

2024

Investing in real estate in the Netherlands



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Preface



Preface

Real estate is an investment category in which all three disciplines of Loyens & Loeff play a dominant role in the preparation, structuring and execution of a transaction. A broad scope of laws governs aspects that co-determine the value of real estate, such as landlord-tenant laws, zoning laws, environmental laws and corporate law. This, together with the complicated tax aspects and sometimes even privacy aspects of a real estate transaction, makes the request for the advice of attorneys and tax lawyers virtually routine practice in the preparation of such a transaction. The mandatory role for the civil law notary, in connection with the establishment or transfer of real estate rights, places real estate civil law notaries in the centre of any real estate transaction. Loyens & Loeff is the first firm where attorneys, tax lawyers and civil law notaries work together on a large scale in offering integrated professional legal services in the Benelux countries and Switzerland. Real estate, in view of the aforementioned features, is one of the many areas where Loyens & Loeff's integrated formula has proved to be successful.

Since 2004, Loyens & Loeff has published new editions of the booklet *Investing in real estate in the Netherlands* on a regular basis. The aim of this booklet is to inform foreign companies who invest in Dutch real estate about the main legal and tax issues that may arise during such an investment. This is the seventh edition of the booklet. Its contents are entirely geared towards investments in Dutch real estate in 2024.

Since the publication of the sixth edition of this booklet in 2022, there have been several developments that have affected real estate investments. For example, surging energy prices have accelerated the transition from fossil fuels to renewable energy sources. This impacts real estate investors in various ways. Attention for energy efficiency of properties has increased and has more impact on value than ever before. The use of roof surfaces for photovoltaic systems becomes more interesting as payback periods become shorter and many solar companies look for roofs to lease for their panels. The downside of the increased speed of electrification also becomes visible: the investments in the Dutch grid does not keep pace with it, causing grid congestion that slows down real estate developments in areas where new connections are not possible on short notice. Further developments in this field will require close attention from real estate investors.

More broadly, we see Environmental, Social & Governance (ESG) factors increasingly influencing the actions of real estate investors. For this reason, we have included a new chapter 7 in this booklet specifically on that topic. This chapter covers all ESG themes relevant in the real estate sector, including e.g. green leases and green loans. The latter topics are therefore no longer included in the chapters on e.g. lease and finance.

Another development worth mentioning is the increase in the transfer tax from 8 to 10.4% since 1 January 2023. And not to be ignored is the introduction of the Environment and Planning Act (*Omgevingswet*) on 1 January 2024. The Act brings changes to the law relating to the permits real estate investors need for, for example, renovations. Chapter 4 of this booklet aims to provide a convenient overview of the most important changes in this regard. Lastly, as of 1 January 2025, a Fiscal Investment Institution may no longer hold direct investments in Dutch real estate. Chapter 9 looks ahead in this respect and discusses the implications for existing Fiscal Investment Institutions.

It should be noted that many of the complex issues that can arise in the context of an investment in Dutch real estate cannot be dealt with in a booklet this size. However, we trust that the content will serve foreign investors with quick orientation in the major legal and tax aspects of investing in real estate in the Netherlands. If, in addition to investments in Dutch real estate, you are also interested in project development in the Netherlands, do not hesitate to ask your contact person at Loyens & Loeff for a copy of our 2021 publication *Project development & construction in the Netherlands*.

We would like to thank all who have contributed to this seventh edition (for a complete list of all contributors, please see page 321-322). Their knowledge and experience is reflected in many sections.

Lonne Rooseboom, chairman of the real estate practice group.

Table of contents

	Introduction	15
	Real estate as an investment	17
1.1	Introduction	18
1.2	Returns in the Dutch real estate market	19
1.3	Features of real estate investments	20
1.4	Real estate markets and sectors	20
1.4.1	Residential	21
1.4.2	Retail	21
1.4.3	Hotels	21
1.4.4	Offices	22
1.4.5	Industrial	22
	Civil law	23
2.1	Introduction	24
2.2	Types of entitlement to real estate	24
2.2.1	Movable or immovable property	24
2.2.2	Rights in rem versus rights in personam	25
2.2.3	Ownership	26
2.2.4	Common ownership	27
2.2.5	Right of leasehold	28
2.2.6	Right of superficies	31
2.2.7	Apartment right	32
2.2.8	Easements	33
2.2.9	Right of usufruct	34
2.2.10	Right of mortgage	35
2.3	Conveyance of real estate	35
2.4	Due diligence, sale and purchase	36
2.5	Transfer and payment of the purchase price	38
2.6	Contractual leases in general	41
2.6.1	Preliminary remarks	41
2.6.2	Categories of property lease	42
2.7	Key items of Dutch lease law	43
2.7.1	Duration, renewal and termination of leases in general	43

2.7.2	Rent and indexation	44
2.7.3	Security of rent	44
2.7.4	Remedy for non-payment of rent	45
2.7.5	Permitted use	46
2.7.6	Sublease	46
2.7.7	Maintenance and repair	46
2.7.8	Defects and damages caused by defects	46
2.7.9	Alterations	47
2.7.10	Urgent works and renovations	47
2.7.11	Reinstatement obligations	47
2.7.12	Rent reduction	47
2.7.13	Parking spaces	48
2.8	Office space leases	48
2.8.1	General remarks	48
2.8.2	Duration, renewal and termination of office lease	48
2.8.3	Rent (review)	48
2.8.4	Protection against eviction	49
2.8.5	Assignment	50
2.9	Retail leases	50
2.9.1	General remarks	50
2.9.2	Duration, renewal and termination of retail lease	50
2.9.3	Rent (review)	51
2.9.4	Assignment	52
2.10	Residential leases	52
2.10.1	General remarks	52
2.10.2	Duration, renewal and termination of residential lease	53
2.10.3	Temporary lease	54
2.10.4	Changes and additions	55
2.10.5	Rent (review), the WWS-system	55
2.10.6	Rent indexation	56
2.10.6.1	Regulated properties	56
2.10.6.2	Liberalised properties	57
2.10.7	Regulations relating to rent levels by municipalities	58
2.10.7.1	Public law regulations	58
2.10.7.2	Civil law regulations	59
2.10.8	Short stay	59
2.10.9	The Tenants and Landlord Consultation Act	59

2.10.10	Good Landlordship Act	60
	Finance and security	62
3.1	Introduction	63
3.2	Structuring for bankability	63
3.2.1	General	63
3.2.2	Insolvency and restructuring proceedings	64
3.2.3	Special purpose vehicle (SPV)	65
3.2.4	Share pledge	65
3.2.5	Subordination	66
3.2.6	Due diligence	67
3.3	Financing documentation	69
3.3.1	Types of documentation	69
3.3.2	Architecture of a loan agreement	69
3.3.3	(LMA) real estate finance-specific provisions	71
3.4	Security	75
3.4.1	In rem security rights (mortgage and pledge)	75
3.4.2	Personal security rights (guarantees)	77
	Spatial planning	78
4.1	Introduction	79
4.2	Spatial planning	80
4.2.1	General remarks	80
4.2.2	General introduction to the Environment and Planning Act	81
4.3	Environmental permits	83
4.3.1	Assessment criteria	83
4.3.2	Procedures	84
4.3.3	Partial permits and phased application	86
4.3.4	Interference by the National or Provincial authorities	87
4.3.5	Coming into effect of the environmental permit	88
4.3.6	Specific deferment	89
4.3.7	Fire-safe use of buildings	89
4.3.8	Nature protection and buildings	90
4.3.9	Administrative enforcement	91
4.3.10	Transferability of environmental permits	92
4.4	Municipal real estate acquisition	93
4.4.1	Amicable acquisition	93

4.4.2	Municipalities (Preferential Rights) Act	93
4.4.3	Expropriation	94
4.5	Soil and groundwater pollution	96
4.5.1	General	96
4.5.2	Severe and urgent remediations	96
4.5.3	Remediation costs	97
4.6	Asbestos	97
4.7	Thermal energy storage	98
4.8	Vacancy	99
4.9	Fair Housing Act 2014	99
4.10	Building Quality Assurance Act	100
	Corporations and partnerships	102
5.1	Introduction	103
5.2	Corporate investment vehicles	103
5.2.1	Main characteristics of the BV	106
5.2.1.1	Introduction	106
5.2.1.2	Incorporation	107
5.2.1.3	Share capital	108
5.2.1.4	Profits and distributions	108
5.2.1.5	Corporate bodies	109
5.2.1.6	Liability of shareholders	111
5.2.1.7	Transfer of shares	113
5.2.1.8	Annual accounts	114
5.2.2	Main characteristics of the cooperative	115
5.2.2.1	Introduction	115
5.2.2.2	Incorporation	116
5.2.2.3	Capital of the Coop	116
5.2.2.4	Profits and distributions	116
5.2.2.5	Corporate bodies	116
5.2.2.6	Liability of Members	117
5.2.2.7	Transfer of membership interests	118
5.2.2.8	Annual Accounts	118
5.3	Partnerships and contractual vehicles	118
5.3.1	Main characteristics of a CV	119
5.3.1.1	Introduction	119
5.3.1.2	Establishment of a CV	119

5.3.1.3	The capital of a CV	120
5.3.1.4	Profits and distributions	120
5.3.1.5	Management of a CV	120
5.3.1.6	Liability of the partners	121
5.3.1.7	Transfer of interests	121
5.3.1.8	Dissolution of the CV	122
5.3.1.9	Annual accounts	122
5.3.2	Main characteristics of an FGR	123
5.3.2.1	Introduction	123
5.3.2.2	General structure of an FGR	123
5.3.2.3	Liability of participants	124
5.3.2.4	Legal title to assets held through an FGR	124
5.3.2.5	Transfer of interests	125
5.3.2.6	Annual Accounts	125
	Regulatory	126
6.1	Introduction	127
6.2	The investment institution and its manager	128
6.2.1	Qualification investment institution	128
6.2.1.1	'Conducting a business' versus 'investing'	128
6.2.1.2	Day-to-day management rests with the manager	129
6.2.1.3	Debt participation ≠ investment institution	129
6.2.1.4	A number of investors	130
6.2.1.5	Investment policy	130
6.2.1.6	Interaction between the criteria	131
6.2.2	Qualification as the manager of an investment institution	131
6.3	Licensing requirement and exemptions	133
6.3.1	Dutch sub-threshold managers	134
6.3.1.1	Thresholds	134
6.3.1.2	Offering restrictions	135
6.3.2	Dutch sub-threshold managers	136
6.3.3	Non-EU Managers	136
6.3.4	Managers in a designated state	136
6.3.5	EU licensed managers in other member states	137
6.4	Licensing and organisational requirements	137
6.4.1	Suitability and integrity	137
6.4.2	Business operations	138

6.4.3	Depository	139
6.4.4	Legal ownership	140
6.4.5	Capital requirements	140
6.4.6	Professional indemnity insurance	140
6.4.7	Valuation	141
6.4.8	Remuneration policy	141
6.5	Prospectus requirements	142
6.6	Other requirements	143
6.6.1	Marketing materials	143
6.6.2	Conduct of business rules	144
6.6.3	Placement agents	144
	ESG	145
7.1	Introduction	146
7.2	SFDR	146
7.2.1	General	146
7.2.2	Classification of financial products	147
7.2.3	Entity level disclosure - PAI statement	147
7.2.4	Impact of the SFDR on real estate actors	148
7.3	EU Taxonomy	148
7.3.1	General	148
7.3.2	Environmental objectives	149
7.3.3	Criteria to qualify as environmentally sustainable	150
7.3.4	Criteria to qualify as environmentally sustainable	151
7.3.4.1	Introduction	151
7.3.4.2	Substantial contribution to climate change adaptation	152
7.3.4.3	Substantial contribution to climate change mitigation	153
7.3.5	Impact of the EU Taxonomy on real estate actors	156
7.4	CSRD	156
7.4.1	General	156
7.4.2	Changes to reporting requirements	157
7.4.3	Scope of CSRD	158
7.4.4	Impact of the CSRD on real estate actors	160
7.5	CSDDD	160
7.5.1	General	160
7.5.2	Status of the CSDDD	161
7.5.3	Obligations under the CSDDD for in-scope companies	161

7.5.4	Impact of the CSDDD on real estate actors	162
7.6	Legislation on energy performance	164
7.6.1	Energy label	164
7.6.2	Nearly zero-energy buildings (NZEB)	165
7.6.3	Energy saving measures	165
7.6.4	EPBD IV	166
7.6.5	Environmental labels and assessment methods	168
7.7	Energy congestion	168
7.8	Governmental investment incentives	169
7.8.1	MIA / EIA / VAMIL	169
7.8.2	SDE++	169
7.9	Green leases	171
7.10	Green and sustainability linked loans	172
7.10.1	General	172
7.10.2	Green loans	173
7.10.3	Sustainability-Linked Loans	174
7.11	Green transaction documents	176
	Privacy	177
8.1	Introduction	178
8.2	When does the GDPR apply	180
8.2.1	General	180
8.2.2	Material scope	180
8.2.3	Territorial scope	181
8.2.4	Local data protection laws	182
8.3	Key principles of Personal Data Processing	183
8.3.1	General	183
8.3.2	Legal ground	183
8.3.3	Accountability	185
8.3.4	Transparency	186
8.3.5	Accuracy	187
8.3.6	Purpose limitation	187
8.3.7	Data minimisation	188
8.3.8	Retention	188
8.3.9	Proportionality	188
8.3.10	Integrity and confidentiality	189
8.4	Data Subject rights	189

8.5	Controller and Processor	192
8.6	Data breach	195
8.7	Data transfers	197
8.8	Final considerations	200
	Taxation	202
9.1	Introduction	203
9.2	Corporate income tax	203
9.2.1	General	203
9.2.1.1	Taxation of domestic corporations	203
9.2.1.2	Taxation of foreign corporations	204
9.2.2	Direct investments in real estate by foreign corporations	204
9.2.3	Indirect investments in real estate by foreign corporations	205
9.2.4	Taxation of domestic partnerships	205
9.2.5	Taxation of foreign partnerships	208
9.2.6	The Fiscal Investment Institution	209
9.2.7	Fiscal Unity (<i>fiscale eenheid</i>)	211
9.3	Determination of taxable profit	212
9.3.1	Financing	212
9.3.1.1	Anti-base erosion rule	213
9.3.1.2	The earnings stripping rule	213
9.3.1.3	Anti-hybrid mismatch measures	214
9.3.2	Depreciation	215
9.3.3	Reinvestment reserve	215
9.3.4	Investment incentives	216
9.3.5	Participation exemption	217
9.3.6	Controlled foreign company rules	218
9.3.7	Exchange of information regarding holding companies	218
9.4	Withholding taxes	219
9.4.1	Dividend withholding tax	219
9.4.2	Dividend withholding tax and Coops	220
9.4.3	Dividend tax exemption for foreign corporations	220
9.4.4	Treaty exemption or reduced rate	223
9.4.5	Conditional withholding tax	223
9.5	Individuals	224
9.5.1	General	224
9.5.2	Taxation of domestic individuals	224

9.5.3	Taxation of foreign individuals	224
9.6	Transfer tax	228
9.6.1	Acquisition of real estate corporations	228
9.6.2	Exemptions of transfer tax	230
9.7	Value added tax	231
9.7.1	Transfer of real estate	232
9.7.2	Lease of real estate	233
9.7.3	Example of deduction of input VAT and the revision period	234
9.8	Real estate tax	235
9.9	Landlord levy	235
9.10	Rulings	235
Annexes		236
Annex 1 - Standard sale and purchase agreement (KNB)		237
Annex 2 - ROZ Model lease agreement of office space		281
Contributors		321

Introduction



Introduction

Investing in real estate in the Netherlands serves to look at certain civil law, public law and tax aspects that may be involved when investing in real estate in the Netherlands. Its content is intended for those considering investing in real estate subject to Dutch law. It is addressed not only to foreign professional investors but also to financiers, advisors and high net worth individuals.

Chapter 1 describes real estate as an investment category. Chapter 2 deals with certain aspects of civil law pertaining to entitlements to real estate and the lease thereof. Chapter 3, focussing on the financing of real estate, is an entirely new chapter. Chapter 4 covers some of the public law aspects that relate to real estate. Chapter 5 discusses the various features of corporations and partnerships used as investment vehicles. Chapter 6 considers the supervision of investment institutions and chapter 7 focusses specifically on ESG. The privacy aspects that need to be considered when investing in Dutch real estate are discussed in chapter 8. Finally, chapter 9 addresses the tax aspects of real estate investments.

This publication does of course not provide an exhaustive account of all the aspects relevant to investment in Dutch real estate. It is only intended to give a general impression of the various issues one can be confronted with when making such investment, up to date until January 2024. In view of possible changes in the laws regarding investments in Dutch real estate, we would recommend regularly ensuring you have up-to-date information about the latest developments and the implications thereof. Although the text has been compiled with the utmost care, Loyens & Loeff NV and the contributors to this booklet accept no liability for the consequences of using this publication or its contents without its collaboration.

The editor

Fokke Jan Vonck
January 2024

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