

# International **Comparative** Legal Guides



Practical cross-border insights into real estate law

## Real Estate **2022**

**17<sup>th</sup> Edition**

Contributing Editor:

**Dan Wagerfield**  
Norton Rose Fulbright LLP

**ICLG.com**

# Expert Analysis Chapter

1

**Green Leases**

Dan Wagerfield, Norton Rose Fulbright LLP

## Q&A Chapters

5

**Chile**

Puga y Ortiz Abogados: Alberto Alcalde Herrera &amp; María Paz Navarrete Sordo

13

**Cyprus**

Andreas Demetriades &amp; Co LLC: Demetris Demetriades

23

**England & Wales**

Norton Rose Fulbright LLP: Louisa Roe

35

**Germany**

Oppenhoff &amp; Partner Rechtsanwälte Steuerberater mbB: Dr. Stefanie Minzenmay &amp; Ann Margret Herzhoff

46

**Greece**

Sardelas Petsa Law Firm: Alexandra Petsa &amp; Ino Tsiridou

56

**India**

L&amp;L Partners: Abhishek Mathur

75

**Indonesia**

Budidjaja International Lawyers: Narada Kumara &amp; Muhammad Ghiffari

84

**Italy**

ONTIER: Roberto De Simone &amp; Laura Gentili

96

**Japan**

Anderson Mōri &amp; Tomotsune: Kenichi Yamamoto &amp; Takanari Sato

106

**Luxembourg**

GSK Stockmann: Dr. Philipp Mössner &amp; Chara Papagiannidi

117

**Nigeria**

Greychapel Legal: Oladele Oladunjoye &amp; Eniola Elegushi

127

**Poland**

DPPA Legal Grzonek Świdnicki adwokaci i radcowie prawni sp. p.: Piotr Grzonek &amp; Marcin Świdnicki

139

**Portugal**

PLMJ: Rita Alarcão Júdice &amp; Francisco Lino Dias

154

**Russia**

Pepeliaev Group: Alexey Konevsky

164

**Scotland**

Shepherd and Wedderburn LLP: David Mitchell &amp; Scott Ritchie

180

**Slovenia**

Law Firm Neffat: Domen Neffat &amp; Mojca Marovt

191

**South Africa**

Norton Rose Fulbright South Africa Inc.: Carina van Vuuren &amp; Chloë Merrington

203

**Switzerland**

MLL Meyerlustenberger Lachenal Froriep AG: Wolfgang Müller &amp; Denise Läubli

212

**Zimbabwe**

Wintertons Legal Practitioners: Cordellia Nyasha Midzi &amp; Peter Moor

# Luxembourg

GSK Stockmann



Dr. Philipp Mössner



Chara Papagiannidi

## 1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.

The Luxembourg Civil Code contains the main provisions that govern real estate rights such as sale, easements, co-ownership, lease, liens and mortgages. Further regulation governs other real estate aspects such as territory planning, urban management, different types of leases including long leases (*baill emphytéotique*) and building rights (*droit de superficie*).

1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

The Luxembourg legal system is based on civil law and, thus, local common law has no impact on real estate in Luxembourg.

1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

Real estate in Luxembourg is governed by national law and, therefore, international laws do not directly impact domestic legislation.

## 2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

There are no specific legal restrictions on ownership of real estate in Luxembourg by foreign investors. However, on 21 March 2019, the EU already established a framework for the screening of foreign direct investment (“FDI”) under regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 (the “**Regulation**”), which applies in all EU Member States from 11 October 2020. Nevertheless, the Regulation does not make the European Commission the decision-maker for FDI approval within the EU. The final

decision-making power continues to rest with the EU Member State(s) concerned. The aim of this framework is to review an FDI on critical infrastructure including real estate crucial for the use of such infrastructures and its potential effects on security or public order. Currently, Luxembourg Parliament is examining the proposal of draft bill n°7578 of 7 May 2020, which will establish the legal basis for a screening mechanism of an FDI in Luxembourg.

## 3 Real Estate Rights

3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

Luxembourg law recognises several types of rights over land, mostly created by contract. These are divided in rights *in rem* such as ownership, usufruct, rights of use and habitation, easements, as well as rights *in persona* which may arise from a commercial lease, a residential lease or an agricultural lease. Certain rights over land may arise without documentation as, for example, easements created by law or “prescriptive” rights arising as a result of a long period of use without challenge.

3.2 Are there any scenarios where the right to land diverges from the right to a building constructed thereon?

Divergence would arise in the scenario of long-term rights *in rem* deriving from the ownership of property as, for example, in the case of a long lease and a building right.

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split? Are there any proposals to change this?

In principle, there is no split between legal title and beneficial title. However, ownership attributes may be divided into usufruct rights and bare ownership rights. In such case, the usufruct holder has the right to use the property and to derive profits from it, but he does not have the right to sell it. The usufruct shall be registered with the Mortgage Registry (as defined below).

## 4 System of Registration

### 4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

All land privately held is registered with the land registry and topography administration (*administration du cadastre et de la topographie*) (the “**Land Registry**”), which provides information about the current owner, the description, the exact situation and surface of the property. In addition, rights *in rem* over land (and certain personal rights, e.g. lease agreements for more than nine years) are registered/transcribed with the “immovable property register” i.e. mortgage offices (*bureaux de la conservation des hypothèques*) (the “**Mortgage Registry**”).

### 4.2 Is there a state guarantee of title? What does it guarantee?

There is no state guarantee of title in Luxembourg *stricto sensu*. However, in general terms, the state and other public law entities are liable, in the performance of their respective public service duties, for any damage caused by the defective functioning of their administrative and judicial services, subject to *res judicata*.

### 4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

The transfer of ownership, rights and interests, leases concluded for a period exceeding nine years, mortgages, certain judgments, easements and encumbrances shall be registered with the Mortgage Registry.

The registration is mandatory in order to be enforceable against third parties, but it does not affect the validity of the transaction between the parties.

### 4.4 What rights in land are not required to be registered?

Lease agreements not exceeding nine years are not required to be registered.

### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is only one form of registration of a title and no probationary period applies.

### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

The ownership of land may be transferred between the parties under the terms of a sale agreement. However, such transfer is enforceable towards third parties only when recorded in a notarial deed and registered with the Mortgage Registry as explained under question 4.3.

### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

As a general principle, rights *in rem* that have been validly registered have a priority right determined by the date of transcription.

## 5 The Registry / Registries

### 5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

There is a Land Registry and a Mortgage Registry, which is managed by the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement des domaines et de la TVA*).

### 5.2 How do the owners of registered real estate prove their title?

The owners, including any interested party, may request an extract from the Mortgage Registry containing all transcriptions/inscriptions on the real estate asset or request a copy of the inscription/transcription or of the documents submitted for inscription/transcription.

In addition, the owners may also order (electronically) an ownership certificate issued by the Land Registry either in electronic or paper format.

### 5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

Transactions related to real estate shall be completed in front of a notary who is drafting and authenticating the notarial deed. He will then register/transcribe the transfer deed at the Mortgage Registry.

Information on the ownership is available to the public and can be accessed electronically via the Land Registry by requesting an extract. The extract is free of charge if ordered in electronic format. The Mortgage Registry may also provide copies of the deeds registered/transcribed with the registry but an electronic access to such documents is not currently available.

### 5.4 Can compensation be claimed from the registry/registries if it/they make a mistake?

See our answer to question 4.2 above.

### 5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate and is this achieved by a search of the register? If not, what additional information/process is required?

Anyone can request an extract from the Mortgage Registry upon payment of a fee. The request should specify the immovable property as well as the person(s) (first name, last name, date of



birth) to which it relates. The applicant must, therefore, check first with the Land Registry in order to obtain the name of the last known owner. The extract from the Mortgage Registry shall contain information on the transcribed rights of those persons over such property, as well as on the mortgage(s) encumbering such property.

## 6 Real Estate Market

**6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.**

It is necessary that a notary is involved in the case of a sale of property since the latter is responsible for drawing up and formalising the deed of sale. He also performs all the necessary checks to ensure a proper sale such as mortgage search, ownership search and may offer impartial advice and overall assistance to the parties.

In addition, the majority of real estate transactions in Luxembourg are concluded through real estate agencies. The sale of a property without the intervention of a real estate agent is considered an exception.

Further parties that may be involved in larger real estate transactions are lawyers who usually assist the buyer or seller in the due diligence process, the negotiation of the sale agreement and with post-completion matters.

Technical experts may also be involved in order to undertake environmental or other technical due diligence.

**6.2 How and on what basis are these persons remunerated?**

Notary fees are fixed by law and tend to be around 1.5% of the property's value and are usually paid by the buyer.

In addition, estate agent fees are typically estimated as 3% of the property's value plus 17% VAT; however, the parties are free to negotiate the aforementioned fees, which are usually paid by the seller.

Lawyers' fees are usually based on hourly rates subject to a fixed-fee arrangement.

**6.3 Is there any change in the sources or the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?**

The main source for financing the residential real estate market in Luxembourg remains the use of mortgage loans from local banks. A continuous decrease on bank loan interest rates has lowered the cost of borrowing, resulting in greater investment spending and consumption. Consequently, the aggregate demand has considerably increased over the years, leading to a boom on real estate prices in Luxembourg, where only in 2020 house prices grew steeply by 14.5%. Nevertheless, according to Luxembourg's statistic service ("STATEC"), the price rise observed in 2019 and especially in 2020 was higher than indicated by the usual determining factors and, thus, this could lead to a correction in the next years, leading to smaller increases. In response to this high demand for real property, debt funds have been an alternative to the banking industry source of financing. Debt funds, available to institutional, professional and sophisticated investors, have provided businesses with liquidity to invest in real assets in Luxembourg by accommodating all types of debt strategies.

**6.4 What is the appetite for investors and/or developers to invest in your region compared to last year and what are the sectors/areas of most interest? Please give examples.**

New construction struggles to meet a continuing, strong demand of a rapidly growing population mainly centred in Luxembourg City with an estimated need for 5,600 to 7,500 additional dwellings per year. As a response to this high demand, developers are lately focusing on building more apartments, rather than houses, with a decreasing surface area year by year. The average price for one square metre currently lies around EUR 12,577 in Luxembourg City, whereas paying rent comes to an average of EUR 1,613. The growth of the residential market also applies to the office market, taking into consideration the relocation of many institutions to Luxembourg due to Brexit. Vacancy rates in the central business district in Luxembourg remain at very low levels despite the COVID-19 crisis. New constructions are also now turning "green" in view of the market's recognition for buildings with a low environmental impact, especially following the recent launch by the government of a sustainability bond framework, the first to be established in Europe. This framework will enable the issuance of "green", social or sustainability bonds and, thus, the proceeds from the bonds issued through this framework will be only used to finance among others constructions of "green" buildings.

**6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.**

The Luxembourg real estate market proved resilient during the COVID-19 pandemic and successfully absorbed market shocks, which were created due to the temporary halt of construction sites at the beginning of the pandemic. The Luxembourg office market also remained unaffected by the accelerating trend of teleworking, which so far has not led to a sizeable decrease in demand for office space in Luxembourg. In general, the Luxembourg real estate market continues to thrive and is expected to grow further over the next years in steady rhythms.

## 7 Liabilities of Buyers and Sellers in Real Estate Transactions

**7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?**

The main document that the buyer of a property (flat, house or land) is required to sign is a sale agreement, technically a "promise-of-sale agreement" (*compromis de vente*). A sale agreement is a contract that is concluded between the seller and the buyer prior to the signing of the notarial deed of sale. A binding promise is made between both parties, by which the seller undertakes to sell a real estate property to the buyer who in return undertakes to acquire the property under certain conditions and at a given price. A sale agreement shall at least contain the names and addresses of the parties, the description of the property to be sold, the sale price and the terms and conditions of payment. The obligations pursuant to a sale agreement are enforceable *erga omnes* only if the aforementioned agreement is notarised in front of a notary in Luxembourg and then registered with the Mortgage Registry. Nevertheless, skipping this formality in no way changes the final and binding nature of the sale agreement between the parties.

### 7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

There is no general duty of disclosure under Luxembourg law. Both the buyer and the notary should carry their own investigation prior to the sale of the property. Nevertheless, the seller must explain clearly to the potential buyer what exactly the latter is bound to under the sale agreement. Any obscure or ambiguous clause is interpreted against the seller. Hence, the seller shall inform the buyer of any easement, mortgage, lien, charge or pending claim on the property. The seller must also inform the notary of easements known to him but not included in the notarial deed, otherwise he is held liable.

### 7.3 Can the seller be liable to the buyer for misrepresentation?

The buyer can seek rescission of the contract for deceit and/or claim for damages in case the seller intentionally induced the buyer through misleading statements during negotiations or intentionally omitted to disclose important information. The deceit shall be of such gravity that if the buyer had known about it, the latter would not have entered into the contract or would have entered into the agreement on other terms. The burden of proof lies with the buyer.

### 7.4 Do sellers usually give any form of title “guarantee” or contractual warranties to the buyer? What would be the scope of these? What is the function of any such guarantee or warranties (e.g. to apportion risk, to give information)? Would any such guarantee or warranties act as a substitute for the buyer carrying out his own diligence?

Contractual warranties are generally less extensive in an asset sale compared with a share sale. Nevertheless, the sale agreement, further to the guarantees described under question 7.5, usually provides for contractual warranties of the seller mainly related to compliance with environmental legislation, operating permits, indemnifications or to the existence of any leases or pre-emption rights applicable to the property. The purpose of these warranties is to contractually bind the seller and to elicit disclosure of information from the seller. In no way shall these be considered a substitute for the buyer carrying out his own due diligence.

### 7.5 Does the seller retain any liabilities in respect of the property post sale? Please give details.

The seller has the following liabilities post sale:

- guarantee for peaceful possession of the property sold. The seller must not perform any act which could interfere with the possession of the property sold. He must also ensure the protection of the purchaser against any full or partial eviction attempt by a third party due to, for example, the extension of a lease that was not notified to the buyer;
- guarantee that there are no latent defects of the property, or defects that render the property useless. There are no guarantees available for patent defects, which the purchaser is obliged to determine upon occupation of the property. The purchaser is obliged to exercise his rights relating to the breach of the aforementioned guarantee within a specific timeframe once he becomes aware of the defect, otherwise his rights would become time-barred; and

- guarantee for lack of conformity with the terms and conditions of the sale agreement/deed of sale as, for example, in the case when the actual surface area is less than that declared by the seller.

### 7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

Further to the sale price, the buyer shall, in principle, pay the notary fees, the transcription fees, the transfer tax plus any VAT costs if applicable.

## 8 Finance and Banking

### 8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

The general rules of granting of a loan are governed by the Civil Code. In the case of a credit agreement made by a credit institution with a consumer relating to residential immovable property, specific provisions of the Luxembourg Consumer Code shall also then apply. In addition, there are no different rules or restrictions for residents/non-residents and for individuals/corporate entities with respect to the purchase of real estate in Luxembourg. An identification process will be required in all the above cases in order to assess the creditworthiness of the borrower. Please also see our answer under question 2.1.

### 8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

Securities are often granted by the borrower in order to secure the loan agreement concluded for the acquisition of property. In particular, the most common security granted under this context is a contractual mortgage, which is created by a notary deed and on an evidenced amount. Further securities are also used, although not commonly, such as a pledge over real estate (*antichrèse*) or lender's lien (*privilège du prêteur de deniers*), which is provided by law to secure the bank debt incurred. All securities mentioned above shall be registered with the Mortgage Registry in order to be opposable towards third parties.

### 8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

The secured creditors are entitled to enforce their security if the secured debt has become due and payable and upon the occurrence of an event of default of the borrower. In order to initiate the enforcement procedure, the mortgagee must obtain a court payment order (*titre exécutoire*) to enforce the mortgage by way of a seizure of immovable property (*saisie immobilière*). A bailiff must then serve to the mortgagor a summons to pay, stating that in the absence of payment the immovable property shall be attached. Following further steps, the mortgagee must eventually file a formal application with the clerk of the court requesting a hearing. The court thereafter will assess the validity of the attachment and will appoint a notary in order to organise

the public auction of the immovable property. In the case the security interest granted is a first ranking mortgage, the above procedure may be shortened if the notarial deed, which constitutes an enforceable title (*titre exécutoire*), provides that the mortgagee is authorised to sell the immovable property through a notary. In such case, the mortgagee is not required to follow the statutory attachment procedure (*clause de voie parée*) and, therefore, court proceedings, which may be lengthy and expensive, are not involved.

#### 8.4 What minimum formalities are required for real estate lending?

Please see our answer under question 8.2 with respect to the formalities required for securities granted in real estate lending.

#### 8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

As indicated under question 8.2, the lender may seek to secure the performance of the obligations of a debtor by putting in place securities. For example, in case of a validly constituted mortgage, the lender has a preferential rank over the immovable property and, therefore, the latter shall be paid by preference on the proceeds generated by the sale of the immovable property but only up to the secured amount. However, in the case of plurality of mortgages on the property, the lenders will be repaid according to the ranking of their mortgage, which is determined based on the date of its registration.

#### 8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

A security taken by a lender cannot, in principle, be avoided or rendered unenforceable. However, in case of a judgment declaring a borrower's bankruptcy (*faillite*), securities such as mortgages or any rights *in rem* granted by the debtor during the hardening period (*période suspecte*), which is generally a period of six months before the declaration of bankruptcy, are deemed null and void. The concept of a hardening period does not apply to financial guarantee contracts.

#### 8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

A debtor cannot, in general, block an enforcement action for commercial matters except, of course, in the case that he proves the repayment of the debt owed to the lender. However, he can seek and benefit, if possible, from a scheme of composition with creditors (*concordat préventif de la faillite*) in order to come to an arrangement with his creditors.

#### 8.8 What is the impact of an insolvency process or a corporate rehabilitation process on the position of a real estate lender?

In case of bankruptcy, controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*) or composition with creditors, individual legal actions by privileged and unsecured creditors are, in principle, suspended. However, if the lender has secured his claims through the registration of a mortgage over

the asset, then the above stay of enforcement does not apply. This is due to the fact that mortgages may be enforced despite the adjudication in bankruptcy of the mortgagor.

In case of other securities held by the lender over the asset as described under question 8.2, the latter shall wait for the bankruptcy receiver to distribute the assets over which the lender has a priority payment right against unsecured creditors.

#### 8.9 What is the process for enforcing security over shares? Does a lender have a right to appropriate shares in a borrower given as collateral? If so, can shares be appropriated when a borrower is in administration or has entered another insolvency or reorganisation procedure?

Pledges over shares of a company are the most commonly used form of security and are governed by the law of 5 August 2005 on financial collateral arrangements, as amended (the “**Collateral Law**”). The Collateral Law is creditor-friendly and, among others, permits the parties to use out-of-court procedures with few formalities. Hence, if an enforcement event occurs, which is determined by the parties under a share pledge agreement, the pledgee may, unless otherwise provided for, enforce his security interests without prior notice. The security taker may benefit from various enforcement methods such as appropriation or private sale, which do not require court involvement. Further, reorganisation measures, winding-up proceedings or other similar proceedings are not applicable to financial collateral arrangements and, therefore, these may not impede the enforcement of a share pledge.

## 9 Tax

#### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The notarial deed with respect to the sale of property shall be registered with the Luxembourg Registration Duties, Estates and VAT Authority and transcribed with the Mortgage Registry. The real estate transfer therefore triggers registration fees (land transfer tax) of a standard rate of 6% of the purchase price plus transcription fees of 1%. If the real estate is located in Luxembourg City, an additional municipal surcharge of 3% is applied to commercial buildings, mixed-use buildings or buildings with any other use. The Luxembourg government, in order to reduce the incidental expenses associated with the purchase of a dwelling, introduced a tax allowance (tax credit) of up to EUR 20,000 per property buyer being subject to certain conditions.

In case the concerned real estate asset is located abroad, no registration duty is due in Luxembourg.

The transfer tax is payable by the buyer unless otherwise stipulated in the sale agreement. Nevertheless, both the seller and the buyer are liable for the payment towards the tax authorities.

#### 9.2 When is the transfer tax paid?

The notary is in charge of the registration of the notarial deed with respect to the sale of property and thus of the payment of the transfer tax. The transfer tax amount must be collected by the notary within 10 days from the signing of the notarial deed if the notary resides in the municipality where the registration office is located. In the case the notary does not reside in the same municipality, the deadline is extended to 15 days. In practice, notaries require the funds from the purchaser on the day the deed is signed. Once collected, the notary will transfer the received amounts to the Luxembourg Registration Duties, Estates and VAT Authority.

### 9.3 Are transfers of real estate by individuals subject to income tax?

The tax treatment of income resulting from the transfer of real estate depends on (i) the kind of real estate sold, and (ii) the time elapsed since the acquisition of the real estate:

- The sale or exchange of the main/primary residence is exempt from income tax, regardless of the length of time the property is held.
- When the sale of the real estate takes place less than two years after its acquisition, the income earned by a Luxembourg resident is considered speculation gain and is therefore taxed at ordinary progressive rates, i.e. at a maximum tax rate of 45.78%.

In the case the sale of the property takes place more than two years after its acquisitions, the income earned is considered a capital gain on the sale. In such case, if the income is earned between 1 July 2016 and 31 December 2018, the maximum extraordinary rate will be 10.5%. Income that has not been earned during this period is taxed at a maximum rate of 21%. It is currently contemplated to reintroduce the rate of 10.5% for income earned between 2020 and 2022.

### 9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

VAT does not apply upon the transfer of a pre-existing building. However, a VAT taxpayer may decide to opt to apply VAT on the sale of real estate (under specific conditions). The construction of the building is not subject to transfer tax but is instead subject to VAT at a rate of 17%. However, the VAT rate may be reduced to 3% on the construction, provided the property is intended to be used as a main residence. The total amount of the VAT benefit cannot exceed EUR 50,000 per building.

### 9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

Income from the sale of real estate derived by individuals is, in principle, also subject to solidarity tax of a maximum rate of 9%. In addition, the 2021 Budget Law has introduced a lump sum real estate levy of 20% on gross income derived from real estate located in Luxembourg and realised by certain tax-exempt Luxembourg entities. Only some types of vehicles are considered in scope: undertakings for collective investment (“UCIs”) under the law of 17 December 2010; specialised investment funds (“SIFs”) under the law of 13 February 2007; and reserved alternative investment funds (“RAIFs”) under the law of 23 July 2016, if they have a legal personality separate from their partners. Vehicles set up as a limited partnerships (*société en commandite simple*) (“SCS”) are expressly excluded from the scope.

### 9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

The acquisition of shares in a Luxembourg company owning real estate is not subject to Luxembourg transfer tax (unless qualified as abusive), considering that there is no direct transfer of the ownership of the property from the seller to the purchaser. However, a transfer tax may apply in case of a transfer of shares of a Luxembourg tax transparent entity (such as SCSs) in the same way as if the real estate asset was directly transferred.

With effect as from 1 January 2021, the registration taxes in the case of a contribution of a Luxembourg real estate to a civil or commercial company in exchange for shares have been increased. This measure aimed at alleviating the gap between share and asset deals in terms of tax treatment. Nevertheless, the sale of shares in a company owning real estate continues to be exempted from registration taxes, as described above.

Capital gains resulting from the transfer of shares of a company by Luxembourg-resident individual shareholders are subject to tax if (i) the equity disposal takes place within six months after the acquisition of the shares (i.e. speculative gains), or (ii) the shareholding qualifies as significant (i.e. more than 10% of the shareholding). In the latter case, the capital gains are taxed at half the global rate. However, speculative gains which do not exceed EUR 500 are not subject to tax.

In addition, the 20% real estate levy as mentioned in question 9.5 also covers the income from the transfer of shares realised by some exempt vehicles.

### 9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

The buyer shall also conduct due diligence on any existing unpaid tax liabilities with respect to the property. Whilst insignificant, buyers should also be informed if the amount of the property tax to be paid on an annual basis.

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

The main source of law that regulates the leases of business premises is the law of 3 February 2018 on commercial leases, which amended certain provisions of the Civil Code (the “**Business Lease Law**”). These provisions are codified in articles 1762-3 to 1762-13 of the Civil Code and complement articles 1713 to 1751 of the Civil Code on the general rules on leases. The main objective of the aforementioned law is to reinforce to some extent the protection of tenants and to bring certain clarifications on the existing framework and practice with respect to business leases.

### 10.2 What types of business lease exist?

The specific legal framework on business leases applies to any lease of a building for use of commercial, industrial or craft activities. The lease of premises for professional use as, for example, in the case of lease of offices or lease relating to liberal professions or bank activities does not fall within the scope of the Business Lease Law. This type of lease is governed by the general rules on leases of the Civil Code.

### 10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

The typical provisions for leases of business premises in Luxembourg are as follows:



- (a) **Length of term:** The Business Lease Law provides for the possibility of a fixed or indefinite duration of the lease. However, the business lease provisions will not be applicable in case of a commercial lease of a duration equal to one year or less.
- (b) **Rent increases:** The parties to a business lease are free to include in the lease agreement an indexation clause, according to which the rent is adapted upwards or even downwards based on the annual official index. Unless otherwise agreed by the parties in the contract, the application of the above index clause is automatic. Further to the possibility of an increase of the rent due to the yearly indexation adjustment, the parties are free to agree on an increase of the rent to occur on a specific day. In addition, the Business Lease Law banned the practice of an entry fee (*pas de porte*) and, therefore, any additional payment on top of the rent paid to the landlord or to a third party intermediary is considered null and void.
- (c) **Tenant's right to sell or sub-let:** The tenant is permitted to assign his rights and obligations under the commercial lease agreement or sub-let the premises under the condition that the assignment or sub-lease is notified to the landlord with a copy of the contract and that an identical activity remains established. However, in case of sub-letting, rents paid by the sub-tenant to the lessee cannot be higher than those paid by the lessee to the lessor, except if the lessee has made specific investments in the activity of the sub-tenant. Any clause in the lease agreement with respect to a prohibition of the tenant to assign the lease agreement or sub-let the premises is valid only when the lessor has reserved part of the premises to live in himself or for his family.
- (d) **Insurance:** The rental guarantee is limited to a maximum amount of six months' rent and can take the form of an insurance policy, a bank guarantee or any other type of guarantee, provided it covers an amount equivalent to six months' rent.
- (e)(i) **Change of control of the tenant:** In the case the tenant is a corporate entity, the change of control of the latter does not affect the business lease agreement unless otherwise stipulated in the agreement.
- (e)(ii) **Transfer of lease as a result of a corporate restructuring:** In the case the tenant is absorbed following a merger, his rights and obligations under the business lease agreement are transferred to the absorber unless otherwise stipulated in the agreement.
- (f) **Repairs:** The lessee is bound to make all the repairs, which may become necessary due to typical usage. On the other hand, the lessor has the responsibility to proceed to repairs relating to the structure of the building or to equipment essential for the use of the rented premises such as elevators and central heating.

#### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

With respect to the landlord, rental income derived from a business lease is taxed at ordinary progressive tax rates in the case that the landlord is an individual or at normal corporate income tax rates if the landlord is a corporation. The calculation of the taxable income from the rental of real property is based on the amount of rent collected minus any business expenses incurred such as for maintenance and repairs. VAT as a general rule does not apply to a business lease. However, the parties may opt under certain conditions for the application of VAT to rental payments and thus waive the VAT exemption usually provided for. The payment of VAT is the tenant's liability.

#### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

A business lease of a determined duration usually ceases at its expiry date without the necessity for prior notice. However, it might be the case that the tenant would like to terminate the lease earlier than agreed. For this purpose, a termination notice is required of not less than six months. On the other hand, the landlord is entitled to terminate the contract:

- with immediate effect in case of breach by the tenant of his contractual obligations;
- anytime with a prior notice period of six months, if (i) the landlord or his children intend to live in the premises, (ii) the landlord decides not to lease the premises anymore for activities described in the lease contract, or (iii) a rebuilding or a transformation of the leased premises is about to take place; or
- after nine years of occupation of the rent and without justification, if the landlord or a third party pays an eviction compensation to the tenant.

According to the Business Lease Law, the tenant has the right to request a renewal of the lease agreement of a determined duration. A renewal right cannot be prohibited under the lease agreement. Nevertheless, the landlord may refuse to grant such a renewal for the same reasons described above in case of termination of the contract and, therefore, an eviction indemnity is payable by him. If the amount of the eviction indemnity is not set out in the lease agreement, the competent court will determine the amount based on the market value of the business activity.

#### 10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

According to the Business Lease Law, a tenant who assigns the lease agreement or sub-lets the leased premises remains severally liable with the assignee or the sub-lessee towards the lessor with respect to his obligations under the original lease agreement. On the other hand, the landlord who is selling his interests on the lease is, in principle, not liable towards the tenant once succeeded by the new landlord. However, his liability may be evoked on a pre-sale and post-sale basis depending on the contractual obligations under the lease agreement as, for example, in case of non-compliance with the tenant's pre-emption right.

#### 10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Luxembourg's first "green" lease agreement was signed a few years ago in relation to the lease of a large office space comprising of "green" obligations such as the use of cleaning products with

a certain percentage of solvent content or the priority to use more sustainable building materials. However, such clauses are not yet common in Luxembourg law-governed lease agreements except for the requirement for the landlord to provide the tenant with an energy performance certificate. Nevertheless, in view of tenants' demand for high sustainability standards and the expected increase of the construction of "green" buildings following the launch of the sustainability bond framework, as mentioned under question 6.4, it is most likely that the interest for "green" lease agreements will further grow.

**10.8 Are there any trends in your market towards more flexible space for occupiers, such as shared short-term working spaces (co-working) or shared residential spaces with greater levels of facilities/activities for residents (co-living)? If so, please provide examples/details.**

Short-term leases for shared working spaces are becoming an upward trend in Luxembourg, especially among start-ups. Taking that into account, the Business Lease Law excluded commercial leases of a duration of one year or less from the applicability of its strict rules. In this way, short-term leases also linked to ephemeral marketing activities such as "pop-up stores" or other "concept stores" are encouraged. In addition, the increase of rent prices is also leading to shared residential arrangements, such as the renting of a room within a house or an apartment. Luxembourg Parliament is currently working on the draft bill n°7642 in order to introduce specific a legal regime for flat sharing.

## 11 Leases of Residential Premises

**11.1 Please briefly describe the main laws that regulate leases of residential premises.**

Leases for residential use are governed by articles 1713 to 1762-2 of the Civil Code subject to the specific rules provided by the law of 21 September 2006 on the lease for residential use and amending some provisions of the Civil Code, as amended (the "Residential Lease Law").

**11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?**

The aforementioned applicable legislation does not differ in the case of a residential lease with different residential occupiers. However, if there is no contractual term related, for example, to joint and several liability of the tenants or to termination notice of the lease agreement, then further articles of the Civil Code may apply in this respect.

As mentioned under question 10.8, the draft bill n°7642 is currently in progress, which will amend the Residential Lease Law and introduce, among others, the flat sharing legal regime.

**11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs" e.g. insurance and repair?**

The typical provisions for a lease of residential premises are as follows:

- (a) Length of term: The standard rental duration in Luxembourg is usually two or three years; however, the lease may be concluded for a shorter or unlimited period of time. In absence of a written form, it is deemed concluded for an unlimited duration.
- (b) Rent increases/controls: Rents cannot automatically be increased due to indexation terms, as these are prohibited by law. In addition, the landlord cannot increase the rent in the first six months of the lease contract and, following this, an additional rent adjustment is possible only every two years following a written notification by the landlord to the tenant explaining the reason for the rent increase.
- (c) Tenant's rights to remain in the premises at the end of the term: A lease concluded for a definite period is automatically extended if neither party ends it. In particular, if at the expiration of the lease contract, the tenant remains in the dwelling and is left in possession, a new tenancy contract is tacitly concluded with the same conditions as the previous one.
- (d) Tenant's contribution/obligation to the property "costs" e.g. insurance and repairs: Minor reparations are the tenant's responsibility, whereas the landlord is liable for structural reparation in the dwelling which is not due to negligence of the tenant as well as for reparation which is due to wear and tear. In addition, the tenant shall also bear the utility costs such as electricity or water supply bills as well as costs incurred for energy consumption and for the maintenance of the dwelling and communal areas. Further, in most cases, the landlord may ask the tenant to pay a rental guarantee, which may not exceed three months of rent in order to cover unpaid rents and charges or other liabilities arising from the lease agreement. Finally, although not obligatory, tenants may take out insurance to cover the dwelling, furniture against the risks of fire, water damage or theft.

**11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?**

The landlord may terminate a residential lease agreement only for legally admissible reasons, i.e. in case of personal need, breach of a contractual duty by the tenant or other serious and legitimate reasons. In case of personal need, the landlord shall give notice to the tenant at least six months before the term is reached and, subsequently, occupy the dwelling within three months after the tenant vacates it. In case of a breach of a contractual duty by the tenant, the landlord shall invoke the general principles of contract law and immediately address a request to court for judicial termination of the contract. Finally, whenever the landlord intends to terminate the rental agreement due to other serious and legitimate reasons as, for example, in case of a necessary renovation, the latter shall give notice to the tenant three months before the term is reached.

## 12 Public Law Permits and Obligations

**12.1 What are the main laws which govern zoning/permitting and related matters concerning the use, development and occupation of land? Please briefly describe them and include environmental laws.**

The main laws that govern zoning/permitting and environmental matters in Luxembourg are:

- the law of 27 June 1906 concerning the protection of public health, as amended;

- the law of 18 July 1983 on the conservation and protection of national sites and monuments, as amended;
- the law of 10 June 1999 relating to classified establishments, as amended and in particular the *commodo-incommodo* procedures regulating the security, environmental and technical aspects of construction;
- the law of 19 July 2004 concerning municipal planning and urban development, as amended;
- the Grand-Ducal regulation of 9 June 2021 relating to the energy performance of buildings (the “**Energy Performance Law**”);
- the law of 19 December 2008 on pollution, protection and management of water, as amended;
- the law of 20 April 2009 on environmental responsibilities, as amended;
- the law of 21 March 2012 relating to waste management, as amended;
- the law of 17 April 2018 on the organisation of the territory; and
- the law of 18 July 2018 concerning the protection of nature and natural resources.

#### 12.2 Can the state force land owners to sell land to it? If so please briefly describe including price/compensation mechanism.

The Luxembourg state and further public authorities may expropriate privately held land only for reasons of public interest and in return for fair compensation. This compensation should reflect the market value of the land and cover all subsequent damages incurred on the landowner. Disagreement between the parties with respect to the expropriation compensation amount is settled before the courts. In addition, the state and public authorities may have, under specific circumstances, pre-emption rights over the sale of land.

#### 12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Local municipal administrations, in co-operation with the Ministry of Home Affairs, are, in principle, responsible for the town planning, while the mayor in each commune oversees the granting of building permits. Depending on the building/land use, further public authorities may be involved such as the Ministry of Environment or the Ministry of Culture. Development plans may be accessed upon request to the relevant urban planning department.

#### 12.4 What main permits or licences are required for building works and/or the use of real estate?

The main permits/licences for building works and/or the use of real estate are the following:

- a building permit for any work to build, renovate or demolish a building;
- an environmental permit in case of construction or renovation works for an existing building located less than 30 metres from woods, watercourses or protected areas;
- an operating permit (*commodo-incommodo*) in case of classified establishments such as office buildings, underground car parks or swimming pools;
- specific authorisation in case of creation of a retail space with a sales area greater than 400 square metres; and
- a roadworks permit.

In addition to the above, further licences may be required such as the establishment of an energy performance certificate and authorisations from the sanitation department, the sewer department and the water department.

#### 12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

In case of works requiring a building permit, the formal application procedure must be followed in order to obtain an authorisation granted principally by the mayor of the relevant commune. An implied permission cannot be obtained. If works are carried out without a building permission, a fine from EUR 251 to EUR 125,000 may be imposed and/or criminal sanctions.

#### 12.6 What is the typical cost of building/use permits and the time involved in obtaining them?

The costs and time to obtain building and use permits vary depending on the size of the project. Typical costs of building permits contain, among others, the fees of the architect whose involvement is mandatory for obtaining the building permit. In addition, the processing time in order to get the building permit depends on the local authority in charge.

#### 12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate or development/change of use?

According to the law of 18 July 1983 on the conservation and protection of national sites and monuments, as amended, a building may be classified as a national monument if its conservation is of public interest from an archaeological, historical or artistic point of view. Such classification encloses various limitations on ownership rights. For example, any restoration, repair or modification works on a historic monument is subject to the approval of the Ministry of Culture. In addition, a disposal of a classified building must be notified within 15 days to the Ministry of Culture by the person who granted it, and the seller is obliged to inform the purchaser of the existence of such classification.

#### 12.8 How can, e.g., a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

A potential buyer may obtain reliable information on contamination and pollution of real estate via conducting a due diligence on environmental aspects. In addition, (potentially) contaminated sites are registered as such in the cadaster for contaminated sites (“**CASIPO**”), which is available to the public upon request and can be relied on a complementary basis.

#### 12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

Clean-up measures are required in the event of deleterious effects on soil/water structure and quality, leading thus to a risk of negative alteration of, among others, human health or of certain types of natural habitat.

Contamination damages shall be paid, in principle, by the polluter, who is usually the last operator of the site; however, other persons may instead be held liable depending on the type of contamination.

#### 12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

Luxembourg has introduced legal requirements in relation to the energy performance of buildings in line with the relevant EU directives. Under this context, the issuance of an energy performance certificate is mandatory in the cases listed in article 14 par. 3 of the Energy Performance Law. For example, an energy performance certificate shall be issued in the case of, among others, a new construction or extension, modification of a building, or change of ownership or tenancy in an existing building. In addition, the Energy Performance Law sets in its annexes the minimum energy performance requirements applicable to both new residential and non-residential buildings (including any extension, substantial modification or transformation of existing buildings), which shall be built in a “nearly zero-energy” standard.

### 13 Climate Change

#### 13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Pursuant to Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030, Luxembourg is bound to reduce greenhouse gas (“GHG”) emissions for the period from 2021 to 2030 by 40% compared to 2005 on sectors that are not covered by the directive 2003/87/EC of 13 October 2003 establishing a system for GHG emission allowance trading within the EU. This is reflected also on the recently adopted law of 16 December 2020 concerning climate, as amended (the “Climate Law”), which introduced more ambitious objectives such as achieving climate neutrality by 2050 and reducing GHG emissions for the sectors outside the emissions trading scheme by 55% by 2030 compared to the 2005 levels. Further to the aforementioned general objectives, the Climate Law also introduced sectoral climate targets determining the annual emissions allocations over 10-year periods.

#### 13.2 Are there any national greenhouse gas emissions reduction targets?

Luxembourg has adopted its national energy and climate plan for the period from 2021 to 2030, which, among others, sets targets to reduce GHG emissions. These objectives are integrated in the recently adopted Climate Law, as described under question 13.1.

#### 13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

Further to energy performance rules for new buildings, Luxembourg has set specific requirements for technical building systems and building envelope components as well as introducing financial incentives in order to promote the energy renovation of existing residential buildings.

### 14 COVID-19

#### 14.1 Please detail any laws that govern real estate in your jurisdiction which were introduced in response to the effect of the Coronavirus (COVID-19) pandemic and which remain in place.

As a response to COVID-19, the Luxembourg government adopted at the beginning of the pandemic crisis a series of measures focusing on real estate. For example, several suspensions had been put in place, such as the suspension of eviction deadlines for residential and commercial leases until 25 July 2020, which was further extended to 31 March 2021, but only in relation to residential leases. In addition, the Luxembourg government decided on a temporary freeze on rent increases for all residential leases until 30 June 2021. As far as building permits were concerned, the expiry period of one year of such permits was suspended for the period of the state of crisis under the condition that these did not expire prior to the declaration of the state of crisis on 18 March 2020. The above measures were not further extended or renewed.





**Dr. Philipp Mössner** focuses on Capital Markets (listed companies), Banking & Finance, Corporate and Real Estate Transactions. He is admitted to the Bar in Germany (2006) and Luxembourg (2007), and holds an LL.M. from McGill University (Montreal) and a Ph.D. from the University of Tübingen (*summa cum laude*). Philipp speaks English, French and German, and is a member of the International Bar Association (IBA), the American Bar Association (ABA) and the Canadian Bar Association (CBA).

**GSK Stockmann**  
44, Avenue John F. Kennedy  
L-1855 Luxembourg

Tel: +352 271 802 40  
Email: [philipp.moessner@gsk-lux.com](mailto:philipp.moessner@gsk-lux.com)  
URL: [www.gsk-lux.com](http://www.gsk-lux.com)



**Chara Papagiannidi** focuses on Capital Markets, Banking & Finance, Corporate and Real Estate Transactions. She is admitted to the Bar in Athens (2016) and Luxembourg (2017), and holds an LL.M. from the University of Luxembourg in European Banking and Financial Law. Chara speaks English, French and Greek, and is a member of the Luxembourg Banking Law Lawyers Association (ALJB).

**GSK Stockmann**  
44, Avenue John F. Kennedy  
L-1855 Luxembourg

Tel: +352 271 802 91  
Email: [chara.papagiannidi@gsk-lux.com](mailto:chara.papagiannidi@gsk-lux.com)  
URL: [www.gsk-lux.com](http://www.gsk-lux.com)

GSK Stockmann is a leading independent European corporate law firm with over 200 professionals across our offices in Germany and Luxembourg.

GSK Stockmann is the law firm of choice for Real Estate and Financial Services. In addition, we have deep-rooted expertise in key sectors including Funds, Capital Markets, Public, Mobility, Energy and Healthcare. Our advice combines an economic focus with entrepreneurial foresight. That is what is behind: Your perspective. For international transactions and projects, we work together with selected reputable law firms abroad.

GSK Stockmann in Luxembourg is the trusted adviser of leading financial institutions, real estate companies, asset managers, private equity houses, insurance companies, corporates and FinTech companies, with both a local and international reach. Our lawyers advise domestic and international clients in relation to Banking & Finance, Capital Markets, Corporate/M&A and Private Equity, Investment Funds, Real Estate, Regulatory and Insurance as well as Tax.

[www.gsk-lux.com](http://www.gsk-lux.com)

**GSK**  
STOCKMANN

# ICLG.com



## Current titles in the ICLG series

Alternative Investment Funds  
Anti-Money Laundering  
Aviation Finance & Leasing  
Aviation Law  
Business Crime  
Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business  
Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Environmental, Social & Governance Law  
Family Law  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Technology Sourcing  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms