The Legal 500 Country Comparative Guides

Luxembourg: Real Estate

This country-specific Q&A provides an overview of real estate laws and regulations applicable in Luxembourg.

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1. **Overview**

   Real estate is strictly regulated in the Grand Duchy of Luxembourg via laws and regulations, which are continuously evolving in order to cover for real estate market's new standards and needs. For example, new constructions in Luxembourg are now turning "green" in view of the market's recognition for buildings with low environmental impact. The Luxembourg government as a response to this growing need has recently launched 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 used to finance among others constructions of "green" buildings.

2. **What is the main legislation relating to real estate ownership?**

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

3. **How is ownership of real estate proved?**

   An owner including any interested party may request an extract from the "immovable property register" i.e. mortgage offices (*bureaux de la conservation des hypothèques*) (the "**Mortgage Registry**") containing all relevant 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 and topography administration (*administration du cadastre et de la topographie*) (the "**Land Registry**") either in electronic or paper format.

4. **Are there any restrictions on who can own real estate?**

   There are no specific legal restrictions on ownership of real estate in Luxembourg by individuals, companies and in general foreign investors. Nevertheless, 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 foreign direct investments ("**FDI**") in Luxembourg in line with the regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, which applies in all EU Members States from 11 October 2020. 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. The decision power on whether an authorization of such FDI shall be granted lies with the EU Member State(s) concerned.

5. **What types of proprietary interests in real estate can be created?**

Luxembourg law recognises several types of rights *in rem* mostly created by contract and in particular the right to ownership, easements, mortgage, usufruct and use and habitation.

In particular, the right to ownership may take the form of:

- Absolute ownership (*propriété absolu*) according to which the owner has the exclusive right to freely use and dispose the property he owns as well as enjoy the fruits of the property being used. Such property may also be held jointly by several persons (*indivision*) as a result of, for example, acquisition by persons who jointly bought the same building/apartment, inheritance or divorce;
- Ownership of an apartment within a building together with co-ownership of common areas of such building (co*propriété par appartements).* Pursuant to the law of 16 May 1975, as amended, the owners of the apartments in such condominium regime constitute a syndicate of co-owners (*syndicat des copropriétaires*), which has legal personality and it is vested with the broadest powers to administer the building and preserve the common areas. The decisions regarding the co-ownership shall be taken during the general assembly of the co-owners (*assemblée générale des copropriétaires*), which, among others, may decide on the appointment of a joint property manager (*syndic*), who shall be the legal representative of the co-ownership, entrusted with the day-to-day management of the building.

A real estate owner shall also have the right to use the apartment/building as his business residence and/or lease the premises/land through for example a commercial lease, residential lease or agricultural lease.

6. **Is ownership of real estate and the buildings on it separate?**

Divergence between the ownership right to land and the ownership right to the building(s) constructed thereon would arise in the scenario of long term rights *in rem* deriving from the ownership of property as for example in case of:

- a long-lease (*bail emphytéotique*) whereas the term of the contract may be from minimum twenty-seven (27) years up to ninety-nine (99) years. The tenant under a long-lease contract may exercise all the rights attached to the property of the building in consideration for a payment but without being able to reduce its value. The tenant is also obliged to maintain the leased premises, make all the necessary reparations and pay the building's taxes. Further rights and obligations of the tenant under a long-lease contract are enumerated under the law of 22 October 2008 on the promotion of living spaces and the creation of a housing pact with the municipalities, and on the right of *superficie* and *emphyteusis,* as amended (the "**Law of 22 October 2008**"); and
- a building/surface right (*droit de superficie*) granted by the landowner to the beneficiary of the surface right for up to ninety-nine (99) years and in consideration for a payment.

The beneficiary of such right may construct and own buildings on the land, the ownership of which is automatically transferred to the landlord(s) at the expiration of the surface/building right and in exchange for reimbursement at the market value of the constructions erected. Further rights and obligations of the beneficiary of building/surface right are enumerated under the Law of 22 October 2008.

7. **What are common ownership structures for ownership of commercial real estate?**

Real estate assets may be held directly or indirectly by individuals and/or companies. The choice of ownership structure usually depends on a tax assessment conducted on a case by case basis. The most common vehicle used for such structure is the Luxembourg holding and finance company (*société de partcipations financières – Soparfi*), which most commonly may take the legal form of a public limited liability company (*SA*), a private limited liability company (*S.à r.l.*) or a partnership limited by shares (*S.C.A*).

8. **What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?**

It is necessary that a notary is involved in 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.

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

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

The buyer shall also conduct a due diligence on any existing unpaid tax liabilities with respect to the property.

9. **What legal issues (if any) cannot be covered by usual legal due diligence?**

There are some legal interests such as adverse possession that may not be registered with the Mortgage Registry, which nevertheless bind the buyer of the real estate asset.

In addition, standard legal due diligence does not extend to the compliance of the building with operational permits, zoning, environmental matters or building’s defects and these matters are delegated to technical experts.

10. **What is the usual process for transfer of commercial real estate?**

The main document that the buyer of a property (flat, house or land) is required to sign is a sales agreement or technically, a “promise-of-sale agreement” (*compromis de vente*). In particular, a sales 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 sales 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 sales agreement are enforceable *erga omnes* only if the aforementioned agreement is notarized in front of a notary in Luxembourg and then registered with the Mortgage Registry. However, omitting this formality does not change the final and binding nature of the sales agreement *inter partes*.

The following table summarizes the main steps in connection with a transfer of real estate:

Transaction Steps	**Seller**	**Buyer**	**Comments**
Pre-agreement and due diligence	Organizes electronic data via a virtual data room.Makes available in the virtual data room information about any easement, mortgage, lien, charge or pending claim on the property and any other property information. Prepares of the preliminary agreement (compromis de vente), which often precedes the sale’s and purchase deed.	Conducts legal due diligence and usually mandates technical experts to assess the building, its defects and compliance with operational permits, zoning, environmental matters (technical due diligence).Negotiates terms.	Pre-contractual negotiations.Buyer’s notary usually performs necessary checks to ensure a proper sale such as mortgage search, ownership search and may offer impartial advice and overall assistance to the buyer.

Signing to Closing	Provides for contractual warranties 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.Obtains waiver of pre-emption right, if applicable; Execution of preliminary agreement	Execution of preliminary agreementPayment in principle of a deposit amount around 10% of the purchase price to the seller's notary. Arrange for bank funding in case the acquisition of property is backed by a loan agreement.	Seller's notary takes necessary steps regarding conditions precedent.The deposit is a form of guarantee granted in favour of the seller. If the buyer does not sign the sale deed, then such deposit is kept by the seller. Deposit amount is usually credited to notary's escrow account.
Closing	Provides release documentation for existing financing and mortgages with financing banks.Provides energy performance certificate. Execution of the deed.	Execution of the deed.Payment of: Purchase price; Notary fees; Transfer tax; and	Payment of purchase price according to the sale's deed.The transfer tax amount must be collected by the notary within ten (10) days from the signing of the notarial deed if the notary resides in the municipality where the registration office is located. Once collected, the notary will transfer the received amounts to the Luxembourg VAT Authority as a next step.
Post-Closing	Physical hand-over of the property to buyer.		Notary is responsible for registering the notary deed with the Luxembourg Registration Duties, Estates and VAT Authority and recording it with the Mortgage Registry.Notary is paying registration fees (transfer tax) and transcription fees.

11. **Is it common for real estate transfers to be effected by way of share transfer as well**

as asset transfer?

It is common for real estate transfers in Luxembourg to be effected by either a share transfer or an asset transfer. Nevertheless, a share transfer is sometimes preferred by the parties over a direct asset transfer due to the relevant tax advantages. For example, the acquisition of shares in a Luxembourg company is not in principle subject to Luxembourg transfer tax, 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 transfer of shares of a Luxembourg tax transparent entity (such as limited partnerships) in the same way as if the real estate asset was directly transferred.

12. **On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?**

In case of sale of a real estate asset, all existing occupational leases on the property are transferred automatically to the new owner, unless otherwise agreed in the lease agreement.

13. **What common rights, interests and burdens can be created or attach over real estate and how are these protected?**

Luxembourg law recognises several types of rights and interests over real estate 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 personam*, which may arise for example from a commercial lease, a residential lease or an agricultural lease.

In addition to above, securities are often granted by the purchaser 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 rights *in rem* and securities mentioned above as well as certain rights *in personam*, e.g. lease agreements for more than nine years, shall be registered with the Mortgage Registry in order to be protected and opposable towards third-parties.

In case of bankruptcy (*faillite*), controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*) or composition with creditors (*concordat préventif de la faillite*), individual legal actions by privileged and unsecured creditors are in principle suspended. However, if the lender has secured his claims through the inscription 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, then the latter shall wait for the bankruptcy receiver to distribute the assets over which the lender has a priority payment right against unsecured creditors.

14. **Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised**

Luxembourg legislation provides for a form of split of legal and beneficial ownership similar to a trust structure of common law countries. In particular, Luxembourg recognises a fiduciary agreement based on which a person, the settlor (*fiduciant*), transfers the ownership of the asset to the fiduciary (*fiduciaire*), who will be in a position to exercise ownership rights and re-transfer the asset to a named person at the end of the contract. The assets under a fiduciary contract are distinct from the fiduciary's personal assets and can only be claimed by creditors who have rights over them.

In addition, foreign trusts that are governed by the law of another jurisdiction are recognised in Luxembourg under the Hague Trusts Convention.

In case the property is owned by a trust/fiducie, only the legal title is registrable at the Mortgage Registry and not the beneficial interests.

15. **Is public disclosure of the ultimate beneficial owners of real estate required?**

All land privately held is registered with the Land Registry, which provides information about the current owner (natural or legal person), the description, the exact situation and surface of the property. In addition, rights *in rem* such as transfer of ownership of real estate to a natural or legal person are registered with the Mortgage Registry in order to be enforceable towards third parties. Anyone may access the Land Registry and the Mortgage Registry, the latter upon payment of a fee. In case the real estate asset is held by a Luxembourg company, registered with the Luxembourg Trade and Companies Register, then such entity shall register a list of information to be publicly available in relation to its ultimate beneficial owner(s) in accordance with the law of 13 January 2019 establishing a Register of Beneficial Owners, as amended.

16. **What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?**

Taxes on real estate transfer:

a) Transfer tax

The notarial deed with respect to the sale of property shall be registered with the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de*

l'enregistrement des domaines et de la TVA) 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 sales agreement. Nevertheless, both the seller and the buyer are liable for the payment towards the tax authorities.

b) VAT

No Luxembourg VAT applies 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.

c) Income tax

Individuals:

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 (2) years after its acquisition, the income earned by a Luxembourg resident is considered as speculation gain and is therefore taxed at ordinary progressive rates i.e. at a maximum tax rate of 45.78%.
- In case the sale of the property takes place more than two (2) years after its acquisitions, the income earned is considered as 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 re-introduce the rate of 10.5% for income earned between 2020 and 2022.

Companies:

Capital gains deriving from the sale of real estate are included in the taxable income of Luxembourg resident companies. Luxembourg companies are subject to corporate income tax at a standard rate of 17% for income above EUR 200,000.

In addition a 7% solidarity surcharge for the employment fund and a 6.75% municipal business tax (the "**MBT**") for companies registered in Luxembourg City are levied. For companies located outside of the Luxembourg City a different rate of MBT may apply.

Taxes on real estate ownership:

a) Property tax

Any natural or legal persons, who own real estate tax in Luxembourg is subject to property tax on a yearly basis. The property tax amount is calculated by the relevant communal authority, which issues a property tax assessment addressed to the property owner.

b) Income tax

Rental income derived from lease contracts is taxed at ordinary progressive tax rates in case the landlord is an individual or at normal corporate income tax rates if the landlord is a corporation.

17. **What are common terms of commercial leases and are there regulatory controls on the terms of leases?**

The main source of law that regulates the leases of business premises in Luxembourg is the law of 3 February 2018 on commercial leases, which amended certain provisions of the Civil Code (the "**Commercial 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 general rules on leases.

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 Commercial Lease Law. This type of lease is governed by the general rules on leases of the Civil Code

The common terms of commercial leases in Luxembourg are as follows:

a) Duration: The Commercial 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 Commercial 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 allowed 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 his family.

d) 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 (6) 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 (6) 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 (9) years of occupation of the rent and without justification, if the landlord or a third party pays an eviction compensation to the tenant.

e) Renewal: According to the Commercial Lease Law, the tenant has the right to ask for 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, then the competent court will determine the amount based on the market value of the business activity.

f) Insurance: The rental guarantee is limited to a maximum amount of six months' rent and

can take the form of an insurance policy, of a bank guarantee or of any other type of guarantee, as long as it covers an amount equivalent to six months' rent.

(i) Change of control of the tenant: In 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.

(ii) Transfer of lease as a result of a corporate restructuring: In 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.

g) 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.

h) VAT: VAT as a general rule does not apply on 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.

18. **How are use, planning and zoning restrictions on real estate regulated?**

Local municipal administrations in cooperation with the Ministry for Internal Affairs are in principle responsible for the town planning and therefore in charge of drawing-up the general development plan (*plan d'aménagement général*). In particular, the general development plan is an important urban planning tool, which outlines how the land is to be used in the future e.g. for accommodation, offices, businesses or green spaces as well as the degree of land use. In addition, there are also special development plans (*plan d'aménagement particuliers*), which are subordinate to the general development plan and must be approved by the communal council and the Minister for Home Affairs. The purpose of a special development plan is to implement the general development plan by for example specifying the nature and extent of land use in each zone. Development plans may be accessed upon request to the relevant Urban Planning Department.

In case of building work and/or use of real estate, the following main permits/licences shall be granted in principal by the respective mayor in each commune:

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

400 sqm; and
- roadworks permit.

In addition to the above, further licenses 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.

Depending on the building/land use, other public authorities may be involved such as for example the Ministry of Economy in case of setting-up manufacturing businesses on an economic activity zone, the Ministry of Environment or the Ministry of Culture.

19. **Who can be liable for environmental contamination on real estate?**

Luxembourg has endorsed the "polluter pays principle" through the law of 20 April 2009, which implemented the directive 2004/35/CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (the "**Environmental Liability Law**"). In particular, according to the Environmental Liability Law, the relevant operator is in principle responsible for environmental contamination, which arises in the event of deleterious effects on soil/water structure and quality leading to a risk of negative alteration of, among others, human health or of certain types of natural habitat. An operator is defined by the Environmental Liability Law as any natural or legal, private or public person who operates or controls a professional activity or that has received economic power over the technical functioning of such activity, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity. The operator is therefore liable to take all prevention and repair measures and to bear the costs for these, unless he proves, among others, that the contamination was caused by a third party (e.g. a previous operator). In case an operator cannot be identified, then the Luxembourg Environment Ministry may take these measures as a last resort.

20. **Is expropriation of real estate possible?**

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 land owner. In case of disagreement between the parties with respect to the expropriation compensation amount, then this 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.

21. **Is it possible to create mortgages over real estate and how are these protected and enforced?**

The most common security granted in order to secure for example the loan agreement concluded for the acquisition of property is a contractual mortgage, which is created by a notary deed and on an evidenced amount. The contractual mortgage shall be inscribed with

the Mortgage Registry in order to be opposable towards third-parties. 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 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.

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 executoire*) to enforce the mortgage by way of an attachment over immovable property (*saisie immobilière*). A bailiff then must 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 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 without involving court proceedings, which may be lengthy and expensive.

22. **Are there material registration costs associated with the creation of mortgages over real estate?**

The mortgage is established by a notarial deed, which shall be registered with the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement des domaines et de la TVA*) and recorded with the Mortgage Registry in order to be opposable towards third parties. The registration with the Luxembourg Registration Duties, Estates and VAT Authority triggers registration fees of 0.24% of the total principal amount of the secured liabilities. The fees for the inscription with the Mortgage Registry are estimated at 0.05% of the total principal amount of the secured liabilities. As a notary is responsible for drawing-up the deed of mortgage, also notarial costs are triggered.

23. **Is it possible to create a trust structure for mortgage security over real estate?**

As previously mentioned under question 14, Luxembourg recognizes foreign trusts under the Hague Trusts Convention. There is also under Luxembourg law a form of split of legal and beneficial ownership known as "fiducie", which is similar to a trust structure. It is therefore possible for a trustee/fiduciaire to be the holder of a Luxembourg law governed mortgage although not common in practice.

In addition, in case of granting of collateral as for example pledge over claims and financial

instruments in accordance with the Luxembourg law of 5 August 2005 on financial collateral arrangements, as amended (the "**Collateral Law**"), then such collateral may be provided in favour of a fiduciary or a trustee, to secure the claims of third-party beneficiaries, present or future, provided such third-party beneficiaries are determined or determinable.