooperative company in the form of a public limited company (*société cooperative organisée sous forme de société anonyme*).

The most commonly used corporations are the public limited company and the private limited company.

Larger developments in the Luxembourg real estate market are usually undertaken by qualified, institutional investors, rather than private investors.

## REAL ESTATE LEGISLATION

### 3. Please briefly set out the main real estate legislation that applies in your jurisdiction.

The main specific sources of real estate legislation are the laws of:

- 12 June 1937, relating to the organisation of cities and communities.
- 21 May 1999, on the organisation of the territory.
- 10 June 1999, as amended, relating to the operating permit (*commodo-incommodo*) procedures regulating the security, environmental and technical aspects of construction (see *Question 37*).
- 19 July 2004, as amended, relating to communal planning and urban development.

In addition, the Civil Code contains the main rules on the ownership of real estate, mortgages, leases and easements.

Other laws relevant to real estate include the laws of:

- 20 December 2002, as amended, relating to undertakings for collective investment.
- 13 February 2007, on specialised investment funds.
- 10 August 1915, as amended, on commercial companies.
- 22 March 2004, as amended, on securitisation.
- 15 June 2004, as amended, which provides a legal framework for establishing a SICAR.

Other relevant rules include:

- CSSF Circular Letter 91/75 Chapter I, Section III, as amended, relating to the revision and rewording of rules governing Luxembourg undertakings covered by the Law of 30 March 1988 on undertakings for collective investment.
- CSSF Circular Letter 07/309, which provides guidelines on the minimum level of risk diversification that SIFs must have.

## TITLE

### 4. Please briefly state what constitutes real estate in your jurisdiction. Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate is composed of the land and anything affixed on it, such as buildings (*Article 517, Civil Code*). Land and any buildings affixed on it are registered together in the same title. Ownership of the land means ownership of the bottom and top of the land.

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**5. How is title to real estate evidenced, for example by registration in a public register of title? Which authorities manage the public title register?**

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All deeds regarding the transfer of real property rights (other than liens and mortgages) must be recorded at the Mortgage Registry (*Bureau de la conservation des hypothèques*) (*Law of 25 September 1905 on the transcription of real rights (rights in removable and immovable property)*). Such deeds must be notarised.

The registration of deeds transferring real property gives the owner rights of opposition against third parties.

It is possible to obtain an extract from the land register that shows ownership of a building.

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**6. Please briefly set out the information and documents registered in the public register of title, for example a description of the real estate, the owner, matters affecting the title and any relevant documents.**

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The Mortgage Registry contains information on:

- Current owners of the real estate.
- The date of transfer.
- A description of the real estate.
- Any mortgages taken over the real estate.
- Leases concluded for a period of more than nine years.

To gain access to registered information, an applicant must provide the Mortgage Registry with the name of the owner of the real estate in question (details of the real estate itself are not sufficient).

Information such as former owners or easements can be obtained by providing a cadastral plan extract including information on the property's ownership origin.

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**7. Can confidential information or documents be protected from disclosure in the public register of title?**

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Documents cannot be protected from disclosure in the Mortgage Registry. This is because certain information must be published in the Mortgage Registry to provide the owner rights of opposition against third parties (*Law of 25 September 1905*).

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**8. Is there a state guarantee of title? Is title insurance available? If so, is it commonly used?**

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A state guarantee of title or title insurance is not available in Luxembourg.

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**9. How can real estate be held (that is, what types of tenure exist)?**

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Apart from rights of ownership, the following rights over real estate also exist (*Law of 10 January 1824*):

- The right of *superficie*. This right, which cannot exceed 50 years in length, is a right over land entitling the holder to construct and own buildings on the land. At the termination date, owners of the land must reimburse the superficiary with the market value of the buildings and items that the latter built on the land.
- The *emphyteusis* or long term lease. This is a right, capable of assignment and descent, over productive real estate. The right is coupled with the right to enjoyment of the property on condition that the right holders take care of the real estate and pay taxes on it. It can also involve the payment of a small amount of rent. This lease typically relates to immovable property and:
  - grants the right to make full use of the immovable property;
  - lasts for a term of between 27 and 99 years;
  - obliges the right holder to make improvements that increase the value of the land, which will belong to the land owner at the end of lease.

A bill presented by the Ministry of Housing to parliament and currently being discussed reforms the rights of *superficie* and *emphyteusis*.

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## SALE AND PURCHASE OF REAL ESTATE

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**10. What are the main stages and documents in the sale and purchase of real estate? In particular:**

- How is real estate marketed, when does commercial negotiation occur and what pre-contractual arrangements are used?
- When is the sale contract negotiated and executed?
- When are the parties legally bound?
- When is the change of title registered?
- When does title transfer and what are the formal legal requirements to transfer real estate (for example, in writing and signed by the parties)? Is notarisation required?

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### Marketing and commercial negotiation

Marketing is carried out by real estate agents whose commissions are freely negotiable (*Law of 17 May 2004 on competition*). In practice, however, real estate agents' fees typically are between 0.5 and 3% of the transaction amount.

Commercial negotiations normally take place approximately six months before the sale occurs.

### Pre-contractual arrangements

A preliminary contract (*compromis de vente*) is usually concluded between the parties. This contract contains details of the goods and the price and conditions of sale (it often contains conditions precedent). Once the conditions precedent are met, the parties sign the final deed, which is registered at the Mortgage Registry.

A seller or buyer can also make a unilateral offer to the other party, which can be accepted within a certain timeframe (set out in the offer).

Buildings are often sold in the course of the sale of the company that holds the building (a share deal). In this type of deal, the buyer acquires the shares of the company that holds the building. In such cases, the parties usually conclude a letter of intent (LOI), which sets out the details of the sale.

### Sale contract

Luxembourg law does not require a special form for the transfer of real estate. A written contract is, therefore, not necessary to bind the parties.

A written contract, however, is recommended to provide evidence of the sale and purchase. In addition, a notarial deed registered at the Mortgage Registry is advisable, as this will grant the new owner rights of opposition against third parties (see below, *Registration*). In practice, it is difficult to effect a sale between the parties without a signed notarial deed.

### When legally binding

A real estate contract is normally binding when it has been signed. There must be as many signed original copies of the contract as there are parties to that contract.

According to the Civil Code, parties are bound when they agree on the "price" and the "thing" (*Article 1589*).

### Registration

To ensure rights of opposition against third parties, all transfers of immovable property in Luxembourg must be registered (*Law of 25 September 1905 on the transcription of real rights*) (see *Question 5*).

### When title transfers

Title normally transfers on the date of the execution of a binding agreement. However, parties can decide to defer the transfer of ownership, for instance, to the date of the notarial deed or on fulfilment of certain conditions precedent.

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#### 11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate, for example to disclose real estate information, or in relation to title?

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A seller must provide the buyer with all information related to, and which may be useful to, the real estate property and title. If the seller does not comply with this obligation, the buyer can

ask for the sale to be nullified or for the payment by the seller of damages based on the loss suffered as a result of the seller's omission.

The seller can also be held liable for hidden defects (*vices cachés*) under normal civil law rules applicable to sales contracts.

A specific regime applies to the sale of real estate property being constructed (*vente d'immeuble à construire*) (*Civil Code*). This provides that the seller is liable for hidden defects and visible defects (*vices apparentes*). A visible defect is that which appears before the latest of the two following events:

- Receipt of the property.
- Expiry of a one-month period following entry to the property.

This regime is currently in the process of being reformed (see *Question 39*).

The seller can demand rescission of the sale when the purchase price is inadequate by greater than seven-twelfths of the purchase price (*Article 1674, Civil Code*). If this action is taken, a buyer has the option of either:

- Returning the property to the seller and being reimbursed the amount it has already paid.
- Keeping the property and paying the seller the difference between the price originally paid and the fair price as determined by the court.

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#### 12. Please briefly outline the real estate due diligence that is typically carried out before an acquisition (including title investigation and searches of public authorities).

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The buyer typically performs various types of due diligence. In addition to a legal due diligence, the buyer usually undertakes financial, tax, technical and/or environmental due diligence.

Legal due diligence generally covers broader matters such as corporate issues, agreements, tax issues, litigation and so on, as well as specific matters such as title deeds, easements, mortgages, authorisations (building permits, *commodo-incommodo*, environmental matters and so on) and leases.

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#### 13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

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In addition to the seller's liability under the Civil Code, the seller often gives the following warranties to the buyer:

- It is the sole owner of the real estate and has the full and entire holding of that real estate.
- The building is in good working order and all necessary authorisations have been obtained.
- No pollution or asbestos exists in relation to the real estate.

- There is no easement, mortgage, lien or charge on the real estate.
- There is no claim in relation to the building.

When the sale of real estate is carried out by way of a share deal, the seller usually provides the buyer with the same warranties as described above. In addition, it provides warranties concerning the shares of the company.

In relation to unfinished buildings, either:

- The seller provides the buyer with a bank guarantee covering completion of the project.
- The parties put in place an escrow agreement under which part of the sale price is deposited in an account and released on completion of construction.

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#### **14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it? For example, environmental liability, or liability under a lease.**

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Normally an owner or occupier cannot inherit liability. If damage to third parties related to the real estate occurred before the sale, the buyer does not inherit liability.

If damage occurs after the sale, the buyer can be held liable in relation to third parties, as owner of the real estate.

A buyer can, however, sue the seller for:

- Breach of any representations and warranties it granted in the sale and purchase agreement.
- Fraud.
- Hidden defects.

In any of the above cases, the buyer can seek an order for damages or ask the court to rescind the sale.

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#### **15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it? For example, environmental liability, defects in the real estate, and contractual liability to the buyer.**

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A seller can be held contractually liable to the buyer for breach of representations and warranties granted in the sale and purchase agreement and for hidden defects that originated before the sale (*Civil Code*).

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#### **16. What costs are usually paid by the buyer? What costs are usually paid by the seller?**

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In a share deal, the costs are usually settled by the parties in the sale and purchase agreement.

In an asset deal, the buyer pays the:

- Fees of the professionals it used.
- Costs of due diligence.
- Public notary fees for the notarial deed of sale, including registration duty.

The seller pays the fees of the real estate agent it used for the sale.

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### **REAL ESTATE TAX**

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#### **17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?**

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The supply of real estate is, in principle, within the scope of VAT and classified as a supply of goods. However, the supply is generally exempt from VAT without credit (*Article 44, para 1f, Law on VAT of 12 February 1979, as amended*).

This exemption does not apply to supplies of construction work under a construction contract or to supplies of real estate to the extent that the construction sold did not exist at the time the contract was signed.

Taxable persons can request a waiver of their exemption and elect to have their transactions subject to VAT, as long as certain conditions are met. These conditions are mainly that:

- The supply or transfer of real estate is made by a VAT taxpayer to another VAT taxpayer.
- The real estate is used wholly or mainly for activities that allow the acquirer to claim a credit for input VAT.

The mixed use of real estate often occurs when, for example, a banking institution is buying a building. These companies are considered to be mixed VAT taxpayers, with a limited right of deduction.

The VAT authorities consider the term “mainly used” to apply when the company has a right of deduction of at least 50%. However, VAT imposed on the sale transaction can only be deducted by acquirers in proportion to their pro-rata deduction amount.

If the parties want to elect for VAT to be paid on the sale transaction, they must obtain the approval of the VAT authorities before the official registration of the sale. Opting for VAT on a sale does not avoid the application of proportional registration duties (*see Question 18*).

The transfer of a business as a whole or as a separate division would include real estate that is outside the scope of VAT. The transfer does not alter the option to apply VAT on real estate as the recipient of the business is treated as the successor to the transferor, provided that the real estate asset is used under the same conditions.

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**18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase? Who pays? What are the rates? Are there any exemptions?**

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In principle, the sale or purchase of real estate is subject to a total registration duty of 7% or 10% depending on the location of that real estate and whether or not a mortgage is held on the property. This is made up of:

- A compulsory proportional registration duty of 6% (applicable to the transfer of real estate other than in exchange for shares).
- A municipal surcharge of 3% if the real estate is in Luxembourg City.
- A compulsory 1% transcription tax due and collected by the Mortgage Registry.

Where the acquisition of real estate is financed with loans guaranteed by a mortgage over the property, the mortgage notarial deed is registered at the Mortgage Registry on payment of:

- A recording duty of 0.05% on the amount of the mortgage.
- Registration duty of 0.24% on the borrowed amount.

Any undervaluation of the sold property may be subject to additional registration duties.

The taxable basis is the price agreed on by the parties. However, if the stated price is inferior to the fair market value of the real estate, the tax authorities can ask for a third party valuation within a two-year period following the sale. An undervaluation may be subject to additional registration duties.

The seller and the purchaser are jointly liable for the payment of registration duty.

Under current capital duty legislation, contributions of properties to a Luxembourg company in exchange for shares trigger a 0.5% capital duty.

A bill that abolishes capital duty in Luxembourg as from 1 January 2009 is still subject to the Luxembourg legislative process. It proposes that, as from 1 January 2009, the contribution of real estate to a Luxembourg company in exchange for shares or a similar interest would be either:

- Subject to a proportional registration duty of 1.2%.
- Exempt from registration duty for certain specified restructuring transactions.

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**19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?**

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Share deals are commonly used (rather than asset deals) to mitigate registration duty, subject to general anti-abuse rules (see *Question 18*).

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**HOLDING BUSINESS PREMISES**

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**20. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties, for example through outsourcing transactions?**

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For offices that are rented, it is common to have a property manager in charge of the daily running of the building.

For buildings that have several owners, the appointment of a representative of the co-owners (*syndic de copropriété*) is required (*Law of 16 May 1975, as amended, governing co-ownership of buildings*).

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**21. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?**

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There are no restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security. Foreign companies can directly or indirectly hold real estate in Luxembourg without issue.

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**22. Does change of control of a company affect its holdings of real estate?**

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Change of control of capital companies does not impact on the holdings of such companies. The transfer of interests in partnerships or economic interest groupings whose assets consist of real estate situated in Luxembourg (regardless of whether this constitutes a change of control) is considered a transfer of the underlying real estate triggering applicable registration duties.

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**23. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?**

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State authorities can compulsorily purchase real estate for public interest purposes (*Law of 15 March 1979 on expropriation for public interest*). The price is normally determined between the parties on the basis of the market price. If the parties do not agree on a price, this is determined by the court after expert consultation.

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**24. Are municipal taxes paid on the occupation of business premises, for example business rates? Are there any exemptions?**

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Immovable property tax is charged annually by municipalities at varying rates. The rate of this tax cannot exceed 7.5% of a property's unitary value (assessed by the Luxembourg tax authorities and depending on the location and nature of the property).

## REAL ESTATE FINANCE

### 25. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?

Acquisitions of large real estate portfolios are generally funded via bank facilities, shareholder loans and equity or hybrid instruments such as (convertible) preferred equity certificates (PECs or CPECs). The type of funding used depends on factors such as the form of the vehicle, the jurisdiction and nature of the issuer and the location of the real estate.

### 26. How is real estate commonly used to raise finance? In particular through:

- Secured lending.
- Sale and leasebacks.
- Other financing such as real estate securitisation.

Real estate can be used as collateral for securing lending facilities. Collateral would generally take the form of a mortgage (*hypothèque*) granted over the real estate but a pledge over real estate (*antichrèse*) is also possible.

Rental income may also serve as security for guaranteeing a facility or as an asset that can be securitised, through a special purpose vehicle issuing securities whose yield is linked to the income generated by the underlying real estate.

## REAL ESTATE LEASES

### 27. Are contractual lease terms regulated or freely negotiable?

Commercial leases are not regulated as to their length and are usually concluded for a total period of nine years. During the lease, both the landlord and the tenant usually have an option to terminate the lease at three-year intervals, subject to notice being given. This is known as a 3-6-9 year lease.

Office leases are also freely negotiable. In practice, they are usually concluded for ten-year periods.

### 28. How are rent levels usually reviewed and are there any restrictions on this? Is VAT (or equivalent) payable on rent?

Commercial lease rents are freely negotiable by the parties. The lease agreement often states that the rent be adjusted in accordance with the inflationary index.

In principle, leases are exempt from VAT (*Article 44, para 1g, Law on VAT of 12 February 1979, as amended*). This exemption is, however, not applicable to certain operations such as the letting of:

- Hotels.

- Parking spaces (except when ancillary to an exempt building lease).
- Machines and tools.

Although leases are exempt from VAT, if the tenant and the landlord are subject to VAT, they can decide to opt for the application of VAT to the rent.

Rental agreements are subject to a registration duty payable within three months of the signing of the original lease agreement. Such registration is mandatory if the term of the lease exceeds nine years. Registration duty amounts to 0.6% for leases not subject to VAT. This duty is applicable on the aggregate amount of the rental fees for the entire lease period.

Leases subject to VAT are subject to a fixed registration duty of EUR12 (about US\$19).

### 29. What is the usual length of lease term and are there any restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term? If yes, please give details.

The term of a commercial lease is freely negotiable between the parties but in practice commercial leases are usually entered into on a 3-6-9 year basis (*see Question 27*).

Commercial tenants may be entitled to a preferential lease renewal right for a period of up to 15 years on condition that they have been conducting their business for at least three years (*Article 1762-4, Civil Code*).

Office leases are increasingly concluded for a nine- or ten-year fixed period, but this is just common practice.

### 30. What provisions or restrictions typically apply to the disposal of the lease by the tenant (for example, can the tenant assign or sublet the lease with the landlord's consent)?

The tenant can sublet or assign his rights under the lease agreement unless prohibited by the landlord (*Article 1717, Civil Code*). In practice, the great majority of lease agreements prohibit the tenant from subletting or assigning its rights without the consent of the landlord.

### 31. Who is usually responsible for keeping the leased premises in good repair?

Landlords are responsible for major repairs (structural repairs such as the roof, boiler and so on) and tenants are responsible for minor repairs (small maintenance repairs) (*Civil Code*). In practice, investors often impose on their tenants all costs, expenses, repairs and tax related to the real estate as pro rated to the actual space rented (triple net lease).

### 32. Who is responsible for insuring the leased premises?

Insurance matters are usually governed by the lease agreement. In practice, the landlord usually insures the structure while the tenant insures the content.

Market practice indicates that landlords often take out insurance for all risks linked to the building and pass on the cost of this to their tenants via the lease agreement.

### 33. Can tenants usually share their business premises with companies in the same corporate group? If yes, on what terms?

Normally, the object of the lease between the landlord and the tenant is occupation of the premises by the tenant. To share the premises with companies of the same group, the tenant must comply with the provisions inserted in the lease agreement regarding subletting and assignment.

Importantly, companies must comply with specific rules of the Law of 31 May 1999 on the domiciliation of companies.

### 34. On what grounds can the landlord usually terminate the lease? Please briefly outline any restrictions or procedure that applies. Can the tenant terminate the lease in certain circumstances?

Leases with a set term automatically terminate when that term expires. The landlord and the tenant can also terminate the lease in cases of material breach by the other party (non-payment of rent, deterioration of the premises and so on). In such cases, the court must approve the termination.

### 35. What is the effect of the tenant's insolvency (under general contract terms and insolvency legislation)?

A tenant's bankruptcy does not mean that the lease agreement is automatically terminated. However, in practice, the lease agreement often contains a provision to the effect that the lease is automatically terminated when the tenant is declared bankrupt.

## PLANNING LAW/ZONING

### 36. What authorities regulate planning control and which legislation applies?

The Administration for Regional Development and Town Planning (*Direction de l'Aménagement du Territoire et de l'Urbanisme*), a division of the Ministry of the Interior, regulates zoning and matters related to the use and occupation of land and buildings.

## REAL ESTATE ORGANISATIONS

### Administration for Regional Development and Town Planning (*Direction de l'Aménagement du Territoire et de l'Urbanisme*)

**Main activities.** The Administration, which is a division of the Ministry of the Interior, regulates zoning and matters related to the use and occupation of land and buildings. The website provides legislation and useful information related to planning and urban development.

W [www.miat.public.lu](http://www.miat.public.lu)

### Chamber of Notaries (*Chambre des Notaires*)

**Main activities.** The website provides general information on, and lists, public notaries in Luxembourg.

W [www.notariat.lu](http://www.notariat.lu)

The applicable legislation is the Law of 19 July 2004, as amended, on communal planning and urban development.

### 37. What planning consents (for example, planning permission or building permits) are required and for which types of development?

A zoning permit or special urban plan (PAP) must be obtained for the construction of new structures (several buildings (but not individual buildings) or plots of land that are to be built on).

A building permit (*autorisation de bâtir*) is also required for new buildings or extensions of existing structures or for any activity that would result in external change to a building.

To ensure conformity with environmental regulations, projects of a certain size require an authorisation known as a *commodo-in-commodo* authorisation, equivalent to an operating permit. This permit, which is granted by the Ministry of Environment and the Ministry of Labour, is required for any workshop or industrial or commercial premises (including office buildings of more than 1,200 square metres) which could present a risk or inconvenience to others.

Finally, an authorisation linked to the public road network (*permission de voirie*) may also be required.

### 38. In relation to planning consents:

- Which body grants initial planning consents?
- Do third parties have the right to object?
- In what circumstances is there a public inquiry?

- **How long does an initial decision take after receipt of the application?**
- **Is there a right of appeal against a planning decision?**

### Application

Applications for PAPs are made to the local municipality, which makes a decision once it has received the opinion of the Ministry of the Interior and the Ministry of Development and Planning.

Once this is obtained, an application for a building permit must be submitted to the municipality, which is responsible for granting the permit.

### Third party rights

Third parties can object to planning authorisations within a certain timeframe of their publication (the timeframe differs depending on the type of authorisation granted) (see *Question 37*). A building permit is posted at the construction site and a PAP is posted at the offices of the local municipality.

### Public inquiries

Before a *commodo-incommodo* authorisation is granted, a public inquiry may be carried out, especially when the authorisation may have an impact on the environment or if dangerous activities are planned.

### Initial decision

The timeframe varies depending on the municipality granting the authorisation. On average, however, a building permit decision takes two months. The average timeframe for a final decision on a PAP is two years.

### Appeals

Initial decisions on authorisations can be challenged before the Administrative Court within three months of their publication.

In relation to building permits only, an out of court appeal (*recours gracieux*), made directly to the body that took the decision, can be brought within three months of publication of the decision. If this results in a refusal of the permit, an appeal before the Administrative Court can still be brought, within three months of the out of court appeal decision.

### REFORM

#### 39. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

A new bill reforming construction law liability and related Civil Code provisions has been introduced to parliament and is currently under discussion. The bill aims to clarify the extent of liability of different entities involved in the real estate market (for example, property developers, building contractors and so on).

There are also bills before parliament concerning reform of the SICAR regime (see *Question 2*), the rights of *superficie* and *emphyteusis* (see *Question 9*) and the abolition of capital duty (see *Question 18*).

### ABOUT THE CONTRIBUTOR

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