International Comparative Legal Guides

Real Estate 2020

A practical cross-border insight to real estate law

15th Edition

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info@glgroup.co.uk
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Group Publisher
Rory Smith

Senior Editors
Caroline Oakley
Rachel Williams

Sub-Editor
Jenna Feasey

Creative Director
Fraser Allan

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15th Edition

Contributing Editor:
Dan Wagerfield
Norton Rose Fulbright LLP

Expert Chapter

Q&A Chapters

From the Publisher

Dear Reader,

Welcome to the 15th edition of *The International Comparative Legal Guide to: Real Estate*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to real estate laws and regulations around the world, and is also available at www.iclg.com.

This year, one expert chapter focuses on the use of technology and artificial intelligence in real estate legal services.

The question and answer chapters, which in this edition cover 28 jurisdictions, provide detailed answers to common questions raised by professionals dealing with real estate laws and regulations.

As always, this publication has been written by leading real estate lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editor Dan Wagerfield of Norton Rose Fulbright LLP for his leadership, support and expertise in bringing this project to fruition.

Rory Smith
Group Publisher
Global Legal Group

Preface

It is a great pleasure to have been asked to be contributing editor of this, the 15th edition of *The International Comparative Guide to: Real Estate 2020*.

Can I start this short introduction to the Guide by thanking Iain Morpeth of Ropes & Gray LLP for his years as contributing editor, his insightful articles and his team's contributions to the chapters on England and Wales. It is clear I have some big shoes to fill.

Today's real estate investment market is an increasingly international one. As investors look beyond their domestic markets, they must grapple with a range of issues, including property market transparency risk, political risk and currency risk. Central to their success in any given jurisdiction, however, is an understanding of local real estate laws and how real estate transactions are structured. The aim of the Guide is to provide that understanding.

Covering 28 countries, we hope you find the Guide a useful reference point when considering cross-border real estate transactions and we encourage you to contact us with any suggestions you may have as to how we might improve future editions.

Dan Wagerfield
Partner & Global Co-Head of Real Estate
Norton Rose Fulbright LLP

Belgium

ALTIUS

Lieven Peeters

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 *Belgian Civil Code* contains the principal rules on real estate rights such as sale, easements, (co-)ownership, lease, construction law, etc., as well as on liens and mortgages on real property. The latter includes the rules on the opposability of a real estate transaction towards third parties.

Other legislation (e.g. zoning and environmental laws) is more fragmented. Especially, as it often concerns a Regional competence implying that each Region (i.e. Flanders, Brussels or Wallonia) has its own legislation on the topic.

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

Belgium is a civil law country, meaning that jurisprudence is not law-making. However, jurisprudence often has an important interpretative value.

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

Real estate is primarily governed by national laws. International law may come into play in cross-border transactions where one or more parties are subject to foreign law, such transactions may also impact the formalities (e.g. apostilling documents) or if certain requirements are translated from an EU Directive into Belgian laws.

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 general restrictions on real estate ownership as every natural or legal person is normally entitled to own real estate.

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?

Belgian law recognises several types of rights over land, mostly created by contract. However, some are created by law or acquired by statute of limitation.

Ownership is the most complete right over property. Bare ownership is the situation where the property is encumbered with a right *in rem* in favour of a third party.

Belgian law also recognises several usage rights which might either be of a personal nature (e.g. lease), or *in rem* (e.g. usufruct, right to build, long-term lease, easement).

Both a mortgage and mortgage mandate constitute a security right over a property. Whereas the first is opposable towards third parties as it is registered, the latter is a purely contractual right.

Noticeable are also pre-emption rights which can be created either by contract or by law, as well as option rights that are of a contractual nature.

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

A right to build or long-term lease right allows a party to build and own constructions without being the owner of the land itself.

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?

Belgian law does not recognise, as such, a split between the legal title and the beneficial title.

4 System of Registration

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

All land is registered in the land registry. In addition, rights *in rem* over land (and certain personal rights, e.g. lease agreements for more than nine years) are transcribed or registered in the mortgage register.

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

In Belgium, there is no state guarantee of title.

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

All deeds transferring or designating rights *in rem* on immoveable property, including any deeds regarding co-ownership, as well as lease agreements exceeding nine years are to be transcribed in the mortgage register. In addition, mortgages are registered in the mortgage register.

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

The rights not listed under question 4.3, such as lease agreements not exceeding nine years, sale and/or purchase options, mortgage mandates, etc.

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.

No probationary period exists in Belgium, neither are there any real classes of registration. However, concerning mortgages, the time of registration is crucial to determine its rank towards other mortgages on the same property.

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

Although ownership normally transfers at the moment that an agreement is reached on the sale, it is customary to stipulate that the transfer of ownership and risk shall be postponed until the execution of the authentic deed which will be opposable to all third parties as of its transcription in the mortgage register.

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

Unless in the event of bad faith, the time of transcription or registration of the right in the mortgage register is decisive to determine the priority of one right over another (e.g. in case of a double sale, if multiple mortgages are granted over the same property, etc.).

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 one land registry ("*kadaster/cadastre*") and a mortgage registry (recently renamed "*kantoor rechtszekerheid/bureau sécurité juridique*") which is divided into different administrations per geographic area.

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

Only the mortgage register provides a beginning of proof of ownership. An extract of the mortgage register containing all transcriptions and registrations over the past 30 years (being the statute of limitation for positive prescription) can be obtained by an interested party.

The land registry is a tax instrument which provides a presumption of ownership at best.

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?

In principle, real estate transactions are mandatorily completed by a notary public who shall automatically take the necessary steps for the (electronic) registration of the transfer at the land registry.

Information on ownership is not electronically accessible.

Legislation was passed that a sale *intra parte* could be completed electronically (if certain conditions are met) and to allow public auctions online (e.g. www.biddit.be).

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

No compensation can be claimed from the mortgage registry. You can ask for a correction or rectification to be made. The notary public is liable for any mistake attributable to him.

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?

Upon payment of a fee, anyone can request an extract from the mortgage register. The request should specify the immoveable property and the person(s) to which it relates as the extract shall only contain information on the transcribed rights of those persons over such property, as well as on the mortgage(s) encumbering such property.

The mortgage registry can also provide copies of deeds transcribed or registered in the mortgage register.

It is common market practice that the seller provides this information to the buyer.

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.

Lawyers usually assist the buyer and/or seller in the due diligence process and the drafting of contractual documents (LOI, sale and purchase agreement, review of the deeds, etc.). A considerable amount of transfers of professional real estate takes place through share deals instead of an asset deal.

An asset deal cannot proceed without the assistance of a notary public for the authentic deed and subsequent registration formalities. Each party is entitled to appoint its own notary public.

Other parties that could be involved are real estate brokers, architects, environmental advisors, etc.

6.2 How and on what basis are these persons remunerated?

The fees of the notary public are determined by law and depend upon the purchase price. The fee is to be split if multiple notaries public are involved.

Other parties are free to determine their own fee.

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?

Private persons mainly finance their acquisitions through still cheap debt.

For a long time, the Belgian real estate market has been seen as a stable market taking into account its size and the limited availability of seizable real estate products. The presence of the EU institutions and other international organisations in Brussels do attract international investors. International (pension and insurance) funds occupy the market together with the Belgian REITs. Institutional investors searching for yield redirect bond investments to real estate.

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.

The appetite for investors remains high, due to the comparatively high real estate yields compared with neighbouring countries; there are still decent real estate yields compared to low yielding bonds and high-valued equity markets.

Logistics and retail will continue to experience the effect of increased online sales in 2019.

Retail remains under the spell of the millennials, forcing a lot of retailers to rethink their organisation. On average the lease of a shop for Belgian retailers represents 11% of its costs side (being the second largest item after 22% for labour). The increased availability of retail m² and the reduced expansion drive of several retailers have put the rent levels under pressure. On average, in the top locations a decrease of 7.5% is to be noted and of 10% shopping centres; in general, the decease is over 15%. Take-up of retail space fell with 15% in 2019 compared to 2018.

In logistics the first "city logistics" products are under serious development.

Flexible working, different tax regimes and mobility issues will be key factors in the office market determining the key locations. Connectivity and digital infrastructure are essential.

The Belgian market has seen "co-working" office spaces, a real estate product which still has to show its robustness for investors, double in size; currently 3.3% of office spaces are labelled "co-working" and agents predict that this could grow to 10%. This product is now extended into mixed co-work/co-house products so that the boundaries between the various sectors disappear.

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.

Retail is under the spell of the millennials, forcing a lot of retailers to rethink their organisation. The new challenges are mainly stemming from e-commerce which is causing investors to be more cautious of major investments in this sector currently, with the exception of products in prime locations.

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?

Agreements between parties on price and the object used to be sufficient for transfer of real estate. However, over the last decades, several regulatory formalities were installed of which non-compliance is sanctioned with the sale potentially being declared null and void. The formalities differ between the Regions and relate to information that should be provided to the buyer prior to the sale (e.g. town planning information, soil certificate, EPC, PIF, etc.).

An authentic deed is required for the opposability of the sale towards third parties and contains information on the ownership history, pre-emption rights, fuel tanks, post-intervention file, as well as mandatory fiscal notifications.

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

The seller has no explicit duty of disclosure aside from the information mentioned above. The duty to disclose by the seller is to be seen in combination with the duty of the buyer to be informed. Belgian law does require parties to act in good faith which implies that other relevant information may have to be disclosed to a potential buyer.

It is to be noted that legislation was passed to adapt the Code of Economic Law ("CEL") regarding abuse of economic dependence, prohibited terms and unfair market practices in a B2B context, which could also come into play in case not all useful information is not properly disclosed.

Sale agreements usually contain a provision that the seller shall not be liable for any visible or hidden defects in the property, except to the extent the seller was aware of the hidden defects.

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

Liability for an untrue or misleading statement can be established, but the burden of proof is high, especially if the seller made no contractual guarantees and has disclosed all the information in its possession.

The sale can be declared null and void if the buyer establishes the deceit of the seller or error. If the seller acted in bad faith (possibly during the pre-contractual phase), the buyer may claim compensation.

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 in an asset deal are often limited to the seller's knowledge (e.g. regarding polluting activities that have taken place at the property, regarding easements that apply, etc.).

The agreement usually contains some informative provisions describing the current situation of the property without giving any guarantees in that respect (e.g. current use of the property, whether certain taxes are imposed such as vacancy tax, etc.).

The warranties and guarantees do not substitute a proper due diligence carried out by the buyer.

In respect of an asset deal the notary will carry out a title search covering a 30-year period in order to establish evidence of ownership of the seller (see question 5.2).

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

Such liabilities are very limited and often relate to environmental and town planning matters (e.g. soil pollution of which the clean-up obligations of the seller continue post-sale, liability for any illegal constructions, etc.). In share deals, such post-closing potential liabilities will be negotiated more frequently.

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

In addition to the purchase price, the buyer ordinarily has to pay the costs related to the real estate transfer (e.g. notary fees, transfer tax, registration duties, etc.).

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 Civil Code contains the main regulations on loan contracts and securities. There are no different rules between residents and non-residents, but more protective rules exist in favour of consumers.

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

Lenders usually require a security to protect themselves. In Belgium, a limited mortgage over the property is often used in combination with a mortgage mandate for the remainder to lower the costs thereof.

Other securities that may be used are pledges over receivables and bank accounts, share pledges, parent guarantees, etc.

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?

Mortgaged property can only be realised if (i) the debt is due, (ii) the mortgagee has an executable title, and (iii) the mortgagee complies with the procedure of executive seizure of real property by which, as a final step, the judge of seizure appoints a notary public who will be responsible for the (public) sale of the property.

Careful drafting of the mortgage title is essential as it can only serve as an executable title if it contains all information to verify whether the debt is due. Otherwise, an additional court order is required which slows down the realisation process.

8.4 What minimum formalities are required for real estate lending?

There are no minimum formalities. However, often, a lender shall require a mortgage and/or mortgage mandate which are authentic deeds to be executed before a notary public. A mortgage should also be inscribed in the mortgage register.

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

By taking out a mortgage, the lender becomes a preferential creditor up to the secured amount.

A mortgage mandate does not give the lender the status of preferential creditor. It shall contain triggering events upon which occurrence the lender may convert the mandate into a mortgage; the borrower should immediately notify the lender of the occurrence of such event.

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

In principle, the security cannot be avoided or rendered unenforceable.

However, a Belgian bankruptcy judgment may contain a hardening period of a maximum of (in principle) six months prior to the bankruptcy judgment. Certain transactions (e.g. security granted) that occur during this hardening period can be declared unenforceable against the bankrupt estate.

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

In principle, there are no specific actions that the borrower can take to frustrate an enforcement action by the lender. However, the borrower can always try to reach an amicable solution with the lender to stop the enforcement action or use regular procedural actions if it did comply with its own obligations.

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

If the lender has taken out a security, the lender becomes a

privileged creditor up to the amount of the security. See also question 8.6.

If the debt of the borrower is larger than the secured amount and if the debt (and secured amount) exceeds the proceeds of the secured good – or if the lender did not take out any security – the lender has no special position in the borrower's insolvency procedure (for the excess) and shall be proportionally paid together with the other unprivileged creditors of the remaining proceeds of the bankrupt estate.

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?

A share pledge can be realised at the occurrence of an event of default by the borrower. Such event shall usually be defined in the share pledge agreement. In principle, and in accordance with the Financial Collateral Law of 15 December 2004, the realisation of the share pledge does not require a prior notice or judicial decision.

If agreed by the parties and despite an insolvency procedure, an event of default may entitle the lender to appropriate the shares that constitute the security.

The courts may retrospectively check the conditions for the realisation of the security.

9 Tax

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

All real estate asset deals are subject to transfer tax or VAT.

The amount of the transfer tax is different for each Region and depends upon the type of right being transferred:

- Full ownership: 10% in Flanders; and 12.5% in the Brussels Capital Region and the Walloon Region, but more advantageous regimes exist for, e.g., real estate developers, individuals purchasing their own house, etc.
- Right *in rem*: 2%.

The agreement usually provides that the acquirer is liable to pay the transfer tax. However, all contracting parties are jointly liable towards the tax authorities.

9.2 When is the transfer tax paid?

The transfer tax should be paid within four months after the sale and purchase of the property. In practice, it is paid at the time of the execution of the authentic deed before the notary.

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

In general, a real estate asset deal by individuals is not subject to income tax if the individual acts as a *bonus pater familias* and the transfer is part of the normal administration of its assets.

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

An asset transfer of 'new' constructions (as defined in the VAT Code) is subject to 21% VAT (exceptions do exist, e.g. social housing at 6%), instead of transfer tax. The purchase price payable by the buyer is increased by VAT; subsequently the seller has to pay the VAT to the VAT administration.

If the new property is sold by one entity, the VAT is imposed on both the new constructions, as well as the land. If the ownership of the land and the constructions is split between different entities (e.g. by means of a right to build), the land is transferred under transfer tax and the constructions under VAT.

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

The main tax cost in an asset deal is the transfer tax or VAT. Furthermore, there are the notary costs which also include the transcription and registration cost for the mortgage register.

If the seller is a company, it shall be subject to corporate income tax on the capital gain created by the disposal of the property.

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

Unlike an asset deal which is subject to transfer tax or VAT, there is no specific tax (related to the underlying real estate) imposed on a share deal of a real estate SPV, exceptions to be made for special regimes such as Belgian REITs.

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

The tax aspect is an important element in deal structuring, e.g. choice between share or asset deal, split sale whereby one entity purchases the bare ownership of the land (at 10%/12.5%) and another entity a right *in rem* (at 2%), etc.

It is not uncommon to obtain a prior tax ruling from the tax authorities in this regard if a less straightforward structure is used.

10 Leases of Business Premises

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

Following the latest Belgian State reform, the Regions (Flanders, the Walloon Region and the Brussels Capital Region) became competent for commercial lease law. Until such Regional regulations are adopted, the Federal law remains applicable.

Currently, the following regulations are relevant:

- general Belgian lease law included in the Civil Code which is applicable to office leases;
- Commercial Lease Act of 30 April 1951 (the "CLA") which is likely to be adapted in the coming years in the three Regions; and
- Flemish Decree of 17 June 2016, the Walloon Decree of 15 March 2018 and the Brussels Ordinance of 25 April 2019 on short-term commercial leases.

10.2 What types of business lease exist?

Belgian lease law provides a special regime for retail premises under the CLA and for retail premises that are let for a short term.

The lease of any other business premises (e.g. offices, warehouses) is subject to the general lease law included in the Belgian 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?

In this section, we will only describe the typical provisions (often reciting the mandatory law) included in retail lease agreements subject to the CLA:

(a) Length of term: usually entered into for nine years, as this is the mandatory minimum term under the CLA.

(b) Rent increases: lease agreements are generally subject to annual indexation on the basis of the official health index. At the expiry of every three-year period, each party is entitled to request an adjustment of the rent before the Justice of Peace if it can be shown that the normal rent is at least 15% higher or lower than the contractually determined rent as a result of new circumstances.

(c) Tenant's right to sell or sublet: often contractually prohibited. Such prohibition is invalid if the tenant transfers or subleases the lease agreement in full together with the transfer or sublease of its goodwill (the prohibition remains valid if the landlord lives in part of the leased premises).

(d) Insurance: generally the tenant is required to take out the necessary insurances in relation to its own liability, its activity and the leased premises. If the leased premises are part of a larger complex, the landlord often takes out the insurance policy for the building and charges the costs *pro rata* to the tenant.

(e) (i) Change of control of the tenant: change of control clauses are unusual. Proper wording would be essential as it may not impair the rights of the tenant under the CLA. (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger): usually commercial lease agreements do not contain a clause in this regard.

(f) Repairs: deviating from general lease law, the landlord often requires that any maintenance and repair works regarding the leased premises are borne by the tenant, except for works related to the structure of the building.

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

Until recently, lease agreements were, in general, exempt from VAT and subject to registration duties. However, there were always exceptions such as the immoveable VAT lease, warehouse lease, business centres, etc.

On 4 October 2018, the optional system for the application of VAT on lease agreements for professional real estate as of 1 January 2019 was approved.

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?

By law under the CLA, the tenant under a commercial lease is entitled to terminate the agreement at the expiry of every three-year period with six months' prior notice. Therefore, agreements often expire either at their termination date or at the end of a three-year period.

The landlord may not terminate the agreement early unless explicitly provided for in the lease agreement and only to actually run a commercial activity in the premises itself or by a family member/subsidiary of the company.

If terminated because of a default of the tenant or landlord, the termination of the agreement should be requested in court.

The retail tenant has a preferential right to renew the lease agreement at its expiry. This right can be exercised three times for a period of nine years each. If the renewal is refused, the tenant is entitled to a lump sum indemnity varying between zero and three years' rent, depending on the reason for non-renewal.

In other business leases, parties are free to stipulate termination modalities, be it that in practice a termination possibility at the end of each three-year period is most common, unless parties agreed on a longer fixed term.

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?

The CLA entitles the tenant to transfer its lease agreement together with its goodwill, but the original tenant shall remain severally liable with the new tenant for the obligations that stem from the original lease (for its original duration).

Assuming the landlord transfers the leased property by means of an asset deal, the landlord remains liable for any non-compliance prior to the sale of the property.

The landlord's obligations post-sale should be assessed in view of (i) the lease agreement and whether it allows the assignment on behalf of the landlord, and/or (ii) the transfer agreement of the lease (especially if the tenant would be a party hereto).

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).

Green leases are not yet common practice and, if existing, they often concern new or newly renovated buildings. More often, some clauses can be found where both sides, landlord(s) and tenant(s), cooperate to reduce the environmental footprint of the building and provide for an effort obligation on either side.

For certain property types (e.g. residential premises, offices), an information duty is imposed on the landlord who should provide its tenant with a valid energy performance certificate (EPC). In the near future, this obligation shall extend to other non-residential premises.

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.

Recently, both the Flemish, the Walloon and the Brussels government have adopted a decree (or Ordinance) on short-term

commercial leases which are commonly referred to as "pop-up commercial leases".

As stated before, the volume of flexible co-working space is in an upward trend estimated to achieve 10% of the available office space and further volumes are to be expected. New co-living and working concepts are popping up on the market which stem from the student housing concept, whereby the borders between working, socialising and living become vague.

11 Leases of Residential Premises

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

Residential lease law became a competence of the Regions. New regulations have been adopted in each of them.

Currently, the main laws are:

- Act of 20 February 1991 on lease agreements regarding the main domicile of the tenant;
- Brussels Ordinance of 27 July 2017 on the regionalisation of the residential lease agreement;
- Walloon Decree of 15 March 2018 on the residential lease agreement; and
- Flemish Decree of 15 November 2018 on leases for residences or parts thereof.

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

The Regional lease regulations provide for additional rules for co-tenancy in relation to joint and several liability, the acceptance of additional tenants and the termination of the lease agreement.

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?

(a) Length of term: residential leases are generally entered into for nine years. However, short-term leases with a maximum of three years are also possible.

(b) Rent increases/controls: rent is often subject to annual indexation at the official health index. Although often not contractually defined, parties are entitled to request a rent revision every three years.

(c) The tenant's rights to remain in the premises at the end of the term: for nine-year residential lease agreements, it is mandatory law that if no notice is given prior to the termination of the lease agreement, the agreement is automatically extended for another three years.

(d) The tenant's contribution/obligation to the property "costs": minor repair and maintenance works are borne by the tenant, other repair and maintenance works are the landlord's responsibility. The real estate property tax cannot be imposed on the tenant if the leased premises are the domicile of the tenant.

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?

Except in case of a contractual default by the tenant, in which case the termination should be requested in court, the landlord is entitled – be it under variation in the three Regions – to terminate the agreement:

- at any time by giving six months' prior notice, to occupy the good itself or by its relatives;
- at the end of the first or second three-year period by giving six months' prior notice, to carry out major renovation works in the leased premises (in the Flemish Region under certain conditions at any time after the first three-year period); and
- at the end of the first or second three-year period by giving six months' prior notice and paying compensation of, respectively, nine or six months' rent.

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.

Following the Belgian State reforms, the Regions have become almost exclusively competent for zoning and environmental matters, including granting permits and ensuring permit compliance.

The most important regulations are:

- Flemish Decree of 25 April 2014 on the unique permit;
- Brussels Town Planning Code as of the Ordinance of 4 April 2019; and
- Walloon Territorial Development Code of 20 July 2016.

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

Several expropriation regimes exist in Belgium (both Federal and Regional regulations). The Belgian Constitution establishes that expropriation may take place for public interest purposes only and in return for appropriate and prior compensation.

Furthermore, certain public authorities have a pre-emption right over certain properties. The price and sale conditions are most often those agreed upon with the initial buyer who would purchase the property if the pre-emption right would not be executed.

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

Depending on the size of the permit (town planning and/or environmental), the permit is granted at the Municipal, Provincial or Regional level. Infringements are detected and, where appropriate, sanctioned by the Regional inspection services.

Buyers can request the town planning information regarding the property, the content of which differs slightly between the Regions.

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

Though slightly different between the Regions, in general, the following type of licences (sometimes being several parts/sections of the same permit) must be obtained:

- Building permit.
- Allotment permit (only when a division in plots of land is needed).
- Environmental permit (only when the construction relates to classified installations).
- For retail establishments or commercial complexes, a socio-economic permit.

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)?

Town planning regulations are of public order, so if a permit is required no implied permission can be obtained. Carrying out such works without a permit, exposes the principal, as well as the architect and/or contractor(s) to penalties.

Constructions that date back prior to the first Town Planning Act of 29 March 1962 enjoy a presumption of permit. Some Regional legislation also provides in statute of limitation periods for certain building infringements.

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

The principal cost in relation to the building permit is the fee of the architect, whose assistance is mandatory for most permit applications. Furthermore, an administrative fee of which the amount varies between the Regions is due.

The time to obtain a permit varies between the Regions and depends on the size of the project. The maximum time in first instance is 210 days (this includes possible extensions).

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?

Protection of historic monuments is a competence of the Regions, who all have their own legislation.

The main obligations relate to the preservation of the monument, as well as prohibitions to alter or damage the monument. In return, owners or users may be entitled to certain subsidies or fiscal advantages.

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?

All Regions have legislation on soil pollution, be it with variations.

A valid soil certificate should be present at the time of the sale.

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

The Regional legislation on soil pollution contains different triggers that require a soil investigation, and where appropriate, clean-up measures. The most important triggers are:

- transfer of a right *in rem*;
- termination of a so-called risk activity (i.e. listed as potentially polluted);
- (periodic) investigation if a risk activity is carried out; and
- occurrence of an event of damage.

Other environmental clean-up measures (e.g. asbestos removal) may be required under the Well-being Act of 4 August 1996 if there is a risk to the wellbeing of the employees employed at the site.

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

The three Regions have adopted a Regional climate plan and implemented the Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (EPB).

Usually, the energy performance that is required, depends on the nature of the construction works (e.g. new construction, invasive renovation, non-invasive renovation, etc.).

The EPB that needs to be achieved also varies from the type of construction (schools, offices, governmental buildings, etc.).

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).

The EU Directive 2003/87/EC has been transposed into Belgian law by means of several cooperation agreements between the Federal State and the three Regions, as well as by means of various Regional regulations, which, *inter alia,* include a mandatory emission trading scheme.

13.2 Are there any national greenhouse gas emissions reduction targets?

In Belgium, the main focus in emission reduction targets are the European and international goals (e.g. the Walloon Climate Decree of 20 February 2014 refers to such reduction targets as an objective).

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

Promoting sustainable development is key for the Federal State and the three Regions. They all have comprehensive sustainable development programmes. Next to that, they advocate for sustainable public tendering, which implies that sustainable development must be taken into account when issuing a public tender.

Several subsidies and tax cuts are in place which promote sustainable development and construction.

Lieven Peeters is partner and heads the (corporate) real estate practice at ALTIUS. He is a renowned expert in the field of real estate and construction and has a deep knowledge of contracts law and general commercial law.
Lieven advises his clients in all aspects of complex real estate transactions, including: the structuring of real estate projects; real estate M&A; sale-and-leaseback transactions; joint ventures; leasing; and split structures. Lieven has advised on various major transactions in the Belgian market involving: large shopping centres and several logistic centres; office buildings; commercial properties; large inner-city (re-) developments; on other real estate niche products (including senior citizens' housing and mixed-use projects).
Lieven is a member of various professional organisations in Belgium and is also MRICS. Lieven is recognised as a real estate expert in various directories and surveys (*Chambers Europe, The Legal 500, World Leading Experts in Real Estate, PLC Which Lawyer, Best Lawyers, Who's Who Legal*).

ALTIUS
Havenlaan 86C B414 Avenue du Port
BE 1000 Brussels
Belgium

Tel: +32 2 426 14 14
Email: lieven.peeters@altius.com
URL: www.altius.com

ALTIUS' real estate & regulatory practice gives our clients a clear advantage by using its in-depth sector know-how to advise on issues concerning private law (property issues, rights *in rem*, etc.) and public law (town planning and zoning rules, building and allotment permits, soil issues, expropriation and public domain issues).
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