Global Corporate Real Estate Guide - Luxembourg

Real Estate Law

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# What is included in the term “real estate”?

The term “real estate” includes the following:

Land

Any buildings or structures of any kind on the land

# What laws govern real estate transactions?

The laws governing real estate transactions can be divided into the following two categories:

General legislation:

Constitution of the Grand Duchy of Luxembourg (“**Constitution**”)

The Luxembourg Civil Code (LCC), which contains the general rules of contract law

The Criminal Code

Specific laws and regulations (including the following):

Law dated 25 September 1905 on the transcription of real property rights, as amended, and the related grand-ducal decree of the same date laying down regulations for the implementation of the law

Law dated 26 June 1953 in relation to the designation of persons and property in the deeds to be transcribed or registered at the Luxembourg mortgage office

Law dated 16 May 1975 on the status of divided co-ownership, as amended

Regulation dated 3 September 1985 regarding the selling of floor-plan buildings (Immeuble en l’état futur d’achèvement), as amended

# What is the land registration system?

There are three public authorities involved in the Luxembourg land registration system:

Public notaries

The Luxembourg land tax registry (Administration de l’enregistrement, des domaines et de la TVA (AED)

The cadastral authority (Administration du cadastre et de la topographie (ACT)

The land registration procedure involves the following three steps:

The sale of land property must be conducted before a public notary, who will carry out inquiries into the seller, the existence of mortgages or any other charges on the property (including the preemptive right of public authorities, as the case may be) and will document the sale by a written deed of transfer (“**notarial deed**”).

The notarial deed will then be submitted to the AED for registration and transcription purposes.

Ownership and the relevant related information (size of the land, geographic situations) are then transmitted to the ACT for registration in public records.

# Which authority manages the registration of titles?

Title registration and transcription are jointly handled by the following authorities:

The AED, through its registration office and its mortgages office (Bureaux de la Conservation et des Hypothèques)

The ACT

# What rights over real property are required to be registered?

The following rights over real property are required to be registered:

Transfer of property ownership (sale, donation)

Ownership sharing agreements (usufruct)

Mortgage over real estate properties

Long-term leases (with a duration exceeding nine years)

Building lease rights (Droit de superficie) and emphyteusis right (Emphytéose)

# What documents can landowners use to prove ownership over real property?

Landowners can prove their ownership over real estate property via the notarial deeds or their transcription by the AED. Another way to prove ownership is by a document evidencing the transcription which can be obtained from the AED upon the owner’s written request.

# Can a title search be conducted online?

Yes, but only public administrations, administrations of municipalities, public entities operating in the real estate sector, geometers, bailiffs and notaries may perform an online title search with the Mortgage Register.

However, the ACT lists every land parcel in the Grand Duchy of Luxembourg and it is possible to order, for free and on the basis of one request a day, a copy of the cadastral excerpt (extrait cadastral) in relation to a specific land parcel on the following website: <https://extraits.geoportail.lu/>.

This document shows the name of the owner of the land parcel as registered with the ACT.

# Can foreigners own real property? Are there nationality restrictions on land ownership?

Foreigners (individuals and legal entities) are entitled to own real estate property, directly or indirectly, in the same way as nationals. There are no nationality restrictions under Luxembourg law on landownership.

# Can the government expropriate real property?

Real estate property can be expropriated from the owner by the government only in case of public interest. Appropriate financial compensation must be paid to an expropriated owner according to Article 16 of the Constitution and Article 545 of the LCC, notably according to administrative procedure and regulations and, in particular, the Luxembourg Law of 15 March 1979 on expropriation for public utility, as amended.

# How can real estate be held?

Generally, an interest in real estate is held by any of the following means:

Ownership

Undivided property co-ownership (indivision)

Long-term lease (including emphyteusis)

Short-term lease

Building lease

# What are the usual structures used in investing in real estate?

The usual structures used in Luxembourg for investing in real estate are either regulated or unregulated vehicles.

Unregulated real estate investment vehicles include the following:

Corporate companies — this is most commonly used by professional, institutional and private investors for the acquisition of real estate

Public limited company (Société Anonyme) or private limited company (Société à responsabilité limitée) — in practice, these are the most popular corporate forms in the Luxembourg real estate market

Securitization vehicles — this is where a wide range of assets, tangible or intangible, movable or immovable, including real estate, are to be securitized

Regulated real estate investment vehicles include the following:

Undertakings for collective investment (UCIs) — Real estate UCIs must invest their funds in real estate, open their shares or units to the public by means of a public or private offer, and have the exclusive objective of investing in real estate assets in accordance with the principle of risk diversification.

Specialized investment funds (SIFs) — SIFs are considered one of the most successful tools in the real estate market, being operationally flexible and fiscally efficient.

Sociétés d’investissement en capital à risque (SICARs) — For example, companies investing in risk capital — real estate investments need to have risk capital characteristics to be classified as eligible assets. However, SICARs can invest 100% of their assets in one target investment as they do not need to comply with risk diversification requirements.

Reserved alternative investment funds (RAIFs) — RAIFs are recent investment vehicles and are not subject to prior approval and subsequent supervision from Luxembourg’s Commission de Surveillance du Secteur Financier but they are required to appoint a regulated alternative investment fund manager (AIFM). Such flexibility represents a real advantage for investors, who are entitled to promptly acquire a real estate asset through such investment vehicle while benefiting from the protection ensured by the full application of the AIFM Directive, as implemented in Luxembourg.

# How are real estate transactions usually funded?

Short-term or long-term bank loans, mortgages, multicurrency and revolving credit line facilities represent the main source of financing for real estate investments in Luxembourg. However, external financing and equity may be pushed down in the form of intercompany loans, profit participating loans and other types of hybrid financing.

# Who usually produces the documentation in real estate transactions?

If a notarial deed is required, the notary will prepare the documentation. Lawyers often prepare a letter of intent (compromis de vente).

If private seal documentation is sufficient for the transaction, lawyers usually draft the documentation.

# Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

An owner is liable for matters relating to the real estate from the date of acquisition, even if such matters occurred before the real estate asset was purchased. Therefore, in general, the purchaser inherits the liabilities for matters that may have occurred prior to its ownership. However, in most real estate transactions and especially relating to pollution matters, sales contracts often set forth that the real estate is sold without liability to the purchaser. As a result, such a clause allows the purchaser to shift liability to the selling property owner.

# Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

Under Luxembourg law, the liabilities of the seller can be divided into two categories:

General provisions

The LCC provides for a guarantee in respect of latent defects (Garantie des vices cachés) of the sold property that renders it unfit for the purpose for which it was intended, or that affects the use of this property. The seller would be liable if the buyer would not have acquired the property, or would have paid a lower price if the purchaser was made aware of such condition. The seller is not liable for latent defects that the buyer was able to discover.

Liabilities relating to the purchase of buildings under construction

The seller/constructor of a building to be constructed is liable for hidden defects for 10 years upon acceptance of the construction used by the purchaser, pursuant to the LCC.

The action arising under this guarantee may be exercised by subsequent purchasers only against the original seller and the constructor that performed the work

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