

Commercial Real Estate in Luxembourg: Overview

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A Q&A guide to corporate real estate law in Luxembourg.

The Q&A gives a high-level overview of the corporate real estate market; real estate investment structures, including REITs; title; tenure; sale of real estate; seller's liability; due diligence; warranties; real estate tax and mitigation, including VAT and stamp duty/transfer tax; climate change targets; restrictions on foreign ownership; real estate finance; leases; planning law; and proposals for reform.

The Commercial 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?

The COVID-19 pandemic has not spared the construction sector in Luxembourg, which has been hit by a shortage of building materials. This shortage caused a significant rise in the price of materials, impacting on delivery times of building sites and causing a decrease of about 20% over one year in the number of sales announcements in the new residential sector.

In the office/retail sector, the vacancy rate in the first quarter of 2021 was 3.7%.

The most significant transactions in Luxembourg in 2021 were:

- The modernisation and extension of the Konrad Adams building (EU institutions) (127,000 square metres (sqm)).
- Union Investment's lease of 10,800 sqm in the Aérogolf II building (airport area).

Real Estate Investment

Investment Structures

2. What entity types and acquisition structures do investors typically use for real estate investment in your jurisdiction?

Common Entity Types

The most common forms of vehicles used by real estate investors are generally the:

- *Société anonyme* (SA), which is similar to a public limited company. The SA is particularly suitable for joint venture structures as the corporate governance rules are very flexible. It is not tax transparent. The SA is extensively used for real estate transactions and therefore easy to market to potential investors.
- *Sociétés à responsabilité limitée* (SARL), which is comparable to a private limited company. Originally created for shareholders with a significant personal link among them (*intuitu personae*), the SARL is now commonly used as a special purpose vehicle (SPV), even with a sole unitholder. It is not tax transparent. The SARL is extensively used for real estate transactions and therefore easy to market to potential investors.

A civil company (*société civile*) (SC) is a type of company often used for civil, agricultural, freelance, and intellectual professions.

Corporate partnerships limited by shares (*sociétés en commandite par actions*) (SCA) are also convenient for founders who want to retain control of the management. They are not tax transparent.

Recent years have seen a significant increase in the use of special limited partnerships (*société en commandite spéciale*) (SCSp) and limited corporate partnerships (*sociétés en commandite simple*) (SCS), which are similar to common law limited partnerships and offer flexibility. They are both tax transparent.

Real Estate Investment Trusts (REITs)

There are no REITs or equivalent.

Common Acquisition Methods

A real estate acquisition can be structured either as a direct purchase of the real property asset or as a purchase of the shares of the asset-owning company.

Asset deals are governed by the Luxembourg Civil Code, which contains the general rules of contract law. There are also specific rules that apply to certain types of assets and to specific

structures such as sales in future state of completion and sales by auction. To be enforceable against parties and third parties, an agreement for the acquisition of real estate assets must be made by notarial deed. Usually, this process takes a few weeks.

In a share deal, the transaction usually starts with a non-binding offer accepted by the seller offering an exclusivity period for the purpose of due diligence. The due diligence process allows the buyer to identify any legal, administrative, tax, financial, technical, and environmental risks associated with the acquisition. After closing of the due diligence process, a share purchase agreement is negotiated. The whole process can take several months.

The main difference between asset and share transactions is the amount of transfer tax. In asset transactions, transfer taxes are based on the purchase price stated in the deed and paid by the buyer. In share deals, no transfer tax is in principle payable, as there is no direct transfer of title to the assets from the seller to the buyer (see [Question 17](#)).

Sources of Finance and Investment

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

The main sources of finance are local or European bank loans.

The main investors used to be local developers, Belgian property and insurance companies. However, French, German and US real estate investors have gained momentum in the market. The authors have also seen the arrival of sovereign investment funds from Asia and the middle east.

Luxembourg welcomes overseas investment and offers a suitable environment for it. Luxembourg is well known for offering attractive business opportunities in the real estate market. Foreign investors are entitled to own real property in the same way as nationals, without any additional restriction based on nationality (see [Question 4](#)).

Restrictions on Foreign Ownership and Occupation

4. Are there restrictions on foreign ownership or occupation of real estate (including foreign ownership of shares in companies holding real estate)? Are there restrictions

on foreign lending, security and guarantees to buy or occupy real estate in your jurisdiction?

Foreign Ownership of Real Estate

Foreign persons can freely carry out real estate investment in Luxembourg. Foreign shareholders, individuals, and legal entities can hold shares and real estate assets in Luxembourg. In all cases, a monitoring of anti-money laundering will be applied, regardless of the form of the transaction.

Luxembourg legislation does not require the disclosure of foreign beneficial ownership of real estate. Foreign persons have the same rights as nationals regarding the sale, purchase, lease, or holding of real estate in Luxembourg. In addition, the Land Register is public and can be freely consulted (see [Question 5](#) and [Question 6](#)).

Foreign Lending, Security and Guarantees

There are no restrictions on foreign lending, security, or guarantees for ownership or occupation of real estate in Luxembourg.

Title to Real Estate

Title Registration

5. How is title to real estate evidenced? What is the system for public registration/recordation of title? Is electronic access and electronic conveyancing available?

How Title is Evidenced

Title to real estate is evidenced by a written deed of transfer authenticated by a notary (*acte notarié de vente*) (transfer deed). The transfer deed must be registered at the Mortgage Registry (*Bureau des Hypothèques*) to be enforceable against third parties (Law of 25 September 1905).

Ownership is then referenced at the *Land Registry Office (Administration du Cadastre et de la Topographie)*.

Public Registration/Recordation System

See above, [How Title is Evidenced](#).

Electronic Access and Conveyancing

No online information is currently available from the Mortgage Registry, except for public authorities (such as notaries).

The Land Register lists every land parcel in Luxembourg (both built on and undeveloped land), information on its owner, and the history of the land parcel. A simple extract can be ordered and received online (www.geoportail.lu).

Electronic conveyancing is not available, as a transfer deed cannot be executed by electronic signature.

6. What are the main information and documents registered/recorded in the public registration/recording system? Can confidential information or documents be protected from disclosure?

Main Information and Documents

The Mortgage Registry provides transcripts of:

- The sale transcript, which mentions the purchase price or division of property on a real estate.
- The mortgage transcript.
- Rent agreements that have been registered.

A search at the Mortgage Registry requires the surname, first name, and date of birth of the property owner or their identity number.

To obtain the name of the owner, a party can search the Land Register (*Administration du Cadastre et de la Topographie*).

The Land Register lists every land parcel in Luxembourg (both built on and undeveloped land), information on its owner, and the history of the land parcel. A simple extract can be ordered and received online (www.geoportail.lu).

Different type of extracts can be obtained: those providing information on the current owner and detailed ones with information on the origin of the property (Cadastre Provenance).

Confidential Information

To implement the General Data Protection Regulation ((EU) 679/2016) (GDPR), the Land Registry Office limits access to the Cadastre Provenance.

7. Is there a state guarantee of title? Are authorities that manage public title registration/recordation systems liable for title registration errors? Is title insurance available and is it commonly used?

State Guarantee of Title and Compensation

There is no state guarantee of title.

To transfer title, a notary must prepare a transfer deed and verify the transferor's title. This provides legal protection to avoid disputes over ownership. The notary is liable for the content of the deed as well as its transcription. The notary can be held liable for any errors they make. Notaries are public officers who are competent to authenticate all deeds and contracts, attest to their date, and keep copies of them.

Authentic deeds are enforceable and have probative force of the matters that they record.

To draw up the transfer deeds, the notary consults:

- Information relating to the property on cadastral maps.
- A personal directory that traces all the legal acts carried out by persons holding relevant real estate rights.
- Mortgage charges over the real estate.

The notary is also required to verify the identity of the seller and buyer.

Title Insurance

Title insurance is not commonly used. However, a notary is required to have professional insurance covering damages caused to third parties by errors, fault, or negligence of the notary and their employees.

Types of tenure

8. How can real estate be held (that is, what types of tenure and other main ownership rights exist over land)?

Freehold Title/Absolute Ownership

The right of ownership (*droit de propriété*) is the right for individuals and corporate entities to enjoy, dispose of, and receive the fruits of real estate property, provided that this does not interfere with a legal provision or third parties' rights (Civil Code).

Freehold title is available.

Joint ownership and co-ownership is available (Law of 16 May 1975).

Leasehold Title

Residential, retail, and office real estate can be subject to lease agreements.

Condominium Ownership/Equivalent

Joint ownership is governed by Law of 16 May 1975 and the Grand Ducal Regulation of 13 June 1975.

Other Rights

Non-ownership rights *in rem* that can be granted over real estate include:

- Long-term leases, such as:
 - *droit d'emphytéose* for a term between 27 (or 50 years for residential leases) and 99 years (at the end of the term, constructions built during the term are owned by the owner without consideration); or
 - *droit de superficie* for a term of up to 99 years (at the end of the term, constructions built during the term are owned by the owner with consideration).
- Usufructs. This is a right to use and enjoy the fruits or profits of another's property.
- Easements. For the beneficiary, easements provide more stability than a mere lease as well as more extensive rights. For the lessor, they guarantee income for a longer period of time.

Sale of Real Estate

Preliminary Agreements

9. What types of preliminary agreements are typically used in the sale of real estate and are they legally binding?

The type of preliminary contract used generally depends on the size of the real estate being sold and on the existence of buildings on the land.

In most cases, when a building is present, as soon as there is mutual consent a preliminary contract can be signed as an offer letter (*offre d'achat*), an undertaking to sell (*promesse de vente*), or most often a preliminary sale and purchase agreement (*compromis de vente*).

The purpose of these contracts is to bind the parties to complete the sale before a notary within a certain time, subject to conditions such as the buyer obtaining the necessary funding, which are often coupled with a penalty clause.

In larger transactions, the preliminary contract is generally a non-binding letter of intent detailing the terms of the transaction, subject to satisfactory due diligence to be conducted during an exclusivity period.

If the sale concerns land and a building to be built, the sale is subject to further conditions under the Civil Code and the preliminary agreement is a forward sales agreement (*vente à terme*) or a sale in future state of completion (*vente en l'état future d'achèvement*). The preliminary agreement is referred to as a reservation agreement (*contrat de reservation*).

Sale Contract

10. Briefly outline the typical main provisions of a commercial real estate sale contract and main real estate provisions of a typical share purchase agreement.

Commercial Real Estate Sale Contracts

The main provisions in a deed of sale are:

- Details of the parties.

- Description of the property, including land plot reference, address, and the origin of its current ownership.
- Privileges and charges affecting the transfer.
- Confirmation of the absence of pre-emption rights.
- Easements.
- Purchase price.
- Any litigation affecting the property.
- Lease(s).
- Tax provisions.
- Seller's and buyer's representations, warranties, covenants, and indemnities.
- Environmental information.

Share Purchase Agreements: Real Estate Provisions

The main provisions in a share purchase agreement are:

- Details of the parties.
- Description of the company, number of shares, and description of real property held by the company.
- Purchase price.
- Calculation and payment of the price adjustment.
- Seller's and buyer's representations, warranties, covenants, and indemnities.
- Buyer's remedies.
- Confidentiality .
- Applicable law and jurisdiction.
- List of due diligence documents.

Due Diligence



11. What real estate due diligence is typically carried out before an acquisition?

In standard asset deal, due diligence is usually carried out by notaries, subject to their liability, verifying the origin of the property, easements, mortgages, administrative authorisations, and pre-emption rights.

Usually, due diligence is carried out at after signature of a non-binding offer providing for an exclusivity period. In larger commercial real estate transactions, an exclusivity period allows a due diligence investigation of documents disclosed by the seller to the buyer. This generally involves a Q&A process, where the seller obtains additional information and confirmation on the documents. Due diligence is usually carried out by lawyers, tax advisers, technical advisers, and corporate finance experts. The areas generally covered are:

- Title, real property taxes and assessments, covenants, easements, mortgages, pre-emption rights, and encumbrances.
- Administrative permits: building permits, construction works, planning, insurance, use and surface area, availability of necessary permits, and environmental matters.
- Facility management: service contracts and internal regulations.
- Leases: tenants and parties in possession, tenant leases, lease term, renewal options, assignment and subletting rights, security deposit, guarantees, schedule of fixtures, landlord's construction obligations, and leasehold financing.
- Corporate matters: due organisation of the parties, authority, share capital, ownership of shares being sold, shareholders' register, articles of association, trade and companies register issues.
- Financing agreements, accounts, and assets.
- Litigation: judgments and pending litigation.
- Employees.

Sellers' Warranties

12. What real estate warranties are typically given by a seller to a buyer in the sale of commercial real estate? What are the main limitations on warranties, for example, qualified by knowledge and disclosure?

The following warranties are automatically granted and expressly provided by the Civil Code:

- **Peaceful possession of the property sold.** The seller must ensure not to disturb the buyer once the buyer is in possession of the property.
- **Absence of hidden defects or critical flaws.** The property must not contain defects rendering it unfit for its intended use or impairing that use so that the buyer would not have acquired the property, or would have paid a lower price for it, had the buyer been aware of the defects.

In addition, the seller's warranties generally refer to the:

- Seller's capacity.
- Target company's existence, share capital, and governance.
- Real estate property and ownership.
- Lease situation.
- Accounting situation.
- Tax situation.
- Employees.
- Agreements (insurance and facility management).
- Absence of litigation.

The warranties are generally limited to information disclosed in the data room and the due diligence Q&A process. The buyer is not entitled to bring a warranty claim for disclosed facts or circumstances.

Warranties are generally time limited, depending on the matters covered. For instance, the time limit for claims under tax warranties is generally shorter than for share ownership warranties.

Warranties are also generally limited by a minimum claim threshold (*de minimis*) and a maximum claim amount.

Liability

13.Does a seller have any statutory or other liability to the buyer in a disposal of commercial real estate?

The seller must deliver the property in compliance with what is agreed in the sale contract in terms of quality, quantity, and identity. The seller also warrants that the buyer will have quiet enjoyment of the property (Civil Code).

Environmental Issues

14. Briefly outline the environmental legislation and potential liability in a purchase of real estate. Is it common to carry out environmental due diligence and obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

Environmental Legislation and Liability

The Law of 19 January 2004 on the protection of nature and natural resources, coupled with the Law of 19 July 2004 on municipal planning and urban development, govern the planning of green zones (zones vertes) or any zone where environmental standards, due to natural forest or animal or vegetal species, are protected and under the supervision (and authorisation) of the Minister for the Environment, Climate and Sustainable Development.

The Law of 10 June 1999 relating to classified establishments applies to any industrial, commercial or craft establishment, public or private, any installation, any activity or related activity and any process, whose existence, operation, or implementation may cause environmental pollution.

The Environmental Liability Law of 20 April 2009 establishes an environmental liability framework based on the polluter pays principle, to prevent and repair environmental damage.

In certain rare circumstances, the owner may incur liability to restore the site.

Environmental Due Diligence and Insurance

Environmental surveys are generally performed when a green zone is involved or a potential risk has been identified.

It is not common to obtain environmental insurance.

Environmental Issues in the Sale Contract

In a sale contract, environmental matters are generally covered by the representation and warranties section. If all environmental due diligence has not been performed before the transfer of the property, an amount of the purchase price can be kept in escrow until full performance of the environmental audit.

15. What types of liability can a buyer inherit relating to the real estate? Can a seller retain liability relating to the real estate after the sale?

Buyer Inheriting Liability

The owner becomes responsible for matters relating to the real estate as from the acquisition.

Seller Retaining Liability

A seller remains liable for:

- Warranties (see [Question 12](#)).
- Environmental matters (see [Question 14](#)).

Exchange and Completion/Closing

16. When does the sale become legally binding? What are the main documents and formalities for exchange and completion/closing of the sale? When does title transfer? Is notarisation required?

When Legally Binding

In asset deals, the preliminary sale and purchase agreement binds the parties when the conditions precedent are fulfilled. No deposit is usually required.

In share deals, when the parties become legally bound to proceed with the sale depends on the terms of the non-binding offer. After the due diligence period, it is common to execute a binding preliminary share purchase agreement.

Completion/Closing Documents

The notary is in charge of collecting all documents related to the property (see [Question 5](#)), including those in the Mortgage Register.

Completion of a share deal requires all documents related to the property, all corporate documents, all accounting statements, and all contractual agreements (including all lease agreements).

When Title Transfers

In a real estate asset sale, the transfer of title must be carried out before a notary by a transfer deed and registered with the Mortgage Registry (see [Question 5](#)). The date of the transfer is generally the date on which the transfer deed is executed and when the purchase price is released to the notary.

A share deal does not involve the Mortgage Registry, since the owner of the real estate remains unchanged. The share transfer is made through a share purchase agreement in accordance with the Law of 10 August 1915 on commercial companies (as amended). The share transfer is generally recorded in the shareholders' register of the target company once the buyer has provided evidence of payment of the purchase price.

Notarisation

The notary's fees vary depending on the price of the transaction, subject to a maximum fee of EUR3,009 (exclusive of taxes).

Real Estate Tax

Stamp Duty/Transfer Tax

17. Is stamp duty/transfer tax (or equivalent) payable on a purchase of real estate? Who pays, what are the rates and are there any exemptions? Does it apply to the transfer of shares in a company holding real estate and at what rate?

Stamp Duty/Transfer Tax

A transfer of real estate is subject to:

- A registration fee of 6% of the purchase price of the real estate.
- A transcription fee of 1% of the purchase price of the real estate.

If the buyer declares in the deed of sale that it is purchasing the immovable for resale, the initial 6% registration fee is increased from 6% to 7.2% by adding a 1.2% surtax on the resale. The transcription fee remains unchanged at 1%.

Who Pays and Typical Tax Rates

The buyer is responsible for payment of registration and transcription fees.

See above, *Stamp Duty/Transfer Tax* for the applicable tax rates.

Exemptions

For a first purchase of real estate for personal use, each buyer is entitled to a tax credit on notarial deeds of EUR20,000, deductible from the registration fee due.

Transfer of Shares

The transfer of shares in a company whose assets include real estate does not give rise to registration duties unless the company whose shares are sold is a partnership or an economic interest grouping whose assets include real estate or fractions of real estate (including general partnerships, limited partnerships, and civil partnerships).

From 1 January 2021, the tax treatment of share deals (in the context of investments in Luxembourg real estate) has been amended to reduce the unequal tax treatment between share deals and asset deals for registration taxes. In the case of capital contributions of real estate assets to a civil or commercial company, the registration duties have increased from 1.1% to 3.4%.

If the intention of the parties is to conceal the real nature of the transaction and/or evade fees for an exclusively fiscal purpose, there is a risk of incurring registration and transcription fees.

Tax on Seller's Profits/Gain

18. Is tax imposed on a seller's profit or gain on a sale of real estate? What are the rates and are there any exemptions? Does it apply to a transfer of shares in a company holding real estate and at what rate?

Tax on Seller's Profits/Gain

The seller's gain on a sale of real estate is subject to capital gains tax. The method used to determine the amount of the gain depends on how long the seller held the real estate before the sale, as follows:

- Real estate sold less than two years after acquisition: the seller's gain is treated as a speculative profit.
- Real estate sold two years or more after acquisition: the seller's gain is treated as a profit on disposal.

Typical Tax Rates

The tax rates are proportional and depend on the seller's personal annual income taxation.

Exemptions

Gains on the sale of a principal residence are exempt from tax. To be considered a principal residence, it must be occupied by its owner at the time of sale.

There is also a ten-year allowance of EUR50,000 available for profits on disposal.

Transfer of Shares

There is no direct tax on a transfer of shares in a company holding real estate.

19. Are any methods commonly used to mitigate transfer tax liability on acquisitions of real estate, or tax on gains from the sale of real property?

A transfer of a company holding real estate assets is commonly used to mitigate real estate tax liability, subject to anti-avoidance provisions (see [Question 17](#)).

Value Added Tax (VAT) or Equivalent

20. Is VAT (or equivalent) payable on a sale of real estate? Who pays? What are the rates? Are there any exemptions?

VAT/Equivalent

A purchase of existing buildings is in principle exempt from VAT, but the buyer can waive the exemption by opting for VAT.

Construction of a building on land with no existing structures is subject to VAT at a rate of 17%. VAT paid is recoverable to a certain extent.

Who Pays and Typical Tax Rate

The buyer can opt to pay VAT.

The standard VAT rate is 17%. A super-reduced VAT rate of 3% applies to the construction and renovation of housing, provided the property is intended as a main residence.

Exemptions

A purchase of existing buildings is in principle exempt from VAT.

Municipal/Local Taxes

21. Are municipal/local taxes paid on the occupation or ownership of business premises or business ownership? Are there any exemptions?

All municipalities in Luxembourg have the right to collect a municipal tax (property tax) on built and non-built real estate in their territory. The property tax is levied on all real estate property regardless of use (private, commercial, mixed, and so on). The person liable for property tax for the entire year is the owner of the property (not the tenant) as of 1 January.

In addition, a communal tax (*impôt commercial communal*) is levied on commercial, industrial, mining, and artisanal enterprises located in Luxembourg. It is calculated on the operating profit of companies, not on the occupation of business premises.

Climate Change Issues

22. Are there targets or incentives to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

Under the Law of 23 December 2004 to combat the release of greenhouse gases into the atmosphere, a permit is required to operate a facility likely to generate greenhouse gas emissions. Permits are obtained from the Ministry of the Environment, Climate and Sustainable Development

(under Article 3(k) of the Law of 23 December 2004), who will issue the permit if satisfied that the operator is capable of monitoring and reporting its emissions.

The Law of 25 June 2004 introduced the National Plan for Sustainable Development (*Plan National de Développement Durable*) (PNDD) and the Inter-departmental Commission for Sustainable Development (*Commission interdépartementale de développement durable*) (CIDD). The PNDD specifies Luxembourg's priority areas for sustainable development at national and international level, formulates objectives, and proposes action and instruments for implementation. The CIDD consists of representatives of the various ministries and co-ordinates the national sustainable development policy.

The Law of 23 December 2016 promotes sustainable construction and housing, as well as sustainable energy renovation of older housing. To this end, a financial aid scheme in the field of housing has been created for the realisation of investment projects aimed at the planning and construction of sustainable housing, the sustainable energy renovation of old buildings, and the development of renewable energy sources.

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

An energy performance certificate (EPC) on the energy performance of residential buildings is mandatory when selling or renting a residential or commercial building. An EPC must be attached to a sale contract and, for leased premises, must be given by a landlord to a tenant.

An EPC provides prospective buyers and tenants with information about the energy performance of the building and practical advice to improve it. An EPC is valid for ten years.

Provisions on energy efficiency are now included in leases, for example on the use of clean and renewable energy sources. The tenant must comply with requirements promoting low energy consumption, efficient management of its energy consumption, and so on.

Real Estate Finance

Secured Lending Involving Real Estate

24. Briefly outline the typical security package required by lenders in relation to commercial real estate lending. How are the most common forms of security interest relating to real estate created and perfected? Is there a mortgage tax/registration fee?

Typical Security Package

The typical security package required by lenders in real estate financing includes a:

- Contractual mortgage.
- Pledge over the shares of the borrower or company owning the property.
- Pledge over receivables.
- Bank account pledge.

Common Forms of Security

A mortgage in Luxembourg takes the form of a written notarial deed and is registered with the administration registry (*Administration de l'enregistrement et des domaines*) (Administration Registry). To be enforceable against third parties, the original notarial deed must be registered with the mortgage registry (*bureau de conservation des hypothèques*) of the judicial district in which the real estate is located.

The pledges mentioned above can be created under private seal and are enforceable against third parties subject to notification or acceptance. In practice, the pledge agreement is countersigned by the debtor for acknowledgment and acceptance purposes.

Mortgage Tax/Registration Fees

The mortgage registration fee is 0.29% of the loan amount.

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

Lenders generally require as a condition precedent to the financing detailed information on the real estate asset. This is generally included in the due diligence reports provided by the purchaser's advisers.

Financial covenants such as a loan-to-value ratio are generally part of the financial documentation.

Lenders may also require specific reporting to be provided regularly.

26. Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

Lender Liability

Lenders do not incur environmental liability due to financing real estate but should consider environmental matters (see [Question 14](#)) in case they become the owner of the real estate property due to enforcement of their security.

Lender Protection

There are no specific measures lenders take to manage potential environmental liability. Lenders rely on the technical due diligence report.

Lenders' Remedies

27. Briefly outline the main remedies for lenders in relation to secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

Lenders' Remedies

The Law of 5 August 2005 on financial collateral arrangements and the Civil Code govern the enforcement of security interests.

Mortgages are usually enforced by a public auction sale of the secured assets.

Pledges on financial instruments and receivables can be enforced by:

- Appropriating directly or through a third party the pledged assets, at a price determined by a valuation method agreed between the parties.

- Selling the pledged assets or having them sold on commercial terms at arm's length, in a private sale organised by a stock exchange or by public auction.
- Obtaining a court order assigning the pledged assets to the pledgee, according to an expert valuation.
- Setting off the pledged assets against the secured obligations.

Effect of the Borrower's Insolvency

If the borrower becomes insolvent, those who provide funds for the acquisition of immovable property benefit from a preferred right on the real estate property, provided that it is truly established, by the deed of loan, that the sum was intended for this use, and that this payment was made from the borrowed funds (Article 2103, Civil Code).

In addition, financial collateral arrangements, as well as the enforcement events, netting agreements, and the valuation and enforcement measures agreed by the parties under the Law of 5 August 2005 on financial collateral arrangements, are valid and enforceable against third parties, commissioners, receivers, liquidators, and other similar persons, regardless of reorganisation measures, winding-up proceedings, or other similar national or foreign proceedings.

28. Briefly outline key additional issues for lenders in relation to construction and development projects.

In construction projects, the lender also generally requires the borrower to provide cost forecasts, regular budget reporting, and reports on the status of the construction and permits.

Other Real Estate Financing Techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

Sale and leasebacks are often used in Luxembourg. Real estate securitisation is rather uncommon in Luxembourg.

Real Estate Leases

Negotiation and Execution of Leases

30. Are commercial lease provisions regulated or freely negotiable? Which legislation applies?

Contractual lease provisions are generally freely negotiable, subject to some mandatory rules of the Civil Code that protect the parties and public policy, for example in relation to rent deposits (see [Question 34](#)) and assignment (see [Question 36](#)).

31. Are there formal legal requirements to create and execute a lease? How are leases executed by a company, a partnership, and individuals?

Formalities for Leases

A lease can in principle be concluded in writing or verbally.

However, leases exceeding nine years must be made by notarial deed and registered with the Mortgage Registry. For example, a long lease (*bail emphytéotique*) of a residential building (which must be between 50 and 99 years) must be made by notarial (or administrative) deed.

While a lease can be formed orally, this may cause evidentiary issues and the parties will not benefit from further conditions such as warranties or insurance.

To avoid these problems, the parties generally enter into a written lease, in order to include specific clauses.

No particular form is prescribed for a written lease, but to be valid it must contain at least the:

- Object of the lease.
- Identification of the parties.
- Rent amount.

The lease must also be signed in as many copies as there are parties involved.

Parties can, but do not have to, register their lease. However, to give it a certain date and make it enforceable against third parties, a lease must be registered with the Land Registration and Estates Administration (*Administration de l'Enregistrement et des Domaines*). The registration fee is 0.6% of the total rent amount over the term of the lease. Any party can register the lease and the registration fee may be borne by the registering party or shared between the parties.

Execution Requirements

Lease agreements can be executed as follows:

- Company or partnership: in accordance with the articles of association or partnership agreement.
- Individual: by affixing their individual signature or by any person that holds a proxy for that purpose.

Rent Payments

32. At what intervals is rent usually paid in a business lease? How are rent levels usually determined and reviewed?

Rent Payment Intervals

Rent is usually paid monthly in advance.

Rent Review

In commercial leases, the parties are free to negotiate rent review and can include a clause for automatic rent index adjustment. The index most often used is the consumer price index published by STATEC. Indexation is not always upwards. In residential leases, automatic indexation is prohibited.

33. Is stamp duty and VAT (or equivalent) payable on rent?

Office and commercial leases can be subject to VAT at 17% at the landlord's option, if the tenant is subject to VAT and the building is mainly used for operations entitling the tenant to recover VAT. In that case, the lease registration fee is EUR12 instead of 0.6%, subject to an additional stamp duty of EUR2 per sheet (see *Question 31, Formalities for Leases*).

The rent of a residential lease cannot in principle be subject to VAT.

34. Is a rent security deposit or other security usually required by the landlord?

The landlord usually requires a rent security deposit to secure payment of the rent. The amount is usually between three to six months' rent. In commercial leases, the deposit cannot exceed six months' rent (Article 1762-5(3), Civil Code) and in residential leases it cannot exceed three months' rent (Article 5, Law of 21 September 2006).

Bank guarantees are commonly used in residential leases to secure the rent deposit.

In commercial leases, the tenant can be required to provide a rent guarantee not exceeding six month's rent to guarantee payment of the rent or any other obligations under the lease (Article 1762-5(3), Civil Code). The guarantee can take the form of a bank guarantee, other forms of first demand bank guarantee, or the taking out of insurance. Lease obligations can also be guaranteed by a professional payment guarantee (*garantie professionnelle de paiement*), which is governed by the Law of 10 July 2020.

Length of Term and Security of Occupation

35. Is there a typical length of lease term or restrictions on the duration of a lease? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

Length of Lease Term

A lease can be concluded for a fixed or undetermined term. A lease with an undetermined term, or in the absence of the indication of a term, will run until terminated by one of the parties or by mutual agreement.

There is no minimum duration provided by law for residential or professional leases. Many leases have a fixed term of three, six, or nine years.

Security of Occupation

If a written commercial lease for a fixed term expires and the tenant remains in the premises without opposition from the landlord, a new lease for an undetermined term is formed (Article 1762-10 Civil Code). The parties cannot exclude this rule by agreement.

Disposal

36. What restrictions typically apply to the disposal of the lease by the tenant?

Assignment and Subletting of the Lease

If the lease is silent about subletting the rented premises, the tenant has a right to sublet the whole or part of the premises. Assignment of the lease is also allowed, unless otherwise agreed by the parties (Article 1717, Civil Code). Therefore, the parties can and often do include a provision prohibiting subletting and assignment.

Group Sharing

Tenants can share their premises with companies in the same group if this is authorised under the lease agreement.

Legal Reorganisation or Transfer/Sale of the Tenant

In commercial leases, the tenant is legally entitled to sublet or assign its lease to the buyer or successor of its business assets (*fonds de commerce*) if a similar activity is maintained in the premises. This right cannot be excluded by the lease agreement. However, the landlord can refuse consent to the subletting or assignment in these circumstances if there are just grounds for doing so, and the tenant can appeal against the landlord's decision within eight days of refusal (Article 1762-6, Civil Code). Additionally, if the landlord has reserved part of the building to live in or to accommodate their family, a prohibition on transferring the lease in these circumstances is valid.

37. Does a landlord or tenant retain any liability under the lease after the lease is assigned?

Landlord's Retained Liability

The landlord remains liable for its obligations to the assignee.

Tenant's Retained Liability

A tenant that sublet the premises remains liable to the landlord for the sub-tenant's actions.

Repair and Insurance

38. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of improvements carried out to the premises during the lease?

Repair

The landlord must maintain the leased property in a condition fit for the use for which it was leased.

The landlord is responsible for major repairs (*grosses réparations*) as defined in Article 606 of the Civil Code. The tenant is responsible for minor repairs as defined in Article 1754 of the Civil Code.

Insurance

In principle, the landlord takes out insurance to cover damage to the leased premises and the tenant insure the contents of the premises. There is no legal requirement for the tenant to take out such insurance. In practice, it is quite common for the landlord to take out insurance on the tenant's behalf, to avoid duplicate remedies and insurance disputes. The landlord's insurance costs are commonly passed on to the tenant.

Ownership of Lease Improvements

It is generally accepted that, for improvements resulting from work carried out by the tenant which are inseparable from the leased premises, the tenant cannot claim compensation from the landlord for a resulting increase in value of the premises.

Unless the lease provides otherwise, the landlord must pay compensation to the tenant for improvements that are detachable and not necessary, if the landlord does not remove them.

Landlord's Remedies and Tenant's Insolvency

39. What remedies are available to a landlord for a breach of the lease by the tenant? On what grounds can the landlord usually terminate the lease? What is the effect of the tenant's insolvency?

Landlord's Remedies and Grounds for Termination

The landlord can terminate the lease if the tenant fails to comply with its contractual obligations (Article 1762-11, Civil Code). The landlord can file a lawsuit to order the forced eviction of a tenant that fails to pay the rent or service charge on the day of the hearing (Article 1762-9, Civil Code).

Based on well-established case law, a delay in payment of rent justifies termination of the lease if the delay is of a certain importance and the landlord has not tacitly accepted the delay.

Effect of the Tenant's Insolvency

The opening of insolvency proceedings (safeguard, rehabilitation, or liquidation proceedings) against the tenant does not lead to automatic termination of the lease. In the interest of creditors, the courts can (and almost always do), order that the activities of the insolvent will continue under the supervision of the curator (Article 475, Commercial Code).

The tenant's insolvency does not impose a stay on enforcement proceedings against the tenant for unpaid rent and other amounts.

However, the landlord may want to terminate the lease, since a landlord ranks with the tenant's other unsecured creditors. In most cases, the lease provides that the lease will automatically terminate on the tenant's insolvency.

40. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the leased premises? Can the tenant terminate the lease in certain circumstances?

Tenant Withholding Rent

The tenant may be able to withhold part of the rent if the landlord does not fulfil some of the landlord's obligations, in repair obligations, but never the whole rent. This can be based on Article 1134-2 of the Civil Code. However, this is admitted by case law with caution, on a provisory basis, if the landlord's breaches are proven and indisputable. When the breaches are remedied, the tenant must reimburse the suspended rent.

Any reduction of rent, for a specified period or for the future, must be agreed by the parties or decided by the court.

Tenant Terminating the Lease

If the landlord does not fulfil its obligations, the tenant can only terminate the lease if the tenant has vacated the premises. Termination must be validated by a court to relieve the tenant of its obligation to pay the rent, unless agreed by the landlord.

Planning and Development Controls

41. In what circumstances can local or state authorities purchase business premises compulsorily (expropriation)? Is the purchase price or compensation based on market value?

Compulsory Purchase/Expropriation

Compulsory purchase of real estate is governed by:

- Article 16 of the Constitution, under which no one can be deprived of their property except on the grounds of public interest, in cases and in the manner set out by law and subject to indemnification.
- Article 545 of the Civil Code.
- The Law of 15 March 1979 (as amended) on compulsory sale for public interest reasons, under which expropriation of real estate (absolute ownership or other right *in rem*) can only take place for public utility reasons.

Expropriation can be carried out by public authorities (the state, municipalities, public administrations, and public undertakings) and certain individuals (whose interests coincide with the public interest).

Additionally, a pre-emption right is granted to the state, an association of municipalities in charge of an area under a sectoral master plan, or municipalities for acquiring land plots or groups of land plots (Article 25, Law of 17 April 2018 on land use planning).

Compensation

The amount of compensation is determined by the parties by mutual agreement or by a court after consultation with three experts especially appointed by the court for this purpose. The price is generally based on the market price.

42. What authorities regulate planning control and which legislation applies?

The government regulates planning control over the country, based on the National Land Use Plan (*Plan d'occupation des sols*). Municipalities are in charge of preparing local plans and applying them. Local plans divide an area into different use zones and assign building density ratios to each zone.

Under the Law of 19 July 2004, each municipality must have a general development plan covering all its territory. Two or more municipalities can draw up a joint general development plan.

The general development plan of a commune is drawn up on the initiative of the college of burgomasters and aldermen, by a qualified person.

Historic buildings are governed by specific legislation. The National sites and monuments service (*Service des sites et monuments nationaux*) (SSMN), on behalf of the state, carries out studies, enforces its role as project owner in infrastructure projects, and advises municipalities and private individuals on restoring their buildings. The SSMN also prepares and manages procedures to protect heritage buildings of national interest.

43. What planning consents are required for building works and the use of a building?

In principle, any person, individual or legal, who intends to carry out work on a building, must apply for a building permit to the mayor of the relevant municipality before proceeding with work relating to construction, conversion, or demolition of a building. Municipal authorities can, in their building regulations, define smaller-scale works that do not require a building permit.

Usually, an architect must draw up the plans for a building permit. This is not required if the works are to transform the interior of a dwelling, do not concern load-bearing structures (*structures portantes*), and do not affect the facade and roof or the affectation of the premises.

Individuals wishing to build a building for their own use on a land plot they have the right to use do not have to use an architect if the cost of the construction work does not exceed a certain amount.

Subject to the legislation on urban development, further authorisations from the Interior Ministry or the Minister for the Environment, Climate and Sustainable Development may be required if the zoning of the real estate is protected.

An authorisation from the Public Road Administration (*Administration des Ponts et Chaussées*) is also mandatory if any construction or renovation works are near streets or if machinery is necessary for the works.

Operating permits for a classified establishment set out the conditions for development and operation deemed necessary to protect the environment and ensure the safety of employees, the public, and the neighbourhood.

44. What are the main authorisation and consultation procedures in relation to planning consents?

Initial Consents

Applications for building permits are submitted to the local planning authority (see [Question 43](#)), even when the granting authority is the local representative of the state, which in most processes is the mayor.

After verification from the authority, and the project can be validated, the mayor grants the authorisation, which includes publication obligations for:

- The municipality, which must display the authorisation in its offices.
- The recipient of the authorisation, who must display a certificate called the red point (*certificat point rouge*) at the building site (under the mayor's liability).

The time to obtain a decision depends on the location of the land and the mayor or relevant municipality. For example, in Luxembourg City, it can take several months or up to a year depending on the complexity of the project.

This notifies third parties and neighbours of the construction project, allowing them to make any complaint they may have.

Third Party Rights and Appeals

Any act emanating from an administrative authority that is likely to cause a grievance to a citizen is subject to appeal. This also applies to planning decisions.

Generally, an appeal to the administrative tribunal must be lodged within three months of the day the decision was notified to the appellant, or of the day the appellant became aware of it.

Recent Developments and Reform

45. Have there been any key recent developments in the real estate sector? Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

Several reforms have been proposed because of COVID-19, including:

- A legislative proposal (number 7551) suspending for the duration of the COVID-19 crisis rents relating to commercial and professional leases, and amending the amended Law of 4 December 1967 on income tax.
- A legislative proposal (number 7549) introducing transitional provisions for rental leases in the context of the COVID-19 crisis, providing in particular protective measures against unilateral termination of a lease.

Other proposed reforms are:

- A legislative proposal (number 7503) amending certain provisions of the amended Act of 21 September 2006 on the lease for residential use and amending the Civil Code to change the current provisions on the tacit extension of a lease to a fixed term.
- A legislative proposal (number 7237) about soil protection and management of polluted sites, setting up a soil quality status report.

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