As a leading firm, Loyens & Loeff is the natural choice as a legal and tax partner if you do business in or from the Netherlands, Belgium, Luxembourg and Switzerland, our home markets. You can count on personal advice from any of our 900 advisers based in one of our offices in the Benelux and Switzerland or in key financial centres around the world. Thanks to our full-service practice, specific sector experience and thorough understanding of the market, our advisers comprehend exactly what you need.
Some civil law, public law and tax aspects of INVESTING IN REAL ESTATE IN THE NETHERLANDS

2016 Edition

Editors:
Fokke Jan Vonck
Robert Bol
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 and environmental laws. This, together with the complicated tax aspects, makes the request for the advice of attorneys and tax lawyers virtually routine practice in the preparation of a real estate 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 the publication of the first edition of this booklet in 2004, there have been important developments in the Dutch real estate market, both in a legal and economic sense. After the economic slowdown during the period 2009 – 2013, the Dutch real estate market has gradually recovered and is a very interesting investment category again for national and foreign investors.

From a legal perspective, there have been several changes of note. New legislation extended the possibility of the temporary renting of residential accommodations and as a result of an easing of the laws regarding spatial planning empty offices can be transformed into student flats or (senior citizen) housing more quickly and easily. The international discussions on tax avoidance and the related initiatives by the OECD and the EU have resulted in the introduction of anti-tax avoidance provisions to combat artificial legal structures. These rules and further regulations to be expected in the near future affect international real estate investments as well. Furthermore, EU law has again shown its impact on domestic law: the rules for corporate income tax consolidation have been broadened and non-resident individuals with a direct passive investment in Dutch real estate can now claim a tax free allowance.

This fourth edition addresses real estate investment in the Netherlands. Many of the complex issues that can arise in the context of such an investment 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 civil law and tax aspects of investing in real estate in the Netherlands.

We would like to thank all who have contributed to this fourth edition (for a complete list of all contributors, please see page 196). Their knowledge and experience is reflected in many sections.

Wilfred Groen, Real Estate, partner
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Introduction

The first edition of this booklet was published in June 2004. Since then, several changes have been introduced to Dutch legislation governing real estate. Additionally, the economic crisis, hitting the market in 2008, impacted on the way of investing in real estate. Therefore, in 2011, a second edition was drawn up, which incorporated several items relating to legislation arising from the economic problems at that time. When the edition of 2013 was published, the real estate market was already slightly improving and now, July 2016, we perceive quite a strongly recovered market and see increasing activities in the investment markets. These developments together with the fact that there have been some important changes in the Dutch legislation regarding real estate investments demonstrate the need for a revision of the third edition. One of the important changes is the entry into force of the Act Mobility Rental Market (Wet doorstroming huurmarkt) as from 1 July 2016 which enlarges the possibilities of the temporary renting of residential accommodations.

This booklet serves to look at certain civil law, public law and tax aspects that may be involved when investing in commercial real estate in the Netherlands. Its content is intended for those considering investing in commercial 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, focusing 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. Finally, Chapter 7 addresses the tax aspects of real estate investments.

This publication does 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. Although the text has been compiled with the utmost care, Loyens & Loeff N.V. accepts no liability for the consequences of using this publication or its contents without its collaboration.

The editors

Fokke Jan Vonck
Robert Bol
July 2016
1 Real estate as an investment category

1.1 Real estate as an investment

Real estate is a special investment category with characteristic features. Real estate investments are defined as the securing of funds for real estate, directly or indirectly, with the intention of realising a financial income stream from its exploitation and subsequent sale.

Investments in real estate can be either direct or indirect. Unless the context indicates otherwise, in this publication direct investment means that the investor has a majority interest in the real estate, whether or not through a corporation, and is actively involved in its management. Direct investment requires an effective network of local players in the real estate market such as policymakers, owners, investors, tenants, civil law notaries, real estate agents and other (legal) advisers.

Indirect investment means an investment whereby the investor owns shares in an investment institution which itself invests directly in real estate. The investor does not hold a majority interest in the real estate nor is it actively involved in its management. Indirect investments can be made, amongst others, via listed real estate funds. Advantages of indirect investment can be diversification of risk through the fund profile, fund managers’ expertise, flexibility regarding entry and exit opportunities, liquidity (in the case of listed funds) and the relatively low capital requirement for entry. Disadvantages are that the fund manager’s policy can be unpredictable, individual shareholders have little influence and the price per share is more sensitive to fluctuations in the stock markets.

For the purposes of the Dutch Act on financial supervision (Wet op het financieel toezicht), discussed in chapter 6, it is important to distinguish between whether the objective of the acquisition is for investment purposes or for business operations, meaning that the owner’s primary purpose is to use the real estate as a means of production.

As is the case with acquisitions for commercial purposes, the activities of project developers are not considered investments. The distinction between investment and property development can be important when determining whether an investor qualifies as a ‘Fiscal Investment Institution’. Project developers are not primarily
engaged in the income from the investment by letting the real estate to third parties whilst maintaining the value of the investment; their goal is to realise a profit from the sale of newly developed or redeveloped real estate.

1.2 Returns in the Dutch real estate market

Real estate investments require payment of a known sum in exchange for unknown returns in the future. This uncertainty can be made manageable, for example, by means of substantiated forecasts of future returns and by diversification of investments and risk.

Factors affecting the returns that investors desire include location, the quality of the real estate, the quality of the income flows (the tenant) and the costs of maintenance and management. The returns on real estate can be distinguished between direct and indirect returns.

The direct return, or return from operation, is the rental income less the costs of operating the real estate. The indirect return includes sale proceeds, upward and downward revaluation of the real estate and, if applicable, exchange rate fluctuations.

A real estate investor’s requirement for the return is related in the first instance to the interest payable on long-term loans; the higher the interest, the higher the return required. A risk premium must be calculated for the envisioned return. This may relate to general risks, such as a downward revaluation due to planning developments in the vicinity of the real estate. Equally important are the investment-specific risks, such as debtor risks related to the quality of the tenant. Another example is the risk of vacancy after expiration of the initial rental period due to the property having been specifically designed to meet the requirements of the initial tenant, rendering it no longer easily marketable as a rental property. Dictated by the direct return requirement, the investor calculates the investment value on the basis of the rental income the relevant real estate will generate. Detailed cash flow calculations are used to produce an accurate calculation of the value, such as the internal rate of return calculation, the net present value method, or the discounted cash flow method.

For a quick and rough indication of the investment value, the gross initial yield or ‘GIY’ (bruto aanvaangsrrendement) is used. The GIY indicates the ratio of the gross rental income on acquisition of the investment, i.e. without deducting operating costs, and
the purchase price. If a seller requires a purchase price of EUR 14,000,000 and the rental income at the time of acquisition amounts to EUR 1,000,000, the investor is realising a GIY of 1/14, or 7.14%. Each real estate is unique; however, since the purchase price and the initial rent in many transactions are published in the branch periodicals, the GIY is an accepted means of comparison in the investment market. Investors can therefore check whether the GIY offered is in line with the market.

1.3 Features of real estate investments

From an investor’s point of view, certain features set real estate apart from other investment categories. These features are, amongst others:

- the real estate market is not transparent. Transaction details are not available for exact comparison, due to individual differences in properties and the confidential nature of transactions. General information is available from, for example, real estate agents and the Dutch Land Registry office;
- transaction costs are considerably higher than those involved in securities investment, especially if transfer tax is due on the acquisition of the property. The result is that, usually, the investment only pays off if made for a longer period of time;
- real estate is linked to a location. Developments in the vicinity of that location can affect its value;
- the high price of individual properties means that risk diversification can only be achieved for a significant value (one of the reasons for the existence of listed real estate companies).

Despite the abovementioned, real estate is often considered an investment category with many attractive features, which include reasonably stable direct returns over the longer term, generated by rental income.

1.4 Real estate markets and sectors

There are different kinds of real estate to be distinguished. In order to analyse the market, a distinction has to be drawn between the various real estate market segments. Obvious distinctions are commercial versus non-commercial, or new versus old. Market segments can also be classified according to geographical location, region or city, or according to various sectors such as residential, retail, hotels, offices and industrial.
1.4.1 Residential
The residential market is a local market that includes a large number of high net worth individuals as well as professional investors, such as housing corporations and institutional investors. Rental income in the residential sector is often quite stable given that the property is usually the tenant's own residence. Future returns are predictable, since rental increases mainly follow inflation and are linked, to a certain extent, to a maximum. Tenants' rights are well protected under Dutch law. Further details of residential leases are provided in section 2.5.1.

1.4.2 Retail
Rents per square metre are highest in the retail sector. Some rental contracts are related to sales, and consumer spending is an important indicator of market growth. The most important factor in the retail sector is location. Retail operators look for locations offering good sales and profit potential over time. Accessibility is essential and adequate parking facilities are a prerequisite. Section 2.5.2 deals with tenancy rights regarding retail premises.

1.4.3 Hotels
The hotel market segment is a specific market involving various types of hotels. Many factors such as location, hotel-classification, brand and the operator are aspects which need to be taken into account when investing in a hotel as real estate. There is a wide variety of agreements on the basis of which hotels are operated, varying from a straightforward lease agreement to a management contract or a franchise contract, or contracts combining elements of these operational forms. The allocation of risk varies for each type of contract, depending on what rules, mandatory or otherwise, will govern the contractual relationship. In view of a number of aspects such as the employees concerned, branding and financing, the replacement of an operator for first class hotel real estate is not as simple as, for example, finding a new tenant for a first class office. As a consequence, even if the hotel is operated on the basis of a straightforward lease agreement, the acquisition of hotel real estate requires the specific sector knowledge of (legal) experts in this line of business. In most cases, therefore, only specific parties are interested in investing in hotel properties.

1.4.4 Offices
The office market is influenced by various factors such as local business activity, infrastructure (such as proximity to an international airport), employment, rent levels, the quality of the labour market and local presence considerations. As one would expect, locations in and around the major Dutch cities are at a premium compared to more peripheral locations, and the cost of popular office locations in Amsterdam is higher than in Rotterdam or Utrecht. As an alternative to city centre
development, better accessibility is attracting the development of many new offices in city perimeters, such as the prestigious ‘Zuidas’ complex in Amsterdam. The need for maintenance and the flexibility of the space are also important factors. For investors, the quality of their tenants is also an issue. A high quality tenant offers more security for the duration of the contract. The tenancy rights applying to offices and industrial premises (discussed in section 1.4.5) are generally of a non-mandatory nature, which means that the parties are free to deviate contractually from the provisions provided by Dutch law (see section 2.5).

1.4.5 Industrial

The industrial market segment features a large number of owner-occupiers. Most industrial premises are built for specific use. Investors may be interested if a long-term rental contract can be guaranteed and/or if the object complies with current requirements. Certain investors focus on specific subcategories within the industrial market segment, such as logistic centres or data centres. The location for industrial real estate is not always a primary consideration, although, dependent on the nature of the operation (such as a logistics centre), access by road, rail or water may be crucial. In the Netherlands, the industrial real estate sector is strictly regulated by local authorities who, for example, issue land subject to highly stringent zoning regulations.
2 SOME CIVIL LAW ASPECTS OF REAL ESTATE

2.1 Introduction

The territory of the Netherlands is divided into plots of land, known as land registry parcels or cadastral plots (kadastrale percelen), each of which is recorded separately in the public registers of the Dutch Land Registry (Kadaster). In respect of each of the cadastral plots, the public registers contain the names of the subjects with an entitlement to such cadastral plots. Those subjects may be individuals, legal entities governed by public law, such as municipalities (gemeenten) and provinces (provincies), and legal entities governed by private law, such as public and private limited liability companies, (naamloze vennootschappen en besloten vennootschappen met beperkte aansprakelijkheid). Foreign subjects can also be entitled to Dutch real estate. The Dutch Land Registry also records the nature of the entitlement, legal restrictions that apply to the entitlement, amongst which restricted rights, and whether the plot is subject to an attachment (beslag) or a right of mortgage (hypotheek).

2.2 Types of entitlement to real estate

2.2.1 Rights in rem versus rights in personam

Real estate is ‘immovable property’. The Dutch Civil Code (Burgerlijk Wetboek: ‘DCC’) defines ‘immovable’ as: the land, the unextracted minerals therein, the plants and shrubs attached to the land, as well as the buildings and works permanently attached to the land be it directly or by attachment to other buildings or works. Everything else is deemed ‘movable’. A building or construction can be deemed permanently attached to the land if (1) it is attached to the land and (2) by its nature and design it is intended to be a permanent fixture. A ‘floating dwelling’ (waterwoning), for example, that is not (directly or indirectly) attached to the land is considered movable under Dutch law. Whether or not a fixture is intended to be permanent can sometimes be difficult to say, for instance in case of a ‘portakabin’. The answer depends on many different aspects, such as whether or not it is connected to utilities.
Whether property is movable or immovable can also have tax implications. As is explained in chapter 7, the acquisition of an immovable property is, in principle, subject to transfer tax. This distinction also determines the formalities applicable to, for example, the transfer and encumbrance of ownership. The role played by Dutch civil law notaries in the establishment of rights and transfer of title to real estate in the Netherlands is also highlighted in this chapter.

The rights vested in real estate can be either a ‘right in rem’ (zakelijk recht) or a ‘personal right’ (persoonlijk recht). The rights in rem are absolute: they apply to all persons and entities holding legal rights and the vesting of a right in rem can be recorded in the public registers of the Dutch Land Registry. Not only the establishment of a right in rem, but also the transfer of such right to another party, can be recorded in these public registers. In furtherance of the entitlements being accurately reflected by the public registers, the legislature has determined that the establishment or transfer of such rights must be effected by a public (notarial) deed executed before a Dutch civil law notary, and is perfected by the subsequent registration of a certified copy thereof in the public registers of the Dutch Land Registry. The civil law notary takes care of the registration on behalf of the parties involved. Nonetheless, the public registers of the Dutch Land Registry can lack complete and reliable information. Situations can arise in which a right in rem is vested with or is transferred to another party without there being a legal requirement that a notarial deed be recorded in the public registers of the Dutch Land Registry. This could be the case, inter alia, where such right is acquired by prescription or by legal merger. In such a case, it might well be in the interest of the entitled party to have this acquisition registered in the public registers of the Dutch Land Registry. In certain circumstances, failure to register (for example, the fulfilment of a condition subsequent) can lead to a situation in which a party is unable to invoke its rights against a third party who deems it has acquired a right on the real estate and has registered the acquisition. This promotes a situation in which it is in the interests of the parties concerned to ensure that the relevant public registers correspond with reality. Moreover, by imposing strict duties on the Dutch civil law notaries and by implementation of modern technology, most of the shortcomings of this negative system have been remedied and, in the majority of cases, the public registers of the Dutch Land Registry are reliable.

Dutch law draws a distinction between ownership and various types of rights in rem. The most comprehensive right to real estate is the (unencumbered) right of ownership, which can relate to movable and to immovable property. Other rights (in rem) regarding real estate, as described hereafter, are derived from, or share significant features with, the right of ownership: the right of leasehold (also commonly referred to as ground lease), the right of superficies, the apartment
right, the right created by virtue of easement, the right of usufruct and the right of mortgage.

Personal rights have only relative effect: they can only be exercised against one specific person or several specific persons. They are not as strong as rights in rem. A personal right with respect to real estate can, for instance, be entitlement to a transfer arising from a purchase contract or the right of beneficial ownership with regard to real estate. The right to tenancy on the basis of a contractual lease is also a personal right, although it has certain features of an absolute right: the tenant can exercise its right against the subsequent owners (and vice versa). Under certain circumstances specific obligations in relation to real estate can have some limited absolute effect; this is the case when in a transaction, parties agree that a certain obligation is labelled as a qualitative obligation (within the meaning of section 6:252 DCC). However, qualitative obligations should consist of the obligation ‘to tolerate’ or ‘to refrain from certain actions’ with respect to the real estate. Active performance cannot, therefore, be secured for the benefit of subsequent owners by way of qualitative obligation.

2.2.2 Ownership

As stated above, ownership (eigendom) is the most comprehensive right to real estate. The owner has exclusive right of use and may dispose of or encumber the real estate at its sole discretion. According to Dutch law, ownership to real estate can be divided into ownership of land (with all that is erected on it) and ownership of a network of cables, pipes and suchlike; for example, ownership of a data-network in another person’s real estate.

Public law contains limitations to the right of use, such as zoning plan conditions, environmental legislation, building regulations and tolerance obligations in connection with the maintenance of public underground cables, pipes and suchlike, registrations within the meaning of the Soil Protection Act (Wet Bodembescherming) and restricted rights as referred to in the Public Works (Removal of Impediments in Private Law) Act (Belemmeringenwet Privaatrecht). At the sale of real estate, a municipality may hold a right of first refusal pursuant to the Municipalities (Preferential Rights) Act (Wet voorkeursrecht gemeenten). Under certain circumstances, the government can expropriate the owner. Furthermore, the right of ownership is limited by the general rule of private law that an owner may not use its property contrary to the rights of others. Most of these limitations to the right of ownership may also apply to the limited rights to real estate derived from the right of ownership. Since the implementation of the Disclosure of Impediments under Public Law in respect of Real Estate Act (Wet kenbaarheid publiekrechtelijke beperkingen), the government is obliged to register, amongst others, the aforementioned limitations
in the public registers of the Dutch Land Registry, this in order to inform third parties about the public limitations regarding specific real estate.

2.2.3 Common ownership
Common ownership (mandeligheid) is a special form of joint ownership of real estate which serves two or more parcels of land. The right is created if an immovable property is held in joint ownership and is designated by the owners for common use by means of a public (notarial) deed executed before a Dutch civil law notary, followed by the registering of a certified copy of such deed in the public registers of the Dutch Land Registry. Common ownership can be applied in cases where there is a need for a common arrangement that is interrelated with the quality of ownership of an immovable property; for example the common ownership of parking places, parks with footpaths, green strips and fencing. In principle, partition cannot be unilaterally claimed. Furthermore, the right is of a dependent nature given that, in principle, it cannot be separated from ownership. Common ownership can also be created on the basis of law. The dividing wall which two buildings or works that belong to different owners have in common is also held in common ownership.

2.2.4 Right of leasehold
A right of leasehold (erfpacht), also commonly referred to as ground lease, is the right in rem to hold and (exclusively) use the real estate owned by another party, usually against payment of a periodic remuneration called the ground rent (erfpachtcanon), which may also be paid in advance for a specific period or in perpetuity. A right of leasehold may be established on a right of ownership, but also on another right of leasehold (subleasehold) or on an apartment right. The establishment of a right of leasehold is effected by registering a certified copy of the relevant public (notarial) deed, executed before a Dutch civil law notary, in the public registers of the Dutch Land Registry. A right of leasehold is a right in rem and is to be distinguished from a lease (huur), which is a personal right.

The right of use of the leaseholder is not only valid for the land but for all that the land comprises according to Dutch law such as, amongst others, the buildings and works that are permanently attached to the land. The leaseholder does not legally own the buildings and works it constructs in or on the land. The owner of the land is the legal owner of any such building as a result of the Dutch legal principle of vertical accession (verticale natrekking). In many cases however, on termination of the right of leasehold, the leaseholder is entitled to remuneration by the landowner for any buildings the leaseholder has constructed or even for the value of the right of leasehold itself.
A right of leasehold itself may be established temporarily (i.e. for a certain period of time) or perpetually. In addition, it is not uncommon that the conditions which apply to the right of leasehold (for example, the amount of the ground rent) are adjusted from time to time. In practice, many leasehold rights include that the terms and conditions (such as the amount of ground rent due) can be adjusted every 30, 50 or 100 years.

The content of a specific leasehold is mainly defined by the leasehold conditions (erfpachtvoorwaarden), which are defined in the deed of issuance. Moreover, the DCC provides regulations with respect to the leasehold. Leasehold is often used by local government authorities as a means of enforcing policy on zoning and environmental matters. The local government authority retains ownership of the property so that it can control the purposes for which the property is used by imposing certain standard leasehold conditions on the leaseholder. These conditions may state quite specifically which kind of use of the land is allowed. If a leaseholder wants to change this way of use or if he wants to alterate the building on the land, a prior consent of the landowner is necessary.

As indicated, the leaseholder is generally obliged to pay ground rent (canon) to the owner of the land. The amount of ground rent may vary (generally it is a percentage of the ground value) and the landowner and the leaseholder can agree to review the ground rent periodically. It is common that the landowner stipulates a review of the ground rent when, for instance, a change of the permitted use of the land and buildings is granted. It is not uncommon that the ground rent is bought-off for a certain period of time (for example for 50 years) or even in perpetuity. Buying-off the ground rent protects the leaseholder from interim increases of the ground rent during the period concerned. However, the owner is still entitled to additional payments during that period if the activities of the leaseholder that are not allowed without prior permission, are authorized. If ground rent has been paid-off for a certain period of time, the ground rent shall be reviewed at the commencement of a new term. The new ground rent shall be determined by the landowner on the basis of the ground value as recalculated at that time and a new percentage. A certain period of time (that varies from 1 to 3 years) prior to the commencement of the adjustments, the landowner will give notice to the leaseholder concerning the new conditions, the new ground value and the new percentage.

The leasehold conditions may state that a transfer, encumbrance with limited rights of or division (into apartment rights) requires the prior written consent of the landowner. If this consent is unreasonably withheld, it can be replaced by means of an authorisation of the subdistrict court (kantonrechter). Irrespective of the fact whether consent is required, the landowner should receive a certified copy of a
deed of transfer/vesting of a right in rem/mortgage, if and when executed, within a
certain period of time after signing such deed (in some cases penalty).

The DCC provides that leasehold can be terminated by the landowner unilaterally
in the event the leaseholder acts in breach of its obligation to pay the ground rent
during a period of two years, or in the event he acts in breach of any other of its
obligations pursuant to the ground lease conditions. If a landowner is a municipal
authority, the landowner also has the right to terminate the leasehold when this is
in the public interest.

As mentioned above, in many cases, the leaseholder is entitled to remuneration
by the landowner, for the value of the leasehold right or – depending on the
circumstances – of any buildings the leaseholder has constructed, upon termination
of the right of leasehold. However, the applicable leasehold conditions may include
a different kind of remuneration or state that no remuneration for the value of the
buildings is to be received.

2.2.5 Right of superficies
The right of superficies (recht van opstal) is the right to own buildings, works
or plants in, on or above another person’s real estate. The right of superficies
therefore breaks the vertical accession described in section 2.2.4 that normally
applies to buildings constructed on another party’s land. The right of superficies
may be established for a defined period or perpetually whereby the conditions
which apply to the right of superficies (for example, the amount of the retribution
(annual payment)) may be adjusted from time to time. A right of superficies can
be established as an independent right or a dependent right to, amongst others,
another limited right (for example, a right of leasehold) or even to a contractual
lease. A right of superficies can be established on a right of ownership, but also
on an apartment right; a right of superficies cannot be established on a right of
leasehold. The establishment of a right of superficies is effected by registering a
certified copy of the relevant public (notarial) deed, executed before a Dutch civil
law notary, in the public registers of the Dutch Land Registry.

On termination of the right of superficies, the owner of the land becomes the owner
of the buildings, works and plants, constructed or created by the holder of the right
of superficies, by the aforementioned principle of vertical accession. In such cases,
the party entitled to the right of superficies has, in principle, the right to remove the
contributions it has made; otherwise remuneration will be applicable in most cases.

2.2.6 Apartment right
In cities such as Amsterdam, for example, large old warehouses are often split up
into apartments for residential use. However, commercial real estate properties
may also be divided into apartment rights; for example, a multifunctional building can be designed to contain residential apartments, shops, offices and parking facilities. A right of ownership, right of leasehold or right of superficies can be divided into a number of apartment rights (appartementsrechten). A leaseholder or a party entitled to a right of superficies can only divide its right into separate apartment rights with the permission of the owner of the land. An apartment right itself can, in principle, also be subdivided into apartment rights. Pursuant to public law, a division of residential property into apartment rights may require a licence issued by the municipality. The division is established by registering a certified copy of the relevant public (notarial) deed, executed before a Dutch civil law notary, in the public registers of the Dutch Land Registry.

An apartment right gives entitlement to a share in the divided - jointly owned - real estate, with the right of exclusive use of a certain part thereof as indicated on a special drawing which is attached to the deed of division and included in the public registers of the Dutch Land Registry. Certain parts can also be designated for communal use by the collective owners of the apartment rights. Each such apartment owner is, by operation of law, a member of the association of apartment owners (vereniging van eigenaars) which manages the common ownership. The apartment owners usually pay a monthly contribution to the association for, inter alia, the costs of maintenance of the communal areas and insurance for the entire building.

2.2.7 Easements
An easement (erfdienstbaarheid) is a burden with which an immovable property (the servient land: dienend erf) is encumbered for the benefit of another immovable property (the dominant land: heersend erf). It is a dependent right that passes with the ownership of the real estate and cannot be disposed of separately from that real estate. The owner of an apartment right, leaseholder, superficiary and usufructuary may also, under certain conditions, encumber the property with an easement. The encumbrance should consist of the obligation ‘to tolerate’ or ‘to refrain from certain actions’ although it can also pertain to supporting maintenance or construction obligations. Easements can be created by establishment and by prescription. Establishment is effected by registering a certified copy of a public (notarial) deed, executed before a Dutch civil law notary, in the public registers of the Dutch Land Registry.

2.2.8 Right of usufruct
The right of usufruct (vruchtgebruik) gives the right to use goods or properties that belong to another and to enjoy the benefits (fruits) of such. If an immovable property is not leased or let out on lease at the moment of establishing the
usufruct, the usufructuary may not lease or let out on lease this property without
the prior permission of the owner of the property or the authorisation of the Court,
unless such authorisation for that purpose is granted at the establishing of the
right of usufruct. Usufruct of an immovable property is established by a public
(notarial) deed, executed before a Dutch civil law notary, a certified copy of which
is registered in the public registers of the Dutch Land Registry. In special cases,
a right of usufruct can be created by prescription. A special form of the right of
usufruct is the right of use and occupation (recht van gebruik en bewoning), which
only entitles a person to occupy and make use of another person’s property; this
right cannot be transferred.

2.2.9 Right of mortgage
The right of mortgage acts as security against the fulfilment of a debtor’s financial
obligations towards a creditor. The right of mortgage entitles the creditor/mortgagee
to dispose of the real estate on which it has been granted such right by public sale
(auction), and to exercise a preferred claim over other creditors to the proceeds
thereof in the event of the debtor failing to meet its obligations. Such public
sale may be held without any court order. This is known as a right of summary
execution (recht van parate executie). With the consent of the Court and with due
observance of some other regulations in that respect, a sale by the mortgagee
can also take place privately. The right of mortgage is usually required by banks
financing real estate transactions in accordance with their specific conditions. The
right of mortgage is not separately transferable; it is related to the debtor’s payment
obligation. The right of mortgage is established by registering a certified copy of
the relevant public (notarial) deed, executed before a Dutch civil law notary, in the
public registers of the Dutch Land Registry.

2.3 Due diligence, sale and purchase
According to Dutch law, a seller is obliged to provide information to a prospective
buyer concerning the legal aspects and actual condition of the real estate; at the
same time, however, a buyer may not simply rely on the extent of information
provided by the seller and, consequently, it is in the buyer’s interest to verify this
information and to examine whether further enquiries are to be made. Therefore,
it is normal practice that before entering into a sale and purchase agreement,
a due diligence investigation is conducted by the buyer’s legal and tax advisers
with respect to the legal and tax aspects of the relevant real estate, amongst
which, the entitlement, lease agreements as well as zoning aspects, permits and
environmental issues. The outcome of this review is recorded in a due diligence
According to Dutch law, the sale and purchase agreement can be registered in the public registers of the Dutch Land Registry. Due to this registration, amongst others, attachments or a sale to a third party by the seller within a time frame of six months, starting from the date of registration of the sale and purchase contract, cannot affect the pre-recorded right of the buyer. Therefore, for a short period of time, this provides the buyer, some additional security. The sale and purchase agreement stipulates the terms and conditions under which the seller and the buyer agree on the sale and transfer of the real estate. An English translation of a standard sale and purchase agreement, as drawn up by the Royal Association of the Civil Law Notaries in the Netherlands (‘KNB’), which is commonly used in the Netherlands for both commercial real estate transactions and the conveyance of dwellings amongst private persons, is enclosed as an example (Annex 1). This standard contract reflects general aspects which have to be taken into account when entering into a straightforward sale and purchase agreement. The first thing parties to a real estate transaction usually agree on, besides the purchase price, is a final date of legal transfer. Failure of the buyer to pay for the real estate or of the seller to deliver on the date of transfer constitutes a breach of contract which may result in liability for damages incurred by the other party as a result of such breach. A penalty clause is usually incorporated in the sale and purchase agreement to cover such situations. To protect the seller’s interests, normal practice is that, prior to the transfer, the buyer deposits a certain percentage (usually 10%) of the purchase price, or provides a bank guarantee in that amount, with the civil law notary as security for the fulfilment of its obligations. The parties may also agree that the contract will be concluded subject to conditions subsequent. It could, for example, be in the interest of the buyer to be able to terminate the purchase in the event the financing of the transaction cannot be arranged or arranged in time. In addition, it is normal practice to specify in the contract who is liable for the various costs of the transfer, e.g. taxes, notarial and land registry costs. It is also very common for the seller to submit a number of statements regarding matters such as the state of maintenance of the real estate, any contamination of the soil and clean-up obligations, etcetera. If the real estate is leased out, the seller should inform the buyer about the contents of present tenancy agreements. The seller’s rights and obligations vis-à-vis the tenants arising from these agreements pass automatically to the buyer when the transfer of ownership is effected. An arrangement to cover the risk of loss of value between the moment of the sale and the moment of transfer of the real estate is also included in the agreement. Normally, this risk passes to the buyer at the moment of execution of the deed of transfer. It is therefore important for the buyer that the seller continues to insure the real estate adequately until the
transfer takes place. In the event of serious damage to the real estate before the transfer date, it is usually agreed that the sale and purchase agreement will be automatically dissolved. If the damage is less serious, a buyer may, for example, require that the purchase price be reduced.

However, the standard contract is mostly used in the case of straightforward transactions involving standard residential real estate. For other types of real estate and in the case of more complex real estate transactions, the standard contract is not sufficient as some aspects are not covered and/or inadequately described. Therefore, it is advisable to document such transactions in a more detailed, tailor-made sale and purchase contract. In such tailor-made contracts, specific attention can be given to a seller’s guarantees concerning, amongst others, taxes, the lease agreement (or agreements), the energy performance certificate and the closing mechanics; in addition, escrow arrangements can be included in the contract in case of defects or missing documents with respect to the real estate. Furthermore, the conditions concerning the contamination (or lack of contamination) of the real estate are given special attention in most tailor-made contracts.

### 2.4 Transfer and payment of the purchase price

In most cases, the closing of a real estate transaction in the Netherlands will take place sometime after the sale and purchase agreement has been signed and finalised by the parties.

Real estate is transferred by means of registering a certified copy of the relevant public (notarial) deed of transfer in the public registers of the Dutch Land Registry. This deed is drawn up and executed by the Dutch civil law notary specified in the sale and purchase agreement. The Dutch civil law notary involved in the transaction always conducts a search into the seller’s entitlement to dispose of the real estate and the legal status of the real estate.

Before the day of the actual closing and transfer of the real property, all suspensive conditions and conditions subsequent which might have been agreed on must be fulfilled or terminated, the necessary consents have to be received by the civil law notary and all amounts due from the buyer – or its financier – have to be paid into the civil law notary’s third party account (*kwaliteitsrekening*). The buyer is obliged to pay not only the purchase price to the civil law notary before the execution of the deed of transfer but also, amongst others, the transfer tax; this is necessary due to the fact that the civil law notary is, in principle, personally liable towards the
tax authorities for the transfer tax payable on the transaction. The civil law notary arranges for payment of this tax once transfer of ownership has been effected. There are cases where the acquisition of real estate is exempted from transfer tax, for instance, if value added tax is payable on a transfer of new build real estate which is not taken into use. Details of liability for transfer tax and value added tax are provided in sections 7.7 and 7.8.

Once all amounts have been received by the civil law notary and all pre-closing steps have been complied with, the civil law notary can finalise the transfer of the real estate to the buyer. In general, the civil law notary is responsible for ensuring that:

1. the deed of transfer is executed by the parties (or their representatives) and the civil law notary;
2. the deed of mortgage, insofar as applicable, is executed by the parties (or their representatives) and the civil law notary;
3. on behalf of the seller and the buyer, a certified copy of the deed of transfer and the deed of mortgage for registration purposes is (if applicable) filed with the Dutch Land Registry.

Once these steps have been taken, the transfer has been completed. However, payment of the amounts to the seller will only take place once the real estate has been transferred, unencumbered, to the buyer, in other words: not subject to any unknown attachment or mortgage. Therefore, on the second working day (or insofar as legally possible, the first working day) after the date on which a certified copy of the deeds has been filed with the Dutch Land Registry, the civil law notary will, amongst other things, verify with the Dutch Land Registry whether the real estate has been placed in the name of the buyer; whether the right of mortgage on the real estate has been registered properly; and that no unknown prior encumbrance, attachment (beslag) or other limited rights (beperkte rechten), with the exception of those mentioned in the deed of transfer and/or the deed of mortgage, have been established. The civil law notary will also request confirmation from the bankruptcy clerk’s office (faillissementsgriffie) of the relevant Courts of the Netherlands and, insofar as applicable, the international bankruptcy clerk’s office (internationale faillissementsgriffie) of the Court of The Hague that the seller has not been granted suspension of payments (surseance van betaling) or declared bankrupt (failliet verklaard). Only on completion of these investigations by the civil law notary will the purchase price be paid out to the seller. The position of the civil law notary in the Netherlands is thus essential for a transfer of real estate, and protects the interests of the buyer, its financer and the seller (with its financiers).
Accordingly, the timely engagement of a Dutch civil law notary in the event of a real estate transaction is absolutely essential.

2.5 Contractual leases in general

2.5.1 Preliminary remarks

Dutch legislation on commercial leases is incorporated in sections 7:201-7:310 of the Dutch Civil Code (‘DCC’).

According to Dutch law, a lease agreement is a contract with the following elements:

(i) the landlord provides the tenant with the exclusive use of its real estate; and
(ii) the tenant pays a consideration for that use.

A lease agreement can be made up in any kind of form, written or oral. The fact that there is no signed lease agreement does not mean that the lease does not exist. The existence of a lease agreement is presumed if one party (the tenant) pays the rent regularly and the other (the landlord) accepts the occupational lease. With respect to the terms and conditions of such a presumed lease, certain mandatory provisions may be applicable. If, for example, it concerns the lease of residential or retail space, the Dutch Civil Code provides for some mandatory terms and conditions, such as the duration of the lease and the termination thereof.

Leases are classified as contracts that constitute personal rights only. A lease agreement does not provide or constitute any right in rem. Comparable to German lease legislation, Dutch lease legislation does not permit the use of lease interests as a third party security. The rights of a tenant under a lease cannot be encumbered, pledged or assigned.

Many commercial lease contracts are based on the standard model of the Dutch Council for Real Estate (Raad voor Onroerende Zaken or ‘ROZ’). This model (a standard form of contract with standard conditions) addresses the main rights and obligations of both the landlord and the tenant. The standard conditions do tend to be favourable to the landlord. Although the ROZ models are still used frequently, the number of tailor-made contracts, or tailor-made amendments to the ROZ standard conditions, is increasing. To give an impression of the content of these forms of contract, a translation of the ROZ-form used for the lease of office space is included in this publication (Annex 2).
For the sake of completeness, it should be noted that a sale and transfer of the leased space has no effect on existing lease agreements. The lease agreement transfers automatically to the new owner by operation of law.

Dutch lease legislation distinguishes between (i) retail leases (the lease of commercial space to be used for retail, hotels, restaurants etcetera, that are open to the public); (ii) office leases or other types of commercial space (e.g. office space, factories, warehouses, banks, etcetera); and (iii) residential leases (private housing and residential accommodations).

The applicable legal regime differs for each type of lease agreement. The primary use of the real estate usually determines the category.

2.5.2 Key items of Dutch Commercial Lease Law

2.5.2.1 Rent
Parties are free to agree on the rent. Usually, the rent is paid monthly or quarterly, usually prior to commencement of the specific payment period.

2.5.2.2 Indexation of rent
Parties usually agree to a rent subject to annual indexation (by way of the consumer price index or ‘CPI’).

2.5.2.3 Security for rent
It is usual, although not mandatory, for the tenant to provide a (bank) guarantee or a deposit in the value of three months’ rental. A standard bank guarantee provided by ROZ is often used. This standard guarantee provides that the guarantee will be transferred to the new landlord/owner in the event of a transfer of the leased space. If the bank guarantee does not contain a provision to that effect, it can be questionable under Dutch law whether such a transfer is possible. Consequently, in such cases, the new landlord will most likely require the tenant to issue a new bank guarantee. Furthermore, it is not uncommon for the tenant to provide security to the landlord by means of a ‘parent’ guarantee, or a so-called ‘403-statement’, issued by the parent company. In January 2012, the Supreme Court ruled that in principle a landlord has no right to claim under a bank guarantee the rent that would have become due if the lease agreement had not been terminated due to the tenant’s bankruptcy.

2.5.2.4 Remedy for non-payment of rent
In the event of default on the part of one party, the other party may request proper fulfilment or termination of the lease. The tenant has the right to terminate the lease extrajudicially (out-of-court) but the landlord is obliged to ask for a Court
Most guarantees provide a right for the landlord to invoke the guarantee if the tenant does not duly pay the rent. Furthermore, it is not uncommon for parties to contractually agree a penalty if the tenant does not fulfil its obligations under the lease agreement (in time).

2.5.2.5 Termination of lease agreements in general

Under Dutch law, termination of a lease agreement is effected by one of the following: (i) termination by mutual consent; (ii) termination following notice given by the landlord or by the tenant; (iii) dissolution (termination) of the lease agreement in the event of a serious breach; or (iv) termination in the event of the tenant going bankrupt.

There are no procedural or formal requirements for terminating a lease agreement by mutual consent.

If a lease agreement is entered into for a fixed period, it will not be possible for the tenant or the landlord to terminate the lease agreement prematurely, with the exception of termination by mutual consent which is form-free. The tenant and the landlord may only dissolve (terminate) a lease agreement prematurely if one of the parties is in serious breach of its obligations under the lease, for example, non-payment of the rent for a considerable period of time (at least three months). The tenant has the right to dissolve the lease out-of-court (extrajudicially) while the landlord is obliged to request the competent Court to dissolve the lease agreement.

If a lease agreement is entered into for an indefinite period of time, both the tenant and the landlord may, with due observance of the applicable provisions, terminate the lease agreement against any day of payment by giving notice of termination. Both the tenant and the landlord must, however, observe the agreed notice period. In the case of retail space, a notice period of at least one year must be observed by the landlord.

If the tenant goes bankrupt, both the bankruptcy trustee and the landlord may terminate the lease agreement, whereby a notice period of three months will in all events be sufficient. If the tenant is granted a suspension of payments, only the tenant and the administrator may terminate the lease agreement, whereby a notice period of three months will in all events be sufficient.

2.5.2.6 Permitted use

In the event the tenant does not use the leased space in accordance with the purpose stipulated in the lease agreement and the lease agreement stipulates that the leased real estate should be used exclusively for this purpose, the tenant will
be in default. Such default may lead to the landlord taking action to have the lease agreement dissolved.

If the tenant does not use the leased space in accordance with the applicable zoning plan, the local authorities may order the tenant and/or the landlord to terminate this use, imposing a daily basis penalty in case of non-compliance, or by administrative enforcement. The penalty and/or the costs of the administrative enforcement are for the account of the offender.

2.5.2.7 Sublease
A tenant may sublease the leased space in whole or in part to a third party unless it has reason to assume that the landlord has reasonable objections to the subletting. As this is not mandatory law, the parties may deviate from this rule by contract. The ROZ model stipulates that the tenant may not sublease the leased space in whole or in part to a third party without the prior written consent of the landlord.

2.5.2.8 Maintenance & repair
According to Dutch law, the tenant is obliged to take care of minor maintenance and day-to-day repairs. The landlord is obliged to perform extensive and constructive maintenance and major repairs. As this is not mandatory law, the parties may deviate from this division by contract. A triple net lease agreement is therefore perfectly valid under Dutch law.

2.5.2.9 Defects
The landlord is responsible for the remediation of defects that obstruct quiet enjoyment under the lease. The tenant is obliged to report defects in time. It is possible to contractually exclude the obligation for the landlord to remedy existing defects or defects arising after commencement of the lease.

2.5.2.10 Modifications
A tenant is not permitted to change the fixtures and fittings of the leased space without the written approval of the landlord. If modifications have been made with the approval of the landlord, the tenant is not obliged to remove these modifications on termination of the lease unless agreed otherwise.

2.5.2.11 Urgent works & renovations
The tenant is obliged to cooperate with the execution of urgent maintenance works in respect of the leased space. Under certain circumstances, the tenant is also
obliged to cooperate with a necessary renovation of the leased space. The fact that the tenant is obliged to cooperate does not affect the liability of the landlord to provide quiet enjoyment under the lease. Thus, the tenant may claim a reduction of the rent, or other compensation.

2.5.2.12 Reinstatement obligations
On termination of the lease, the tenant is obliged to deliver the leased space back to the landlord in its original condition, usually the condition as set out in a certified description drawn up at the commencement of the lease. In the absence of such description, the lease agreement usually stipulates that the premises must be delivered in a good state of repair, clean, entirely vacated and free of use or rights of use. In the absence of a contractual stipulation or a description, the tenant is presumed – save for proof to the contrary – to have received the premises in its condition at the end of the lease.

2.5.2.13 Damages caused by defects
The landlord is liable for any damages caused by defects in the leased space, provided the defects are attributable to the landlord. As this is not mandatory law, the landlord may exclude liability for damages caused by defects which were unknown to the landlord at the commencement date of the lease and have occurred thereafter and are not attributable to the landlord. However, if the defects existed at the commencement of the lease and the landlord was aware or should have been aware of those defects, mandatory law stipulates that the landlord may not exclude its liability.

2.5.2.14 Rent reduction
If the tenant is not provided the quiet enjoyment under the lease because of defects, the tenant has the right to ask the Court for a proportional reduction of the rent for the period that the tenant has not had the quiet enjoyment of the leased space. As this is regulatory law, the landlord usually tries to exclude the tenant’s right to ask for a rent reduction.

2.5.2.15 Parking places
In general, parking places that form part of the building or complex and are rented out to the tenants of that same building or complex are subject to the same regime as the head lease (retail or offices). However, an agreement giving the tenant the right to use a certain number of not specified parking places in a parking garage does not qualify as a lease agreement by lack of an exclusive use of a certain space. It is considered an agreement *sui generis*. 
2.5.3 Office space lease agreements

2.5.3.1 General remarks

The lease agreements concerning office space or other types of commercial space (e.g. office spaces, factories, warehouses, banks, etcetera) are subject to the mandatory provision of section 7:230a DCC and to the provisions of sections 7:201 through 7:231 DCC. With regard to office space, Dutch law contains no provisions concerning the terms of the lease, the notice periods for termination or for rent revision. Arrangements on these matters may be made at the discretion of the landlord and the tenant.

2.5.3.2 Length of lease/ lease renewal

Regarding office leases, parties are free to decide the lease period. However, a five-year to a ten-year lease period is common. Leases often include one or two renewal periods, sometimes in the form of an option for the tenant.

Unless the lease agreement contains an option to renew the lease, or a provision for an extension of the lease period, the tenant has no automatic right to renew the lease. If parties continue the lease after the expiry date, it will be considered extended for an indefinite period. A lease agreement for an indefinite period can be terminated with due observance of at least the period of a rental payment.

The most common system for renewals in the Netherlands is that the lease agreement will be automatically renewed, by force of contract, unless one of the parties gives notice of termination with observance of the contractual notice period.

2.5.3.3 Vacation protection

Section 7:230a DCC only contains mandatory provisions with regard to vacation protection for the tenant at the end of the lease. A lease agreement is terminated once one of the parties has given notice of termination of the lease. In order to effect the tenant’s vacation of the leased space, the landlord must also give notice of vacation to the tenant. The obligation of the tenant to vacate the leased space can be suspended for a period of two months by force of law as from the date of vacation specified in the notice of vacation.

There is no tenant entitlement to a suspension of the obligation to vacate if: (i) the tenant has given notice of termination on its own behalf; (ii) the tenant has explicitly agreed to termination of the lease; or (iii) the tenant was ordered to vacate the leased space by Court order because of default.
During the time in which the tenant is entitled to a suspension of the obligation to vacate, the tenant may, within the two-month period, request the Court to extend the term of suspension to a period of one year. By filing this request, the obligation to vacate is further suspended until the Court has given a judgement. As the tenant is entitled to repeat this request two more times, the tenant can, in theory, suspend the obligation to vacate the leased space by a maximum of three years at most.

When considering the tenant’s request, the Court will first weigh the interests of the tenant in staying in the leased space against the interests of the landlord in having the premises vacated. The tenant’s request will be rejected by the Court if, for example, the tenant has made improper use of the leased space. Case law on this subject is very casuistic.

The Court will determine a compensation to be paid by the tenant to the landlord for the period of suspension. If the landlord and the tenant do not agree on the amount of such compensation, the Court will determine the compensation on the basis of the local rent level, if necessary, further to the advice of an expert.

2.5.3.4 Assignment
With respect to lease agreements for office space, the tenant is not entitled to assign the lease to a third party unless agreed otherwise in the lease or with the consent of the landlord.

2.5.4 Retail lease agreements

2.5.4.1 General remarks
For some specific subjects (such as the term of the lease, protection of the tenant against termination and a rent review), Dutch lease law pertaining to retail space is semi-mandatory law. This means that the parties to a lease agreement are free to deviate from mandatory law in favour of the tenant, while any deviation detrimental to the tenant will be declared null and void by the Court.

2.5.4.2 Length of lease / lease renewal
Retail leases are entered into for an initial duration of at least five years. Upon expiry of the initial term, the lease will automatically be continued for a period of up to ten years. If parties continue the lease after the expiry of a contractual lease term, the lease will be extended for an indefinite period of time. A lease agreement for an indefinite period can be terminated by giving notice of termination with effect from the date of payment of the rent, with due observance of a period of at least 12 months.
These are semi-mandatory provisions: there may be no derogation to them to the detriment of the tenant. However, leases agreed for a (and with an actual) duration of less than two years are not subject to the semi-mandatory provisions of the DCC. Leases may also include an option for the tenant to extend the lease, usually for a period of five years. Such an option means that only the tenant has the right to terminate the lease agreement at the end of a certain lease period.

2.5.4.3 Rent (review)

The landlord and the tenant are free to agree on the rent payable. The tenant and the landlord are entitled to request the court to adjust and assess the rent in accordance with the rent of comparable local retail space, as per the end of the lease period (in the case of renewal), or, if the retail lease has been entered into for an indefinite period, every five consecutive years after adjustment of the rent by the parties, or every five consecutive years after adjustment by the Court.

The tenant and the landlord must first try to reach mutual agreement on a new adjusted rent. If the parties do not succeed, they must seek expert advice. If the parties cannot reach agreement on the expert to be appointed, the court can appoint an expert. This advice may sometimes take between one and two years.

As the advice of the expert is not binding, either party is entitled to request that the rent be adjusted by the Court. This procedure may also take a considerable period of time. Therefore the procedure to have the rent reviewed may sometimes take years. The new rent will be assessed as of the date of the request to the Court to appoint an expert.

As the adjustment of the rent is based on the average of rents of comparable local retail space during the last five years, this type of review differs from a review based on current market conditions.

2.5.4.4 Assignment

In the event the tenant wishes to sell and transfer the business it conducts in the leased space (staff, movable property, stock, goodwill, etcetera), the tenant may also have the right to transfer the position of tenant to the buyer by means of assignment. This is a rule of mandatory law, which means that this right of the tenant cannot be limited or otherwise infringed in the lease agreement. If the landlord does not consent, assignment can be claimed by Court order. The Court will sustain such a demand if the tenant has relevant arguments in favour of the transfer. However, the Court may deny the demand if the third party does not provide sufficient security that it will fulfil the obligations under the agreement and that it will act as a ‘good tenant’. The Court may make the assignment subject to
charges and/or conditions. Such charges and/or conditions will usually relate to the security that the new tenant is obliged to offer to the landlord. No assignment of the lease is possible if the leased space is vacant and/or in the event there is no transfer of the current tenant’s business.

2.5.4.5 Termination

If a lease agreement is entered into for a fixed period, neither the tenant nor the landlord has the right to terminate the lease agreement prematurely before the end of the lease period (with the exception of termination by mutual consent). If a lease agreement runs for an indefinite period, both the tenant and the landlord can, with due observance of the applicable provisions, terminate the lease agreement with effect from the day of payment of the rent, by giving written notice of termination. The landlord must, however, observe the semi-mandatory notice period of at least one year. In the lease agreement, parties may agree a shorter notice period than twelve months for the tenant.

The tenant is not obliged to state any grounds for a termination. The landlord has no possibility to refuse the termination; it must accept termination by the tenant provided the contractual formalities are complied with.

The landlord is however obliged to state a mandatory ground for termination in its notice. The most important grounds are: (i) that the tenant has not acted as a good tenant should have acted; (ii) that the landlord urgently needs the leased space for its own use; and (iii) a renovation of the complex (e.g. a shopping mall) is necessary without it being possible that the tenant continues its lease. On expiry of a period of at least ten years, the landlord has an additional ground for termination: a general weighing of interests. This means that the landlord may state any ground for the termination as long as its interests by terminating the lease are considered more important than the interests of the tenant by continuing the lease.

The tenant is not obliged to accept a termination of the lease by the landlord. In the event the tenant disagrees with the termination, the landlord must ask the Court to terminate the lease. As can be derived from Dutch case law, the tenant is well protected against termination.

2.5.5 Residential

2.5.5.1 General remarks

Dutch lease law pertaining to living space is mandatory (or semi-mandatory) law in respect of a number of subjects, such as protection of the tenant against termination of the lease, the rights of the tenant’s partner, the rent and a rent
review. This means that the parties to a lease agreement are free to deviate from mandatory law in favour of the tenant, while any deviation detrimental to the tenant will be declared null and void by the Court. Dutch tenants of residential spaces are well protected by law.

2.5.5.2 Length of lease / lease renewal

Regarding residential leases the parties are free to decide the length of the lease period. The lease does not automatically expire at the end of a lease term. In almost all cases, giving notice of termination with effect from the end of an agreed lease term is required in order to terminate a lease.

The lease agreement usually contains an option to renew the lease, or a provision for an extension of the lease period. The most common system for renewals in the Netherlands is for the lease agreement to be automatically renewed, by force of contract, unless one of the parties gives notices of termination with observance of the contractual notice period.

If the parties continue the lease after the expiry date, it will be considered extended for an indefinite period of time. A lease agreement for an indefinite period of time can be terminated with effect from the date of payment of the rent, with due observance of a period of at least three months and a maximum of six months for the landlord and a period of at least one month and a maximum of three months for the tenant.

2.5.5.3 Termination

The law provides a number of formal requirements for notice of termination. Notice of termination is required, even if the landlord or tenant wishes to terminate the agreement on expiry of the fixed term for which it was entered into. There are only a limited number of grounds for a termination by the landlord, including an urgent need of the landlord to use the real estate itself (for purposes other than alienation), the conduct of the tenant being other than behoves a good tenant and the realisation by the landlord of a zoning plan applying to the leased space.

If a tenant fails to react to a notice of termination or is not in agreement with such, the landlord may appeal to the Court for termination of the lease agreement. If the Court deems the ground for termination justified and grants the request for termination, the lease agreement will be terminated and the landlord may deny the tenant the use of the leased space.

Termination of a lease agreement does not result in subtenants remaining in the rented accommodation without right or title, at least if it is their principal residence; the sublease is continued by operation of law by the principal owner. The owner
can have the sublease legally terminated on a limited number of grounds, provided that it initiates legal proceedings to that effect within six months.

If a tenant’s behaviour so justifies (e.g. by failing to pay rent) the landlord may start proceedings for the termination of the tenancy agreement and for the vacation of the leased space on the ground that the tenant has failed to meet its obligations.

2.5.5.4 Temporary lease

As a consequence of the abovementioned provision landlords are not easily able to terminate a lease, not even on the expiry of the agreed fixed term. However, the DCC provides for some possibilities in certain cases. Under Dutch law a temporary lease is possible for instance if an accommodation is designated for students pursuant to the lease contract and the tenant is no longer registered at a university or institute for higher education. Furthermore, as from 1 July 2016 the Act Mobility Rental Market (Wet doorstroming huurmarkt) came into force, stating that if parties agree on a lease agreement for two years or shorter (or five years or shorter in case of a resident that is not a self-contained dwelling) the lease ends when the fixed term expires, as long as the landlord gives notice of this expiration no later than one month and no earlier than three months before the expiration date.

In addition to these possibilities, there is the so-called Vacant Property Act (Leegstandwet) which provides for the owner to lease a vacant house or apartment for a maximum period of five years whereby the lease will expire and the tenant is obliged to vacate on the last day of the agreed period. The owner is obliged to obtain a permit for such a lease from the municipality in which the relevant leased property is located. As many persons who have purchased a new house have great problems selling their old houses, the Vacant Property Act provides for the possibility of terminating the lease with effect from or shortly before the date that the relevant leased property must be transferred to the new owner, without running the risk that the Court may not approve of the termination. This Act is to be discussed in more detail below, under 4.8.

2.5.5.5 Rent (review)

Although the parties are free to set the level of rent as they wish, the general freedom to contract has been restricted by a number of mandatory provisions. If the permitted rent of the living space is below a certain level (the maximum amount of monthly rent in order to qualify for a government rent subsidy), tenants have the option of having the agreed rental price tested by an external committee of experts (the rent assessment committee). The tenant must submit the request within six months of the commencement of the tenancy if the agreed rent is higher than that certain level. The rent assessment committee assesses whether the
quality of the real estate justifies the agreed rent and, in the event of a discrepancy, determines a justifiable level for the rent. The assessment is subject to judicial control. Furthermore, a number of additional regulations apply. These relate mainly to the possibility of increasing the rent and the manner in which this should be effected. Generally speaking, on that basis, the annual rent increase is limited to the inflation rate.

2.5.5.6 Changes and additions

Dutch law allows the tenant to force the owner to approve changes and additions to the leased space. The relevant statutory provisions may not be set aside by contractual provisions. On termination of the lease, the tenant is entitled to undo the changes and additions it has made and to return the real estate in its original state, although it is not obliged to do so. The tenant may even claim reimbursement from the owner to the extent that the rented accommodation has increased in value as a result of the changes and additions left intact. However, in this case, the lease agreement may deviate from the statutory provisions.
3 REAL ESTATE FINANCE

3.1 Introduction

Investments in real estate are normally financed by a mix of equity and debt. The type of debt for real estate investments that we will discuss in this chapter is provided by either a single bank (a bilateral loan) or a syndicate of financial institutions (a syndicated loan). The vast majority of loans is still granted by banks, but increasingly other types of financial institutions also provide debt. These include private equity funds, hedge funds, mezzanine funds, pension funds or other institutional investors (such as insurance companies, specialist debt funds or family offices). Bonds are also a form of debt, but not commonly seen in the Dutch real estate market (and accordingly will not be discussed in this chapter).

3.2 Structuring for bankability

The structure to which lenders provide financing is important to them. Importantly, in a bankruptcy scenario a lender may prefer to restructure the debt of its borrower instead of enforcing its mortgage. If a borrower is mindful of the fact that it can, by its structuring facilitate a lender, then it is able to improve the ‘bankability’ (that is the prospect of obtaining bank financing). In this chapter we will discuss certain aspects that improve bankability.

The archetype real estate finance transaction entails a special purpose vehicle (SPV) attracting a loan from one or more lenders, while receiving equity from a holding company. The lender receives first ranking security over all assets of the borrower and the shares in the borrower. These loans are more often than not non-recourse, meaning that the (ultimate) shareholder does not guarantee or otherwise offer recourse for the debt.

At present, the debt part usually ranges between 40% and 70% of the market value of the real estate; the remainder is financed by way of equity. Equity is either provided by a group of investors or raised from third parties or by means of a listing (see section 5.2). The latter two ways of raising equity may trigger the need for an information memorandum. An equity contribution can take the form of either share capital, share premium or (although legally not considered equity)
subordinated (shareholder) loans. The advantage of a shareholder loan compared to a true equity contribution is that (a) interest is not dependent on profits whilst dividends are; (b) debt can be repaid whilst redemption of shares is often restricted; (c) debt can be secured; and (d) it may have tax advantages, such as deductibility of interest (see section 7.5.1 of this booklet).

3.2.1 Special purpose vehicle

Lenders prefer to finance real property that is acquired by a newly incorporated company (in chapter 5, different legal forms of investment vehicles are described). If a borrower is newly set up as a SPV this decreases the risk of any lingering, unknown creditors that could compete with the lender. Combined with ringfencing – i.e. a ‘fence’ of contractual restrictions aimed to limit the SPV’s activities to holding and exploiting its real property – it also improves the bankruptcy remoteness of the structure. Bankruptcy remoteness does not mean that the borrower cannot go bankrupt at all, but that it cannot go bankrupt because (a) other companies within its group are bankrupt or (b) it was engaged in other business or it had incurred other liabilities than those related to the real estate that is being financed.

3.2.2 Share pledge

In addition to the traditional mortgage and pledges over the rental income and insurance proceeds, lenders increasingly demand a pledge over the shares in the borrower. The reason is that the enforcement of a share pledge is potentially more advantageous than enforcement of the mortgage. Firstly, the borrower could be easily cut loose from the investor’s group and sold going concern. Secondly, a transfer of the shares could be made without incurring transfer tax (although admittedly only if at least four non-affiliated parties all acquire ownership for less than 33.3 %) (see also section 7.6). Lastly, the enforcement of a share pledge may be slightly quicker if the pledgor consents to a non-public sale without court approval. (For a mortgage, a non-public sale is only possible if the court approves that sale.)

The share pledge often provides that the voting rights attached to the shares conditionally transfer to the pledgee (upon the occurrence of a default under the loan). This allows the lender to replace the board of directors and gain actual control of the borrower. Although a lender would only consider to take such control in an enforcement scenario where the investor is resisting. Obviously, an enforcement sale of the shares in the borrower as opposed to a foreclosure over the real property is only advantageous if claims of major creditors of the SPV can be cut off upon enforcement of the share pledge – hence the need for subordination arrangements which are discussed in more detail below (see section 3.2.3).
3.2.3 Subordination

As is the case in other types of asset finance, in real estate finance there are often different layers of debt – apart from the (senior) lender, there might be a mezzanine loan (which has a higher credit risk and is more costly) or a shareholder loan (to fund part of the equity). A lender will consider it of key importance to have a proper intercreditor or subordination agreement in place since this ensures that its claims rank higher than those of such other lenders.

There are three main methods of subordination:

(a) Turnover subordination – under a turnover subordination a junior lender agrees to transfer (turnover) all proceeds under the junior debt to the senior lender until the senior debt has been paid.

(b) Structural subordination – structural subordination is commonly used when a structure is partially financed by a mezzanine loan. This subordination is not based on a contractual arrangement, but rather is effected through the corporate structure. Typically a senior lender finances the company that owns the real property and the mezzanine lender lenders to the shareholder of this (senior) borrower. The mezzanine lender’s borrower will only be able to service the mezzanine loan to the extent that it receives dividend or other distributions from its subsidiary, i.e. the senior borrower – the mezzanine borrower does not have direct recourse to (the income generated by) the real property. In that sense the mezzanine lender is (structurally) subordinated. Obviously the conditions under which the senior borrower is allowed to make distributions to mezzanine borrower are a topic of negotiation.

(c) Full subordination to all or specific debt – under a full subordination a junior creditor agrees to be paid only once all other (or specific) creditors of its debtor have been paid. A generic declaration of full subordination grants limited protection to the senior lender. Therefore, normally, additional covenants are included in a subordination agreement:

(i) a payment stop covenant, prohibiting the debtor to pay on the junior debt (including by way of sett-off);

(ii) a prohibition for the junior creditor to (a) receive payments on the junior debt, (b) accelerate the junior debt, (c) enforce its security right and (d) file for bankruptcy of the debtor;

(iii) restrictions of assignment/transfer of the junior debt without the senior lender’s consent;
(iv) an undertaking by the junior lender to co-operate with (private) enforcement by senior lender of its security; and
(v) a turnover obligation (see above).

3.2.4 Due diligence

When assessing the risk profile of a loan, important aspects for lenders are the value of the real property and the income generated by it. The value of the property is crucial in case the lender needs to foreclose, whereas the rent income is the main source for servicing the debt (interest and amortization) while the loan is still performing. The lender will want to flush out, by way of due diligence, certain risks in connection with the cash flow generated by, and the value of, the real property.

For purposes of such due diligence, the following reports are commonly commissioned by lenders:

(a) Report on title (or certificate of title) – this report is prepared by a Dutch civil law notary, showing the results of his investigation into the borrower’s legal title to the real property. The report also contains a description of any encumbrances to which the real property is subject (see section 2.2 for a description of possible encumbrances);

(b) Valuation report – in this report an independent expert provides an assessment of the market value of the real estate as well as the market rent. The report is used as a basis for calculations of certain financial covenants – see section 3.3 below. Generally, lenders require a new valuation on a yearly basis. Borrower will want to negotiate that a more costly full valuation is not done every year and that instead desktop valuations are fill the gaps between the interval of full valuations (e.g. every 3 years a full valuation and desktop valuations in between).

(c) Environmental report – specialized researchers will report on any environmental risks like asbestos and the presence of soil contamination. These risks may not only have a detrimental impact on the value of the real estate but also expose the structure to significant costs of clean-up, which may adversely affect the borrower’s ability to service the loan.

(d) Structural survey – during a survey the real property is inspected top to bottom to get a view of the condition of the property. Again, costs of potential issues may affect the servicing of the loan.
(e) Insurance broker letter – insurance brokers in jurisdictions like England and Wales are accustomed to issuing a letter to lenders that the borrower’s insurance complies with (the more important) insurance requirements under the credit agreement. Non-Dutch lenders are increasingly asking Dutch insurance brokers to provide such letters.

Although the borrower will typically pay for the reports, lenders often require that the various reports are addressed to them or that they are able to ‘rely’ on these reports. Some providers of these reports are hesitant to provide such reliance (mainly due to inexperience with the phenomenon), so it is recommended that a borrower discusses this aspect at the time an adviser is being instructed to prepare a report.

3.3 Financing documentation

3.3.1 Types of documentation
When it comes to documentation, bilateral loan agreements often take the form of a term sheet or offer letter that is supplemented by the lender’s general terms and conditions for lending. Syndicated loans are increasingly documented by way of a standard document (obviously altered on the basis of the outcome of negotiations) developed by the Loan Market Association (LMA). Overall the LMA documentation is more balanced than banks’ in-house documentation. Characteristically, under the LMA documentation administrative and security agents are also parties to the loan and related agreements, performing the role of point of contact for the borrower in its dealings with the lenders (and vice versa).

3.3.2 Architecture of a loan agreement
In this and the next section we will have a closer look at some elements of loan agreements in general and of LMA loan agreements in particular.

The provisions of a loan agreement can be categorised as follows:

(a) Loan related provisions – this is the heart of the loan agreement. What type of loan is granted and how can it be utilised. How is the interest calculated and when should it be paid and when should the loan be repaid. A loan for an investment in real property is normally a term loan. A borrower is often required to amortize the loan, with a bullet repayment being due on the maturity date. Most loans are granted on a floating basis (LIBOR or EURIBOR). Alternatively, pension funds and insurance companies prefer to enter into a long-term loan with a fixed interest rate that cannot be prepaid without penalty.
(b) *Representations* – these serve several purposes. Some representations confirm certain legal or commercial facts regarding the real property and the borrower. Others are repeated on each interest payment date and accordingly in a way act as covenants. For instance: if the borrower has to repeat the representation that the real estate is not subject to an attachment by a third party, it must procure that no attachments are levied on the real property. Representations are not included to enable the lenders to claim for damages (as in most other contracts) but to give the lenders the possibility to accelerate the loan. In case there is a long (commitment) period between signing of the loan agreement and drawing of the loan or if the loan is drawn in several tranches over time (consider construction finance), any misrepresentation also triggers a draw down stop.

(c) *Covenants (undertakings)* – covenants are either positive undertakings (must do’s) or negative undertakings (don’ts). These provisions aim to keep the status of the borrower and its assets in the same ‘condition’ as they were at the date of the loan agreement – that is the position that was acceptable to the lender when it made its credit risk assessment.

(d) *Events of default* – upon the occurrence of certain events the lender wants to be able to accelerate the loan (and consequently enforce its security). In general, events of default listed in LMA documentation are more balanced (and allow for remedy periods) than those set out in in-house documentation.

(e) *Conditions precedent* – before the loan can be drawn, the borrower is required to deliver certain documents and other evidence to enable the lenders and their advisers to perform a due diligence. For example: the deed of incorporation of the borrower, resolutions by the borrower’s board approving the transaction, a valuation of the real estate, lease contracts, licenses and insurance policies.

(f) *Administrative provisions* – these provisions are rather extensive, arranging the rights and obligations between the lenders and between the lenders and the (security) agents. Other administrative provisions relate to payment mechanics, method of calculation of interest, methods of notification and voting requirements for approval of amendments.

3.3.3 *(LMA) real estate finance-specific provisions*

Given the importance for the lenders of the value of, and income generated by, the real property LMA documentation for real estate finance contains a broad set of provisions specifically regarding the real estate. Sometimes similar, but less sophisticated provisions are found in in-house documentation.
(a) *Rental covenant* – the value of the real property is affected by the identity of the tenants and their use of the property. For a single tenant property lenders want full control over the termination and the amendment of the existing lease and full approval right for a new lease. Conversely, if a lender is financing a portfolio a borrower may be able to negotiate more freedom – for example, no approval of the lender is required if rent is less than 10% of the total rent generated by the portfolio or the rental agreement is in line with the existing approved agreement or a market standard (ROZ – see section 2.5.1);

(b) *Insurance covenant* – this covenants states the requirements for insurance that the borrower should obtain for the real property. The LMA precedent contains requirements based on market standard insurances for real property in the United Kingdom. This means that the insurance covenant will need to be tweaked to capture differences between the UK and Dutch insurance market (unless the borrower takes out a non-Dutch insurance). For example, cover against loss or damage by flood is deemed not insurable in the Netherlands from a commercial perspective – it is too costly for the limited cover that insurers are willing to provide.

(c) *Maintenance and capex* – lenders require that the real estate is maintained properly but will want control over expenditure by the borrower to improve the real property. If a borrower is planning or anticipating renovations then it should try to address this in the documentation phase. Having to go back to the lenders to obtain approval may be time-consuming (especially if the loan is syndicated) and result in delays.

(d) *Management undertaking* – the borrower usually delegates the day-to-day management of the real estate to an affiliated party or a third party. Sometimes a distinction is made between asset management (concerned with maximizing results from the investment) and property management (concerned with day-to-day, technical aspects of the property). Lenders will want to be comfortable with the identity of both types of managers and control their appointment and termination. Since claims for management fees can be a significant expense lenders will also try and get those fees subordinated to their claims. If a manager is affiliated with the borrower, then the fee that the manager charges is considered a dividend-like distribution; payment of that fee is then restricted in the same way as dividend payments. Managers are also expected to enter into duty of care agreements, which establish a direct contractual link between the managers and the lenders that mirrors the contractual arrangement between the managers and the borrower as far as the manager’s duty of care is concerned.
(e) Financial covenants – the importance of the value of the real estate, as mentioned in section 3.2.4, is reflected in the financial covenants. The ratios expressed by these covenants serve as an early warning signal and are examined anywhere from once a year to on each interest payment date. The traditional financial covenants are:

(i) Loan to value – this ratio shows whether the amount of the loan is covered by the collateral being offered. Loan to value is expressed as a percentage, by dividing the amount of the loan by the market value of the real estate (according to the most recent valuation).

(ii) Interest cover – this ratio indicates to which extent the borrower is able to pay interest. Interest cover is expressed as the ratio between rental income and interest payable on the loan during a certain period. Interest cover may be calculated on a historical or on a projected basis (using a calculation period of three, six or 12 months ending or beginning on the date on which interest cover needs to be calculated).

Borrowers frequently negotiate so-called cure rights. These rights give the borrower the ability to cure a breach of a financial ratio by (a) repaying a part of the loan; (b) depositing additional cash collateral on a blocked pledged account or (c) granting additional security. Lenders usually agree on the condition that the cure rights can be used only a few times during the term of the loan and not during consecutive testing periods.

(f) Bank accounts – since the SPV’s sole source for servicing the loan is the rental income lenders want tight control over the SPV’s bank accounts into which the rental income is paid. The LMA documentation assumes the following accounts are maintained by the borrower:

(i) Rent account – the purpose of this account is to collect the rental income. The rent account is administered in the name of the borrower, but the lender has (sole) signing rights. On each interest payment date, the lender sweeps the account to pay any unpaid amounts, any interest accrued, and any repayment instalment due under the loan agreement. The surplus is released into the general account. Borrowers are usually not comfortable that they are dependent on the lender for operating costs to be paid and frequently propose that the lender only gains control of the account upon the occurrence of an event of default.

(ii) Deposit account – the purpose of this account is to collect non-ordinary income that must be applied towards prepayment of the loan, such as insurance payments proceeds, lease prepayment proceeds, compensation prepayment proceeds, and – if agreed upon – excess cash. The deposit account is administered in the name of the borrowers, but the lender has
(sole) signing rights. On each interest payment date, the lender sweeps the deposit account and applies the funds in prepayment of the loans.

(iii) **Disposal account** – this account is only relevant in case the loan agreement relates to a portfolio of real properties and is used to collect the proceeds of any sale of real property by the SPV.

(iv) **General account** – this account is in the name of the borrower and, as monies are paid into this account only after debt service, the borrower has full signing rights. Subject to any agreed restrictions, the SPV may at any time withdraw from, and apply amounts standing to the credit of, the general account for any purpose (for example, in payment of any permitted dividends or prepayment of subordinated loans).

In order to meet the abovementioned account structure, the bank at which the borrower has its accounts must cooperate. Obtaining such cooperation can prove to be a challenge if that bank is not part of the syndicate of lenders making the loan available. It is therefore important to keep the requirements in mind when opening the bank accounts.

(g) **Transferability** – since the LMA documentation is designed to facilitate transferability of the loan to a third party it contains a sophisticated legal framework to enable such transfers. In practice, certain restrictions on transferability are implemented. For example, a borrower may demand that a transfer of the loan is only allowed if has given its prior written consent. Lenders may counter that such consent may not be unreasonably withheld and will be deemed to have been given if the borrower does not respond to a notice within a certain period of time. It is very unusual for lenders to not be restricted as regards transferring the loan in case the borrower is in breach of its obligations under the loan. In addition, lenders are almost always allowed to transfer the loan to their affiliates. Borrowers will seek to exclude competitors and loan to own parties from the group of potential transferees.

### 3.4 Security

When making a credit decision the lender assesses the quality of the borrower, the quality of the real estate and the probability that the borrower can fulfil its obligations under the credit agreement. Another important factor is the quality of the security provided by the borrower or other parties. The main forms of security for a lender are in rem security rights (mortgage and pledge) and security rights in personam (guarantees).
3.4.1 **In rem security rights (mortgage and pledge)**

In order to cover the default risk of the borrower, a lender will prefer in rem security rights. As a rule, a lender requires the following security rights:

(a) A mortgage over the parcel and the building – this is the most important asset.
(b) A pledge over movable assets located on the real estate.
(c) A pledge over claims – usually all claims must be pledged. In practice, the most important claims are claims on tenants (under lease agreements), on the bank where the borrower’s bank accounts are held and on the insurer (under the insurance policies covering the real estate).
(d) A pledge over the shares in the borrower – this allows the lender to sell the borrower ‘going concern’.

A security right gives the lender priority over other creditors; the lender has a priority claim over the proceeds resulting from enforcement of its security (subject to limited exceptions). If the borrower has been declared bankrupt, then this can even be done without the bankruptcy trustee’s cooperation. A court may nonetheless order a two-month general stay, the so-called cool down period (which can be extended by an additional two months), during which security rights cannot be enforced. The pledgee or mortgagee does not need to contribute to the bankruptcy costs.

A bankruptcy trustee does have the right to impose a (reasonable) deadline on pledgees and mortgagees for enforcing their security rights. If a pledgee or mortgagee does not enforce their security rights by this deadline, then the trustee may take over the enforcement. In that case, the pledgee or mortgagee retains its priority claim on the proceeds from the enforcement but it must bear a proportionate part of the bankruptcy costs (which can be considerable).

A security right can be enforced in various manners:

(a) by means of a public auction – this does not require any court intervention or approval;
(b) by means of a private sale with permission from the court; and
(c) in the case of rights of pledge, by means of a sale with permission from the pledgor after default has occurred.

The mortgagee or pledgee is not permitted to appropriate the collateral under Dutch law. A pledgee or mortgagee may, however, also make bid in the auction or make an offer that could be put up for approval by the court.

A security right also gives the lender a certain degree of control over the collateral:

(a) To a certain extent the pledge or mortgage protects against a disposal of the assets, because the pledge or mortgage sticks to the collateral (this is the *in
rem effect) and purchasers usually do not want to acquire any assets that are subject to a security right. In addition, a civil-law notary will not cooperate with the delivery of the real estate or the shares in a company if the mortgagee or pledgee has not given permission for the disposal.

(b) In case of share pledge over the borrower, a pledgee typically demands that the voting rights relating to the shares vest in the pledgee on the occurrence of a default under the loan agreement. This mechanism gives the pledgee the ability to replace the board and to manage the borrower temporarily in the run-up to the enforcement of its security right.

(c) A right of pledge on a claim that has been disclosed to the debtor of that claim gives the pledgee the right to collect the debt. In practice the pledgee usually gives the company permission to collect debts itself until a certain event occurs, for example default under the loan agreement.

(d) The pledgee is entitled to take control of movable assets that have been pledged to it. In case of such a pledge it also generally agreed that the pledgee will only take such control upon the occurrence of a certain trigger event.

(e) The mortgage deed usually stipulates that – if the court gives permission – the real property can be managed by the mortgagee or, in the event of an enforcement, can be cleared by the mortgagee.

### 3.4.2 Personal security rights (guarantees)

With the exception of construction finance, real estate finance is often non-recourse – this means that the lenders do not have recourse against the sponsors that own the borrower. If a guarantee is given, then in principle the guarantor guarantees, with all its assets, the borrower’s debt to the lender. In such case, a lender sometimes agrees that it can only seek recourse against certain of the guarantor’s assets (a so-called limited recourse guarantee) or that the guarantee is capped at a certain amount. Conversely, it is also possible that lender seeks to ‘strengthen’ the guarantee by demanding in rem security rights from the guarantor itself.

The term ‘guarantee’ is not defined in Dutch law. In general a distinction is made between on-demand guarantees – which enable the beneficiary to claim under the guarantee prior to having to deal with any discussions on whether its demand under the guarantee has any merit – and suretyships – under which the surety only has to pay the lender if the principal debtor does not fulfil its obligations towards the lender.

Disputes and case law on guarantees show that the wording of a guarantee is rather important. Guarantor that are reluctant to honor a demand under a guarantee often argue that the scope of the guarantee is more limited then the lender making the demand claims it is.
4 SPATIAL PLANNING & ENVIRONMENT

4.1 Introduction

In the Netherlands, spatial planning and environmental legislation are organised on three levels: at national, provincial and municipal level. At national level, regulations (Spatial Planning (General Rules) Decree (‘Barro’)) and national policy (Spatial structure vision on Infrastructure (‘SVIR’)) are determined and national land use plans may be implemented. At provincial and municipal levels, regulations and provincial land use plans and Zoning Plans may be implemented.

In principle, the implementation of legislation, together with the preparation and implementation of spatial planning are tasks delegated to the Municipal Executive.

To a large extent, national spatial planning and environmental legislation is also influenced by European Union legislation, examples being the legislation on energy performance of buildings and the European Directives on the limit values of certain substances in ambient air. Furthermore, the European Birds and Habitat Directives can have a direct influence on spatial planning if projects are (to be) located in or near the ‘Natura 2000 areas’ designated by virtue of these Directives.

Below, a general description is provided of all the permit requirements (including exemptions from Zoning Plans) which, as of October 2010, are regulated by the Environmental Permitting (General Provisions) Act (Wet algemene bepalingen omgevingsrecht: ‘GPA’). Furthermore, the legislative frameworks relative to real estate acquisition, soil and groundwater pollution, asbestos and thermal energy storage (Warmte Koude Opslag: ‘WKO’) are briefly discussed. In addition, we briefly discuss the Crisis and Recovery Act (Crisis- en herstelwet) that entered into force on 31 March 2010, with the aim of temporarily speeding up the development and implementation of spatial and infrastructural projects. This Crisis and Recovery Act was supposed to expire on January 2014 but was made permanent later on.

To conclude, we point out that in the previous edition of this booklet we discussed the voluntary agreement on vacant offices that was signed in June 2012 by representatives of the State and various provinces, municipalities, investors, developers, users, and real estate financiers. In this edition we will briefly describe
the new measures that have been concluded since in order to solve the problem of increasing vacancy.

4.2 Spatial Planning

Spatial planning and real estate are closely related. The general legal framework for spatial planning is embodied in the Spatial Planning Act (Wet ruimtelijke ordening: ‘SPA’).

Spatial planning can be described as government action in delineating zones and management of the permitted use of land through the use of Zoning Plans. Insofar as no new developments are intended in respect of the relevant zone, it is sufficient to draw up management regulations. These regulations govern the management of the zone in accordance with the existing (planned) use.

A Zoning Plan creates a spatial separation between burdensome areas such as industry and sensitive areas such as residential. This zoning is also reflected in legislation pertaining to particular sectors, such as the Noise Abatement Act (Wet geluidhinder) and the External Safety (Establishments) Decree (Besluit externe veiligheid inrichtingen), as well as circulars and policy rules such as laid down in the Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten: ‘VNG’) brochure, ‘Industry and Environmental Zoning’ (Bedrijven en Milieuzonering).

Insofar as the minister or the province have not reserved their powers to determine Zoning Plans or where the realisation of a part of the national or provincial spatial planning is not at issue, the Municipal Executive is obliged to draw up one or more Zoning Plans for the entire area over which the municipality has authority. These Zoning Plans should contain rules as to the use of the land and the buildings to be built or already standing thereon. In this context it is worth noting that the (permitted) use of land or buildings in breach of the Zoning Plan is prohibited. This means that the owner/landlord can also be held liable for any breach of the Zoning Plan by the tenant.

In addition, a Zoning Plan must comply with the Spatial Planning (General Rules) Decree (‘Barro’) and provincial regulations containing rules for the content of Zoning Plans. There is also an option for the Minister or the Provincial Executive to give (reactive) instructions regarding the content thereof in the context of Zoning Plan (or exemption) proceedings.
Insofar as the review of a Zoning Plan results in the restriction of opportunities for use or building work, the owner of the relevant land may submit a claim for compensation for planning loss with the Municipal Executive. In principle, such loss must be compensated unless there is a case of passive risk-acceptance or of foreseeable circumstances.

In the event of incompatibility with the Zoning Plan or the management regulations, specific exemptions can be granted. The GPA contains prohibition provisions and assessment criteria with regard to decisions which are to be integrated in the (integrated) environmental permit (see section 4.3), along with the other consents required for developing real estate.

4.3 Environmental Permitting (General Provisions) Act

Whereas previously, any party wishing to develop real estate had to deal with numerous different permits and exemptions (such as building permits, demolition permits, exemptions from Zoning Plans, fire safety permits, permits to modify or demolish a protected building under the Monument and Historic Buildings Act and felling permits), the GPA provides for replacement of those permits and exemptions with one single permit, known as the ‘(integrated) environmental permit’ (*omgevingsvergunning*). In most cases, the Municipal Executive for the area where the real estate is to be developed will be the competent authority to grant the permit.

4.3.1 Assessment criteria

The GPA does not change the level of protection of the interests concerned because it contains the same assessment criteria as previously set out in various Acts such as the SPA and the Housing Act (*Woningwet*). Most assessment criteria have been implemented in the GPA. This means that building activities still have to be checked for compliance with the Building Decree (*Bouwbesluit*), the Municipal General Building Regulations (*Bouwverordening*), the Zoning Plan and reasonable standards regarding the external appearance of buildings (*redelijke eisen van welstand*). Not all consents and assessment criteria are to be found in the GPA. For example, assessment criteria for consents required under provincial and municipal by-laws (e.g. felling and demolition activities) are still found in those by-laws although, procedurally, they may be subject to the GPA. Furthermore, some consents are still regulated by specific Acts such as the Nature Conservation Act of 1998 (*Natuurbeschermingswet 1998*) and the Soil Protection Act (*Wet bodembescherming*). The assessment criteria for consents required under those Acts are to be found in those Acts, and in those cases, ‘incidental integration’ applies.
4.3.2 Procedures

The GPA provides for two procedures: a regular procedure and an extended procedure. If building work also involves an exemption from a Zoning Plan or management regulation (formerly the ‘project decision’), usually the extended procedure must be followed. However, for small exemptions with regard to dimensions of a building the zoning plan itself usually provides for an exemption. In that case, the regular procedure applies. Furthermore, an exemption may be possible on the so-called minor cases regulation in the cases in which the regular procedure is also applicable. It should be noted that as from November 2014 the scope of the minor cases regulation has been widened, in particular in relation to temporary buildings on fallow (development) sites and the transformation of (empty) buildings. Temporary planning use for a maximum period of up to 10 years and/or the change of use of an empty building can yet be granted on the basis of the minor case regulation, as a result of which empty offices can be transformed into student flats or (senior citizen) housing more quickly and easily.

If the extended procedure applies, the Municipal Executive must issue its decision on an application within 26 weeks after its receipt. The Municipal Executive is allowed to postpone its decision (within eight weeks after receipt of the application) for another six weeks. If the Municipal Executive fails to decide within the applicable period then (contrary to the regular procedure) the permit is not deemed to have been granted by law. However, in that case, the applicant is free to serve notice of default on the Municipal Executive and subsequently, to appeal to the Court by virtue of the Penalty and Appeal (Overdue Decisions) Act (Wet dwangsom en beroep bij niet tijdig beslissen), incorporated in the General Administrative Law Act (Algemene wet bestuursrecht). In case the extended procedure applies, it is also necessary to obtain a ‘declaration of no objections’ (verklaring van geen bedenkingen) from the Municipal Council. If this certificate is refused, the Municipal Executive must refuse the environmental permit.

If the regular procedure applies, the Municipal Executive must decide on an application within eight weeks after receipt thereof. The Municipal Executive is allowed to defer its decision for another six weeks. If the Municipal Executive fails to decide within the applicable period, the permit is deemed to have been granted by law. However, in that case, the GPA provides for the possibility of changing the conditions under which the permit is granted in order to limit possible harm to the environment, or even of withdrawing the permit if amending the conditions cannot prevent the harmful consequences. Furthermore, general conditions - such as the condition that nothing may be chopped down during the breeding season in the case of an environmental permit for the felling of trees - are deemed to form part of the permit by operation of law.
4.3.3 Part permits and phased application

In addition to the above, the GPA provides for the possibility of applying for a part permit or phased environmental permit. It is for the applicant itself to decide the activities within a project for which it seeks an environmental permit. The applicant may decide to implement the project in phases and to apply for a part permit for each phase. A part permit is simply an environmental permit that covers only a part of the project. This can be of value in larger projects, such as the development (or redevelopment) of a large area covering many different activities all of which require permits. In such cases, the applicant may first decide to apply for an environmental permit to demolish existing buildings and, at a later date, apply for an environmental permit to construct buildings. An advantage of this is that at the time of applying to carry out demolition work, it is not necessary to submit any building plans. However, this is conditional to the activities being physically separable. For example, the demolition of a listed building requires an application for an environmental permit to ‘demolish a listed building’ and might also – pursuant to a zoning plan (conservation area) – require a permit to demolish a building. Since these activities cannot be physically separated, the necessary environmental permit cannot be split into two parts to allow one part permit to ‘demolish a building’ and another to ‘demolish a listed building’.

The applicant may also decide to apply for a phased environmental permit. This is of particular interest in the case of inseparable activities. In such cases, the competent body will initially, for example, consider whether the demolition of the listed building is permitted from a built-heritage point of view and in the second phase decide whether the demolition is permitted from a “conservation area” point of view. This is done in two phases. Both phases should follow the procedure that would have applied had the full scope of the permit been applied for in one application. A disadvantage of this procedure is that the activities cannot be carried out until decisions on both phases have been issued.

4.3.4 Ruling

If public interest so requires, the Minister may also give a ruling to the Municipal Executive regarding the taking of a decision in respect of an application for an environmental permit or in respect of an environmental permit already granted. There is also a possibility for the Minister or Provincial Executive to issue a ‘reactive ruling’ if the environmental permit concerns an exemption from a Zoning Plan.

4.3.5 Coming into effect of the environmental permit

An environmental permit comes into effect once it has been communicated to the applicant. The same applies to the environmental permit granted by operation of law. The environmental permit granted by operation of law must, therefore, also be
communicated to the applicant before it can come into effect. If the authority itself does not communicate the decision, the applicant may demand communication and notification of the decision pursuant to the Penalty and Appeal (Overdue Decisions) Act.

However, in certain cases, the GPA provides for the deferment of the effectiveness of the environmental permit, even after the permit has been communicated to the applicant. Accordingly, environmental permits that have irreversible consequences, such as carrying out work, demolishing buildings, demolishing buildings in protected town or village landscapes, demolishing listed buildings and felling trees, only come into effect after the expiry of the period for filing objections. An environmental permit granted under the expanded preparation procedure only comes into effect after the expiry of the period for filing an appeal (in this case, there is no possibility to file an objection). If, in the case of such environmental permits, an application is made to a Court for injunctive relief (voorlopige voorziening) within the period for filing an objection or appeal, such permits will not come into effect until the Court has given its decision. The coming into effect of a permit granted by operation of law is deferred until the period for filing an objection has expired or, if an objection has been filed, until a decision has been given on the objection. However, the permit holder may apply to the injunctive relief judge to suspend the deferment.

In general, it should be noted that with the amendment of the General Administrative Law Act, which entered into force in January 2013, a relativity requirement has been added to this Act. Application of the relativity requirement means, for example, that undertakings can invoke only standards that are actually designed to protect their interests. It is no longer possible to complain about every aspect of a decision. For example, an undertaking is no longer able to contest an environmental permit (to build) on the ground that the specific permit is contrary to the Nature Conservation Act or the Flora- and Fauna Act, since this legislation does not protect their interests. The foregoing means that the grounds for potentially successful appeals by real estate companies have been limited.

4.3.6 Specific deferment
The GPA also provides for a deferment of the coming into force of the environmental permit in specific cases. In the event of serious soil contamination caused before January 1987, the environmental permit will not come into effect until the consents required under the Soil Protection Act have been granted. Likewise, where an archaeological site permit is required under the Monuments and Historic Buildings Act (Monumentenwet 1988), the environmental permit will only come into effect once the archaeological site permit has been granted.
Given the statutory deferment of the environmental permit, there is now, unlike in the past, less likely to be an implementable environmental permit under which activities can be commenced immediately, albeit at the expense and risk of the applicant during the period in which the environmental permit is revocable.

4.3.7 Building work and fire-safe use
By virtue of the Environmental Permitting Decree (Besluit omgevingsrecht), the occupation and use of buildings in which commercial night-time accommodation is provided to more than ten persons or to more than the number of persons specified in the building regulation, an environmental permit is required for fire-safe use. This is also the case if daytime accommodation is provided to more than ten persons under the age of ten or to more than ten persons with physical or mental handicaps.

For the use of certain buildings, a notification of use (gebruiksmelding) is sufficient. These are situations whereby accommodation is offered to more than 50 persons, such as offices, restaurants, sporting venues, shopping centres and supermarkets.

A notification of use may be submitted either at the same time as the application for the environmental permit for other activities, or independently.

4.3.8 Building work and nature
If the building activities could impact on a protected natural site in the vicinity, the application for an environmental permit should also cover the necessary consent under the Nature Conservation Act 1998 - legislation that covers site protection. If the building activities could lead to the disturbance of protected plants or animals, the application for an environmental permit should also cover the necessary consent under the Flora and Fauna Act (Flora- en faunawet) - legislation that covers protection of species. In this context, it should be noted that, probably, as from January 2017 the Nature Conservation Act 1998 and the Flora and Fauna Act are to be integrated in the new Nature Conservation Act (Wet natuurbescherming). Under this new Nature Conservation Act, in both cases, a declaration of no objections from the Provincial Executive (instead of formerly the Minister of Economic Affairs, Agriculture and Innovation) is required. If this is not issued, no environmental permit can be granted at all.

4.3.9 Enforcement
Enforcement consists of actions, such as administrative enforcement and penalties, in response to breaches of, for example, provisions of a Zoning Plan or against the carrying out of activities requiring a permit, without, or in contravention of, a permit. The administrative body granting the environmental permit is also authorised to enforce it. If a declaration of no objections is required for the environmental
permit, the administrative body that has issued the declaration is also authorised with regard to enforcement concerning the activities for which the declaration is required. In the interests of protecting the physical environment, the Minister can require the authorised body to take enforcement steps. Furthermore, any decision to impose administrative enforcement or to attach a penalty for failure may also specify that such decisions will also be binding on successors in title.

In the context of enforcement, it is also significant that unless specifically permitted in an environmental permit, the Housing Act prohibits the construction of a building that does not comply with the standards for new buildings as set out in the Building Decree. Obtaining an environmental permit does not mean that the building plan automatically satisfies the Building Decree; the building plan is only globally tested in this context. Moreover, given that it is not permitted to keep up a building which, at the time it was built, did not comply with the standards for new buildings as set out in the Building Decree, even parties not responsible for building it can be held liable in retrospect for the fact that, at the time it was built, the building did not comply with the said standards.

4.3.10 Transferability of environmental permits

If an environmental permit is to cover a party other than the applicant or the permit holder, the applicant or the permit holder must give notice of this to the authorised body at least one month in advance. Categories can be designated by governmental decree in which the environmental permit has a personal nature.

4.4 Municipal real estate acquisition

There are three ways in which a municipality may acquire real estate: (i) acquisition by way of mutual agreement (amicable acquisition); (ii) acquisition by virtue of a preferential right; and (iii) expropriation.

4.4.1 Amicable acquisition

Amicable acquisition means the normal sale and purchase of real estate whereby the municipality and the owner of the land negotiate the transfer of the land.

4.4.2 Preferential Rights of Municipalities Act

The Municipalities Preferential Rights Act (Wet voorkeursrecht gemeenten), which came into force on 1 January 1985, provides municipalities with a better starting position in the purchase of real estate. Originally, its scope was limited to municipalities to which expansion capacity was intended or granted under national or provincial policy. Nowadays, any municipality may exercise this preferential right.
Where a preferential right exists, a landowner who has the intention to sell his land must first offer it for sale to the municipality. The owner, therefore, may not simply sell his land to a third party. However, there is the possibility that the Municipal Executive may waive this duty to offer for sale. The Municipal Executive may impose a temporary preferential right that lapses after three months or at such earlier time as the Municipal Council imposes a preferential right. The Municipal Council may exercise a preferential right on the basis of a structural vision (structuurvisie) – subject to certain conditions being satisfied – or on the basis of a Zoning Plan. Provinces and the State also have powers to impose preferential rights on the basis of a structural vision or a land use plan. A preferential right based on a structural vision will lapse unless a Zoning Plan or a land use plan is adopted within three years of the date of the decree. A preferential right based on a Zoning Plan or land use plan will lapse after ten years of the Zoning Plan or the land use plan coming into effect. This means that provided the sequence of planning decisions is taken in good time, a preferential right may be enforceable for a period of thirteen years and three months. By virtue of Article 26 of the Municipalities Preferential Rights Act, the Municipality may rely on the voidability of transactions performed with the apparent effect of escaping the preferential right, such as transactions for the disposal of real estate without the transfer of control, such as share transactions.

4.4.3 Expropriation

Expropriation is only possible if it is in the public interest and subject to the prior guarantee of compensation. The most well-known grounds for expropriation are the Zoning Plan expropriation and the infrastructure expropriation. Any expropriation proceedings consist of two phases: an administrative phase and a judicial phase. The administrative expropriation decision is given by the Crown, whereby the main issue is whether there is a necessity for expropriation. Here the owner may argue, for example, that it wishes to carry out the project itself (the ‘self-realisation’ defence). However, the Crown imposes strict requirements upon this defence. For example, the owner must possess sufficient skills, experience and capital to be deemed able to realise the project himself. Furthermore, a self-realisation defence can fail on the basis of case law conducted by the Crown in the following cases:

- if the self-realisation prevents a systematic realisation of the Zoning Plan;
- if the plan has to be implemented in an integrated and cohesive form;
- if the landowner envisages a different type of implementation of the plan than the form required by the municipality, and the form required by the municipality can be deemed urgently desired in the public interest.

The Crown must reach a decision within six months following a request by the Municipal Council. Once the decision of the Crown (or the adoption of the Zoning
Plan) has been determined, the claim for expropriation can be filed with the Court. In the judicial phase, the main issue is compensation, during which the Court also marginally tests the Crown’s decision to expropriate. The (irrevocable) expropriation order cannot be recorded in the public registers until the Zoning Plan has also become irrevocable. The Court’s expropriation order can also be appealed in a higher Court. Such an appeal has the effect of making the expropriation order revocable for a temporary period and thus, it cannot be recorded in the public registers. The appeal procedure takes an average of one and a half years. Assuming a potentially lengthy administrative phase for the expropriation procedure by the municipality (and the Crown) and an appeal procedure in the civil law phase of the expropriation procedure, a minimum length of thirty months should be taken into account.

4.5 Soil and Groundwater Pollution

4.5.1 General
The applicable rules for the prevention, investigation and remediation of soil pollution are embodied in and/or based on the Soil Protection Act (‘SPRA’). By virtue of the SPRA, the Provincial Executive (or in some cases the Municipal Executive) is granted the authority to issue orders for certain persons owning real rights or personal rights related to polluted sites to investigate, take temporary control measures or remediate serious cases of soil pollution.

4.5.2 Seriousness and urgency
The SPRA lays down the procedure for the remediation of specific pollution. The SPRA makes a distinction between pollution caused before January 1987 (so-called ‘historic cases’) and pollution caused after this date. With regard to the so-called ‘historic cases’, remediation may only take place after the Provincial Executive has determined the degree (i.e. the seriousness and the urgency) of the pollution and has approved a remediation plan to be drawn up by the owner of the land. This plan specifies whether the pollution is to be cleaned up in full, or if risks must be eliminated by isolating, managing and controlling the pollution. Pollution qualifies as serious if the functional properties that the soil and groundwater have for humans, flora and fauna are in danger or seriously impaired. This is deemed the case if the intervention values are exceeded and if the extent of the pollution exceeds certain volumes. The urgency is determined by the associated actual risks to which humans and ecosystems are exposed and by the designated use of the polluted site.
Pollution caused after January 1987 has to be remediated pursuant to a general ‘duty of care’ laid down in the SPRA.

4.5.3 Remediation costs
The party ordered by the competent authority to investigate, remediate or to take certain control measures with respect to a certain case of soil pollution must, in principle, also bear the costs thereof. In most cases, this is the owner of the polluted property or the leaseholder. In some cases, a possibility for recourse against the party who has caused the soil pollution or one of the previous owners of the polluted real estate may be found in general civil law or in the purchase agreement in respect of the polluted real estate.

4.6 Asbestos
At present, there is no general legal requirement to remove asbestos from an existing building built before 1993. There is one exception: as from 2024 asbestos-containing roofs (asbestdaken) are prohibited in the Netherlands. The scope of this asbestos prohibition is limited to asbestos roofs of constructions and/or buildings of which the roofs are affected by the outside air, including but not limited to corrugated plates (golfplaten) and roof-slates (dakleien). Hence, the prohibition does not apply to asbestos-containing materials situated on the inner side of premises, such as asbestos-containing battening or insulating material that is situated beneath the roofing.

The legal requirement to remove asbestos from (the inner side of) existing buildings which were built before 1993 depends on whether it affects the working conditions in the relevant working area (i.e. the likelihood of employee exposure). The possibility to claim damages after exposure is dealt with in general civil law.

The rules for the execution of asbestos surveys and the removal of asbestos from buildings, constructions and objects are embodied in and/or based on the Working Conditions Act (Arbeidsomstandighedenwet) and the associated decrees, including the Working Conditions Decree (Arbeidsomstandighedenbesluit), the Asbestos Removal Decree (Asbestverwijderingsbesluit) and the Municipal General Building Regulations (Bouwverordening). These decrees and regulations contain a number of safety requirements and stipulate that asbestos surveys and asbestos removal activities are performed by certified companies only.
A notification (pursuant to the Municipal General Building Regulations) is required if the demolition works entail the removal of asbestos from a building or if asbestos is present in the building under construction.

4.7 Thermal energy storage

Thermal energy storage is a sustainable method of storing energy in the soil in the form of thermal energy. The technique is used to heat and/or cool commercial buildings, homes, greenhouses and processes. The application of thermal energy storage systems has increased significantly over recent years and it is expected that this growth will continue in the years ahead.

There are two types of thermal energy storage systems by which natural energy in the soil can be used, namely an open system and a closed system. The operation of an open system requires a (groundwater) extraction permit under the Water Act (Waterwet). If this causes the release of flushing water above the water table, then a (water) permit must also be obtained for this activity. Indirect discharge into sewers or into soil is regulated by means of general regulations under the Activities Decree (Activiteitenbesluit) and under the Decree Discharge Outside Facilities (Besluit lozen buiten inrichtingen).

For the operation of a 'big' closed system (>70 kW) a permit pursuant to the GPA (omgevingsvergunning beperkte milieutoets) is required. This is also the case for an operation of a 'small' closed system (<70 kW) situated in a so-called interference area. These interference areas, usually dense urban areas, can be designated by the municipal authority to prevent systems from interfering with each other.

In addition, the drilling of wells might require an exemption from the Provincial Environmental Regulations (provinciale milieuverordening) if the project is located in a geographically rich area or a drilling-free water extraction and ground water protection zone.

4.8 Vacant offices

In June 2012, representatives of the State and various provinces, municipalities, investors, developers, users, and real estate financiers signed the ‘voluntary agreement (convenant) on vacant offices’. This agreement has no binding effect on the individual members of these parties or on third parties. It is ‘only’ a document
which contains best effort obligations for the State and the other parties involved in the said agreement. Branch organisations participating in this agreement have, amongst other things, committed themselves to invest in quality improvement and sustainable offices in so-called 'growth areas' and 'balance areas'. They are to cooperate actively in demolition and transformation in the so-called transformation areas. In this context, it should be noted that the new Building Decree 2012 provides for easier ways to transform offices into residences whereby (higher) building standards for new housing are no longer applicable and only (lower) building standards for existing housing have to be met.

However until now, the voluntary agreement on vacant offices did not result in government policy (spatial planning policy) or to legislation in conformity with the objectives formulated in the agreement, such as legal obligations to contribute to regional or local office funds. Up to now each province and municipality have their own way of 'implementing' the convenant. For example, the province of Utrecht has decided to adopt a provincial zoning plan in which the use of certain premisses for offices will be ended.

With regard to vacancy also the Vacant Property Act (Leegstandwet) is relevant. Pursuant to this Act, a municipality can adopt a 'vacancy bye law' which includes an obligation – subject to a penalty – for property owners to inform the municipality about the vacancy of offices, industrial premises and stores, and which includes the possibility of a binding nomination by the municipality of a candidate to use the vacant property. Furthermore, pursuant to this Act, the Municipal Executive can grant a permit for temporary lease of residential accommodation in a building, after the expiry of which also the rental agreement terminates. As from July 2013, these possibilities for temporary lease have been broadend. The maximum period of letting (non-self-contained) residential accommodation in (former office) buildings on a temporary basis is extended from five years to ten years (in that case also an exemption of the zoning plan is needed; change of use of an empty building can yet be granted on the basis of the minor case regulation). Also houses destined for sale can now be let on a temporary basis for the duration of five years and houses that will be demolished can be let for a maximum period of seven years.

### 4.9 Housing Allocation Act 2014

In January 2015, the (new) Housing Allocation Act 2014 (Huisvestingswet 2014) entered into force. Pursuant to this Act municipalities can no longer make private agreements on housing allocation. Municipalities can only control housing allocation
by means of municipal bye laws. Furthermore, the Act no longer regulates the allocation of owner occupied houses (except for the Wadden Islands). However, houses rented by a private owner/landlord can be regulated by this new Housing Allocation Act 2014 as municipalities are now free in determining a rent limit for housing allocation. This means that in certain circumstances landlord and tenant must have a housing permit.

4.10 Crisis and Recovery Act

The Crisis and Recovery Act (‘CRA’) entered into force on 31 March 2010, with the aim of temporarily speeding up the development and implementation of spatial and infrastructural projects. The CRA was supposed to expire on January 2014, but it was made permanent at a later date.

The CRA consists of certain procedural provisions for all projects that fall within the scope of the CRA. Furthermore the CRA introduces new types of plans such as ‘development area plans’ and ‘plans of national significance’. With regard to so called ‘development areas’ experimental rules have been introduced. In such areas new developments may currently stagnate because certain environmental standards cannot be met. With the adoption of a ‘development area plan’ existing activities within the area can be forced to reduce emissions so that activities, like housing-developments, can proceed without infringement of existing environmental standards. Furthermore, the CRA makes it possible for these areas to deviate from environmental standards.

With regard to projects with national significance one could think of large-scale urban renewal, the redevelopment of station areas, large housing projects and the renovation of industrial areas. With concern to these projects, the procedure focuses on the spatial structure vision, as a result of which further steps in the implementation process can be more rapidly completed. With respect to the granting of permits the municipal coordination measures from the SPA are applicable, which means that all permits follow the same procedure and are granted at the same time. The provisions of the CRA for development areas and projects of national significance are only applicable to areas that have been designated as such by the Crisis and Recovery Decree.
4.11 Sustainability

Nowadays it is impossible to imagine project development and real estate investment in the Netherlands without considering sustainability. Thermal energy storage is only one of the items under the flag of sustainability. New commercial buildings, especially offices, are frequently supplied with energy through a local thermal energy storage system, often owned by an energy supplier, with the owner of the commercial building holding a right in rem regarding the system. Furthermore, existing commercial buildings are being redeveloped into more sustainable buildings in order to accommodate the current tenants or to attract new tenants.

The circle (of blame) investor-developer/constructor-user has been broken, even when higher initial costs are involved. Investors wish to acquire and tenants wish to lease ‘green’ real estate, whereas developers and contractors wish to accommodate and link their names to ‘green’ project developments. Owners and tenants enter into so-called ‘green leases’, under which both parties take on obligations for sustainable use and operation of the building, which leads to energy saving and reducing CO² emission.

A relatively new phenomenon in the Netherlands is the Energy Service Company (‘ESCo’). The ESCo is a party or consortium of parties that, inter alia, takes over the maintenance and operation of the building systems and executes other energy saving measures for its risk and account; certain investments may qualify for a tax investment allowance or subsidy from the government. For this purpose, the ESCo enters into an Energy Performance Contract (‘EPC’) with the owner and the tenant for a certain period of time, usually a period of five to ten years. The ESCo warrants energy cost savings vis-à-vis the owner and tenant, who will in turn make periodical payments based on such savings. On expiry of the EPC, the owner of the building may be obliged to pay for certain investments, or the parties may renew the EPC.

There are several methods in use in the Netherlands for assessing the environmental impact of real estate. The parties to (turnkey) sale and purchase agreements, building contracts or leases refer to such ‘labels’ in their contracts setting sustainability requirements or rankings the real estate must meet. Frequently, reference is made to Green Rating Systems from abroad, such as the Leadership in Energy and Environmental Design (‘LEED’) and the Building Research Establishment Environmental Assessment Method (‘BREEAM’). Only recently the Dutch Green Building Council was founded. This institute grants sustainability labels based on the British BREEAM, ranking (the design of newly
built) real estate itself and the use thereof based on the following nine sustainability categories of management:

Health and wellbeing
Energy, transport
Water
Material
Waste
Land use and ecology
Pollution

These labels with specific rankings for real estate are self-imposed by the contracting parties involved. One of the biggest users of commercial buildings is the government (the Ministry of Housing of the State of the Netherlands). In tender procedures, authorities have to impose sustainability requirements which have been established for certain product groups, including real estate to be purchased or leased. At the same time, authorities regulate the sustainability of real estate – in the construction phase as well as in the use phase (e.g. reduction of CO² emission) – through legislation; mainly environmental laws and spatial planning.

4.12 Energy performance label

Since 1 January 2008, the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen) stipulates that each owner or landlord (apart from a short list of exceptions) has the obligation to submit an ‘energy performance certificate’ for their building(s) to the purchaser or tenant in case of sale or letting out of the building. This certificate intends to provide the purchaser or tenant insight in the amount of energy required for the normal use of the building concerned. This Dutch legislation on energy performance of buildings is derived from European Union legislation.

As from 1 January 2015, the obligation to submit an energy performance certificate is replaced by the obligation to submit an ‘energy performance label’. New is especially the enforcement of the obligation. Not submitting a definitive energy performance label in case of a sale or letting out of a building is subject to a fine up to EUR 405 in case of individuals and up to EUR 20,250 in case of legal entities.

This legislation, however, only sets a minimum sustainability standard. Investors and tenants generally raise this standard by stipulating more stringent sustainability
requirements. In tailor-made SPA's and/or lease agreements, specific attention can be given to the content of the energy performance label (for example which minimum category is acceptable) and also by stating whether or not an energy performance label is already available and if not, that parties will cooperate in obtaining such energy performance label after sale or lease.

4.13 Sustainable urbanisation

To promote sustainable space utilisation, the government now uses a ‘ladder for sustainable urbanisation’ (ladder voor duurzame verstedelijking). If a new spatial development provides for a regional need for industrial sites, offices, housing and other urban developments, the developer should describe to what extent this need can be provided within the existing urban area through utilisation of the available urban grounds by restructuring, transformation or otherwise. A description should, therefore, be provided of the way vacancy is being taken into account and why restructuring or transformation is not preferable. If the restructuring or transformation of existing urban areas does not offer sufficient possibilities, new urban areas should in principle be located in such a way that they are accessible to multimodal transport.

4.14 Revision of Environment & Planning Laws

As previously described, as from October 2010, the GPA replaces various permits and exemptions with one single permit. Therefore, most assessment criteria for environmental permits have been implemented in the GPA. However, some consents are still regulated by specific Acts. Through the new Environmental & Planning Act, the government wants to further integrate and combine the regulations for spatial projects. Thus, it is intended that this Act will replace existing laws such as the Spatial Planning Act, the General Provisions Act, the Crisis and Recovery Act, the Noise Abatement Act, the Soil Protection Act, the (new) Nature Conservation Act and the Water Act. Furthermore, also legislation on real estate acquisition, such as the Expropriation Act and the Preferential Rights of Municipalities Act, will integrate in this Act. The aim of this Act is also to simplify the existing laws on the environment and planning, which should, amongst other things, result in fewer studies in order to obtain a permit for a spatial project. The expectation is that this new Environment & Planning Act will take effect in 2018.
5.1 Introduction

This chapter describes the various types of investment vehicles available under Dutch law that are commonly used for structuring real estate investments. Investment vehicles are often used as property holding vehicles when making direct investments or as fund vehicles when making indirect investments.

In terms of legal forms of investment vehicles, a distinction can be drawn between legal entities with and those without legal personality (rechtspersoonlijkheid). An investment vehicle without legal personality cannot acquire and hold legal title to assets in its own name. This means that such vehicles cannot own the legal title of the real estate assets. The legal title of the property is held in the form of (a joint) ownership by the partners or alternatively by a designated person (e.g. the general partner or custodian) for joint account. Investment vehicles with legal personality can own and transfer real estate, as they independently hold rights and obligations.

The choice for a certain type of investment vehicle is often made on the basis of the tax attributes of such vehicle. It can be stated as a general rule of thumb that investment vehicles with legal personality such as corporations are tax opaque whilst investment vehicles without legal personality such as partnerships and contractual entities are tax transparent, provided that certain requirements are met. Please refer to chapter 7 for a more detailed description of the tax treatment of the various investment vehicles. It must be emphasised that not all the legal forms available under Dutch law are described in this chapter, but only those most commonly used as real estate investment vehicles.

5.2 Corporate Investment Vehicles

The private limited liability company (besloten vennootschap met beperkte aansprakelijkheid or ‘B.V.’), the public limited company (naamloze vennootschap or ‘N.V.’) and the cooperative (cooperatie: ‘Coop’) are the most commonly used corporate entities for structuring direct or indirect real estate investments. Since these corporate entities all have legal personality, they can independently hold
rights and obligations and are treated under Dutch property law in more or less the same manner as individuals.

The legal frameworks applicable to the B.V. and the N.V. show great resemblance. Both N.Vs and B.Vs have their capital divided into shares. A distinguishing feature of an N.V. as opposed to a B.V. is that an N.V. can issue bearer shares. As a public company, the N.V. is the appropriate vehicle for a stock exchange listing.

The specific part of Book 2 of the Dutch Civil Code that applies to B.Vs allows for much greater flexibility and freedom in organising and setting up a B.V. (as opposed to a N.V.). There are ample possibilities to tailor the articles of association of a B.V. to the agreement between the parties involved.

Some of the key features of a B.V. are the following:

(i) Appointment of directors: the articles of association may include a provision to the effect that shareholders holding a certain class of shares or a certain group of shares (e.g., all ordinary shares numbered 50 through 100) may appoint their own directors.

(ii) Convening a general meeting of shareholders: shareholders holding at least 1% of the entire issued share capital may require the management board and/or the supervisory board to convene a general meeting of shareholders.

(iii) Adopting resolutions outside the general meeting of shareholders: it is not required that the articles of association of B.Vs do provide for the possibility of adopting resolutions outside the general meeting of shareholders; this can therefore be done in any case. Where resolutions are adopted outside the general meeting of shareholders, the shareholders are not required to vote unanimously; a simple majority of votes is sufficient (unless the articles of association provide otherwise), provided that all shareholders and other persons with meeting rights have consented to the relevant manner of decision-making.

(iv) Voting rights: variations are allowed when attaching voting rights or dividend rights to shares. It is possible to issue shares either without voting rights or without dividend rights. In other words, nonvoting shares must carry dividend rights and solely voting shares may be without dividend rights.
(v) Share transfer restriction: unrestricted transfers of shares in a B.V. are possible if so provided for in the articles of association. In addition, the transfer of shares may be prohibited or limited for a specific period (i.e. lock-up).

(vi) Protection of capital and assets: No minimum capital requirements apply to a B.V. At least one share must be issued to the incorporator of the company. It is possible to agree that shares will be paid up after a certain period of time.

(vii) Distribution: distributions may be made insofar as the shareholders’ equity exceeds the amount of the reserves which must be maintained by law or the articles of association, provided that the management board has approved the distribution. The management board should not approve the distribution if it knows or could reasonably be expected to know that the company will no longer be able to pay amounts due and payable after the distribution. If the management board were nevertheless to approve the distribution in these circumstances, it would be jointly and severally liable for the deficit (increased with statutory interest) which arises as a result of the distribution.

Since the B.V. is much more frequently used as a real estate investment vehicle, we shall not describe the N.V. separately in this publication. The key features of the B.V. will be described in section 5.2.1.

In section 5.2.2, we will describe the main legal features of a Coop. Given the fact that, in practice, cooperatives with excluded liability for their members (coöperatie UA) are far more commonly used than cooperatives with unlimited liability (coöperatie WA) or with limited liability (coöperatie BA), where this section refers to a Coop, it is referring to a cooperative with excluded liability.

5.2.1 Main Characteristics of the B.V.

5.2.1.1 Introduction

Common reasons for choosing a B.V. as an investment vehicle include:

- clear rules regarding exclusion of personal liability;
- clear tax position and eligibility for tax treaties;
- great structuring flexibility;
- relatively simple transferability of ownership interest; and
- the realisation of a well-defined and internationally recognised legal structure.

As stated above, a B.V. is a legal entity with its capital divided into shares. The capital contributed by the shareholders is deployed to realise the objects of the
company such as, for example, real estate investments. The B.V. issues registered shares and is not permitted to issue bearer shares. The management board of a B.V. has to maintain a shareholders’ register at its offices that is available at all times for inspection by shareholders and other relevant parties.

In the case of a B.V., both nonvoting shares (stemrechtloze aandelen) and non-profit shares (winstrechtloze aandelen) can be issued if this is desirable.

It was the legislator’s view that the nonvoting character of the shares should not result in the nonvoting shareholder being subjected to all the decisions of the shareholders’ meeting. Nonvoting shareholders are not only entitled (in their capacity of shareholder) to attend the shareholders’ meeting, to address the general meeting and to exercise other rights linked to the right to entitlement to attend meetings, but may also block certain decisions by withholding their consent (as a group). Existing shares may only be converted into nonvoting shares with the consent of the shareholders in question.

Furthermore, the law enables the creation of non-profit shares (therefore with the right to vote, but without a claim to profit or reserves). Other variations on the entitlement to profits also remain possible. Provided that they have the approval of all shareholders, shareholders may, at all times, diverge from profit apportionment according to the law or to the articles of association. Shares may not be both non-profit shares and nonvoting shares at the same time.

5.2.1.2 Incorporation
A B.V. is incorporated by executing a notarial deed drawn up by a Dutch civil law notary, which includes the B.V.’s articles of association. This deed of incorporation must be in the Dutch language. Incorporation may be effected by a written power of attorney. Both legal entities and individuals can be founders and managing directors, regardless of their nationality. After the incorporation, the articles of association can be amended by executing a notarial deed of amendment to the articles of association.

It is not required to pay up the issued share capital at incorporation. Each share must be paid up at a certain moment and therefore it may be agreed that the whole nominal amount shall be paid up later. Payment on shares may be in cash or in kind. The nominal value of the shares may be in a foreign currency and may be indicated in lower units than hundredths. The minimum paid up capital for an N.V. amounts to EUR 45,000.
If the contribution is made in kind, for example by contributing a real estate property, a description of such contribution (including a statement of the incorporators as to the value thereof, the valuation methods used and the valuation date) is made and should be attached to the deed of incorporation. The actual transfer of the contribution in kind (in case of Dutch real estate) is effected by a separate notarial deed.

After incorporation, the B.V. must be registered in the trade register of the Chamber of Commerce. Until such registration, not only the company but also the managing directors are jointly and severally liable for obligations of the B.V. For this reason, it is highly inadvisable to enter into transactions on the B.V.’s behalf before registration has been effected. Third parties can verify whether the B.V. legally exists and who is legally authorised to represent it by inspecting the relevant trade register. The civil law notary who is engaged as adviser in a real estate transaction will verify these matters with due care.

If all shares are held by one individual or one legal entity, this party should be recorded as the sole shareholder in the trade register. If shares are held by more than one person no such registration is required.

5.2.1.3 Share capital

Each share in a B.V. represents a certain amount, which is the nominal value of the share. The aggregate amount of the nominal values of the issued shares is known as the issued capital of the B.V. The capital paid up on the issued shares forms the paid up capital. The authorised share capital is the maximum amount specified in the articles of association for which shares may be issued by the B.V., without a requirement to amend its articles of association. Please note that in the case of a B.V., an authorised share capital does not have to be included in the articles of association, in such cases further shares may be issued without an amendment to the articles of association.

The issued capital can be increased by issuing new shares. Unless the articles of association designate this authority to another corporate body (e.g. the management board), the decision to issue new shares is taken by the general meeting of shareholders (the ‘General Meeting’). The General Meeting can also transfer this authority to another corporate body. The issuance of shares takes place by means of a notarial deed. Unless preferential rights are excluded or limited in the articles of association or in the resolution to issue new shares, shareholders have a preferential right in proportion to the nominal value of their shareholding (subject to statutory exceptions). Besides raising additional shareholders’ equity to
finance an acquisition, for example, an issuance of shares can be used to change the control structure of the B.V.

5.2.1.4 Profits and Distributions
In principle a decision to distribute profits or reserves must be made by the shareholders’ meeting. This power can be limited in the articles of association or attributed to another corporate body, such as the management board or the supervisory board. Distributions can only be made in so far as the equity capital exceeds the legal reserves and the reserves provided for in the articles of association. The management board has a veto right in respect of distributions: a decision to distribute has no effect as long as the management board has not given its approval. The management board can however only exercise this veto right if it is aware, or reasonably should be aware, that the company will not be able to continue to pay its debts when they are due after such distribution is made.

With the exception of the holders of non-profit shares, the shareholders share in the profits in proportion to the amount of the mandatory payments on the nominal amount of their shares in the capital of the company, unless otherwise provided for in the articles of association or, on distribution, the shareholders unanimously decide otherwise. There are several solutions for alternative profit-sharing mechanisms by having tailor-made articles of association and with due consideration to, for example, a shareholders’ agreement. As previously mentioned, it is also possible to create shares with specific profit rights and it is even permissible to issue shares without any profit rights, thereby providing an even more robust legal framework for tailor-made structures.

If, after a distribution to the shareholders, a B.V. is no longer able to meet its payment obligations, the management board members will be jointly and severally liable for the deficit, caused by such distribution if at the time of such distribution they knew or reasonably should have foreseen that that this situation would occur.

5.2.1.5 Corporate Bodies
All B.Vs are required to have at least two corporate bodies; one is the management board and the other is the General Meeting. A B.V. may also have a supervisory board, and possibly other corporate bodies, such as a meeting of holders of a certain class of shares or a certain specified type of shares. The supervisory board’s duty is to supervise the policy of the management and the general course of affairs of the company and the enterprise connected therewith. Only individuals may be supervisory directors, whereas legal entities can also form part of the management board.
A B.V. is managed by its management board. The management board represents the B.V., to the extent that the contrary does not follow from the law. Each director has the authority to represent the company. The articles of association may state, however, that in addition to the entire management board, only one or more managing directors are individually entitled to represent the B.V., or that one managing director may only represent the B.V. together with one or more other managing directors. Provisions in the articles of association requiring prior approval for certain management decisions by a corporate body (such as real estate transactions or the creation of a right of mortgage) have internal effect only and do not affect the power to bind the company vis-à-vis third parties.

In a B.V., certain powers are allocated to the General Meeting by mandatory law. For a typical B.V., decisions the General Meeting is authorised to make include:

- amendments to the articles of association;
- conversions, mergers, demergers and dissolution of the B.V.;
- issue of additional shares;
- appointment, suspension and removal of the managing directors;
- adoption of the annual accounts; and
- capital reductions.

In addition, matters which significantly impact the structure or business of a B.V. are typically made subject to the prior approval of the General Meeting. This shall in any event include a disposition of substantially all of the assets of the B.V. and may also include the entering into or termination of material joint ventures or participations. Any powers not conferred on the management board or other persons are allocated to the General Meeting within the limits set by law and the articles of association.

It is also possible to grant a direct right to the meeting of holders of shares of a certain class or type to appoint or dismiss one or more management board members. A condition for the application of the direct right of appointment is that every shareholder with voting rights, directly or indirectly, may vote on the appointment of at least one management board member. Alternatively, management board members can be appointed pursuant to a binding nomination (one person on the nomination suffices).

Many variations in respect of voting rights attached to shares are possible, provided they are included in the articles of association and provided that the decision thereto is adopted unanimously in a General Meeting in which the entire issued share capital is represented. The arrangement under the articles of association
regarding the right to vote must apply to all decisions; therefore variation per separate decision is not possible.

Meetings of the General Meeting are held in the place as indicated in the articles of association. From a Dutch corporate law perspective, such place could also be outside the Netherlands. Resolutions of a meeting not held at the place indicated in the articles of association are valid only if all the persons with meeting rights (vergaderrecht) concerned have consented to the fact that the meeting is being held at another place and the managing directors and the supervisory board members have been given the opportunity to render advice. A General Meeting must be held at least once a year, but can also be held outside a meeting. It is also explicitly stipulated that annual accounts can be adopted by resolution outside a meeting. Both the management board and the supervisory board have the authority to convene a General Meeting. The articles of association may state that other parties can convene a meeting as well. Resolutions of a General Meeting are adopted by a simple majority of the votes cast, unless the articles of association require a different majority. Unless the articles of association contain special provisions regarding the part of the capital that must be represented at a meeting for valid resolutions to be taken, no minimum number of shares is required to be represented at a meeting. There is also no statutory obligation to keep minutes of a meeting or to record attendance. However, the management of a company must keep a record of resolutions adopted by the General Meeting. This record must be made available at the office of the company for inspection by the shareholders.

Decision-making outside a meeting is generally possible even if the articles of association do not explicitly provide for this. The statutory notice period for convening a shareholders’ meeting has been reduced to at least eight days before the day of the meeting albeit that the articles of association may provide for a longer period.

5.2.6 Liability of Shareholders

As a starting point under Dutch law, a shareholder is not liable for acts performed by the company. A shareholder’s liability is limited to the contribution of the amount to be paid on the shares of the company.

There are no statutory provisions imposing liability on the shareholder of a company. In general, any shareholder liability is based on tort (onrechtmatige daad). Under certain circumstances, a shareholder may also be liable on the basis of the doctrine of identification (vereenzelviging) or as a policymaker (feitelijk beleidsbepaler).
Liability on the basis of tort may arise when a shareholder takes insufficient account of the interests of the creditors of the company. Case law on this subject can be divided into two categories, for example in cases in which:

- the shareholder has such insight into and control over (the management of) the company and prejudices the possibilities of the company’s creditors to take recourse against the company’s assets; for example by transferring assets from the company to itself or to an affiliate, or by having the company distribute dividends to the shareholder; and
- there has been an intensive involvement of the shareholder in the affairs of the company in general and, more specifically, in the transactions entered into with the creditor, and the shareholder has led the creditor to believe that its claim would be satisfied while taking insufficient care that this claim would indeed be satisfied.

Please note, however, that the difference between the two categories is not always clear. Some cases have elements of both categories.

Whether a shareholder can indeed be held liable is highly dependent on the circumstances of the case. Case law of the Supreme Court demonstrates that in most cases, liability is based on the situation that (i) the company entered into a contract with a trade creditor while the company knew or should have known that it would not be able to fulfil its obligations under that contract; and (ii) the company concerned was controlled by only one shareholder, not an individual but a parent company, often forming part of a group of companies.

It is assumed that parent companies usually exercise more control over and are more involved with their subsidiaries. If the shareholder is also the managing director of the subsidiary, the shareholder will almost always have insight into and control over the affairs of the company. In this respect it should be noted that in the articles of association of group companies, the General Meeting is often granted the power to give instructions to the managing directors and/or the managing directors require the General Meeting’s prior consent for certain decisions contemplated by the managing directors.

Identification (vereenzelviging) is a legal notion, according to which two (or more) companies which are legally and economically intertwined are regarded as one company, as a result of which the assets, rights and obligations of the one company are also regarded as the other’s and vice versa. In general, only under extraordinary circumstances is a company’s (separate) corporate identity disregarded.
A shareholder who de facto acts as a managing director and (jointly) determines the policy of the company (or acts as a supervisory director) (feitelijk beleidsbepaler) may be held liable as if he or she were a (formal) managing director. Whether that is the case, is highly dependent on the circumstances of the case.

Further to the director’s liability with respect to distributions as referred to in section 5.2.1.4 above, the liability regime also applies to shareholders who received a distribution when they knew, or reasonably ought to have known, that after the distribution the company would no longer be able to pay its due debts, with the proviso that they will not have to reimburse any amount exceeding the amount received by them from the company.

5.2.1.7 Transfer of Shares

The law provides for a 'standard' share transfer restriction in the form of an offering system comprising a right of first refusal for the other shareholders, and therefore the shares in a B.V. are in principle not freely transferable. However, the articles of association can provide for the free transferability of the shares as well as share transfer restrictions in another form. This could be in the form of (i) an offering system comprising a right of first refusal for the other shareholders; (ii) an approval system whereby a transfer requires the prior approval of a corporate body specified in the articles of association (e.g. the management board); or (iii) a combination of these two systems. It is furthermore possible to include a provision in the articles of association containing the non-transferability of the shares for a certain period (lock-up). A period of five years for such lock-up is considered by the legislator to be reasonable.

The transfer of shares requires a deed for such purpose, executed before a Dutch civil law notary. Unless the B.V. is a party to the deed itself, the rights attached to the shares can only be exercised once the B.V. has acknowledged the transfer or the deed has been served on it. As described in more detail in section 7.7, a 6% transfer tax is, in principle, payable on acquisition of a substantial shareholding in a real estate corporation.

5.2.1.8 Annual Accounts

All B.V.s are required to prepare and, in principle, publish annual accounts; however, the amount of information required depends on the size of the company (the value of its assets, turnover and number of employees).

Annual accounts should be prepared by the management board within five months after the end of the B.V.'s financial year, which term can be extended by the General Meeting by an additional term of five months. After the annual accounts have been
prepared by the management board, the shareholders may adopt the annual accounts.

The management board has to file the annual accounts with the Chamber of Commerce where the B.V. is registered within eight days after they have been adopted, but in all events, no later than twelve months after the end of the company’s financial year to which they relate. It should be noted that this filing obligation remains in place even if the accounts have not been adopted by the shareholders. If the annual accounts have not been adopted by the shareholders, such should be noted by the management board. In the event of bankruptcy, the members of the management board of a company can be held liable in person for the deficit of the bankrupt estate, if it is established that the bankruptcy is due to “evidently improper management” during the three years preceding the bankruptcy. Failure to file the annual accounts in time with the Chamber of Commerce in one or more of these preceding years constitutes (reputable) prima facie evidence of evidently improper management.

5.2.2 Main Characteristics of the Cooperative

5.2.2.1 Introduction

A Coop is a specific form of association with legal personality. The Dutch Civil Code only provides a limited number of articles in respect of a Coop which apply to a Coop in addition to the general rules applicable to Dutch associations (verenigingen). Consequently, the mandatory statutory framework is not extensive and allows great flexibility in tailoring the articles of association of a Coop to the investors’ individual needs. In addition to the provisions in the articles of association, the legal framework for the investors in a Coop is usually supplemented by a members’ agreement, the contents of which may closely resemble that of a traditional shareholders’ agreement.

The main distinctions between the Coop and the B.V. can be explained by their difference in nature: the B.V. is a corporation formed for a commercial purpose with a capital divided into shares whereas the Coop is a specific form of an association the main purpose of which is to provide services to its members. It must be noted that this difference in nature does not, in practice, prohibit their use in structures as they may both serve as an investment vehicle. As such, in most structures, a B.V. and a Coop are quite interchangeable.

The Dutch Civil Code stipulates that the articles of association of a Coop must state that the Coop’s objective is to provide for certain needs (bepaalde stoffelijke behoeften) of its members pursuant to agreements concluded with them in the
course of the business the Coop conducts or causes to be conducted to that end for the benefit of its members. Coops are thus intended to achieve economic benefits for their members, by for example jointly operating certain parts of their business and pooling resources (e.g. central purchasing of supplies). Coops are normally owned and controlled by their customers/members, for example, agricultural cooperatives, housing cooperatives and banking cooperatives. Because of the tax benefits and the flexible legal framework, Coops are widely used as holding or investment vehicles, although it is fair to say they were not originally designed for that purpose.

5.2.2.2 Incorporation

A Coop is incorporated by means of the execution of a notarial deed drawn up by a Dutch civil law notary. Dutch law requires that at least two persons act as incorporators of the Coop and, unless the deed of incorporation explicitly states otherwise, these persons will automatically become members of the Coop (‘Members’) on incorporation. As no approvals need to be obtained as part of the incorporation process, and no bank or auditor’s statement confirming the value of any agreed contributions by the Members to the capital of the Coop are required, a Coop can normally be incorporated within a few days.

5.2.2.3 Capital of the Coop

There is no statutory requirement for a Coop to maintain a minimum amount of capital. The articles of association or the separate Members’ agreement may require a Member to contribute funds or assets in respect of its membership interest in a Coop. In addition, it may be laid down that additional equity contributions can be called. Such a provision can be very specific, or it can simply be stated that the general meeting of Members will determine the amount of any additional equity contributions to be made by the Members.

5.2.2.4 Profits and Distributions

The Dutch Civil Code does not prohibit or restrict the Coop from making distributions to its Members. If the articles of association or the Members’ agreement do not provide for a distribution arrangement, the general meeting of Members is authorised to decide on the allocation of the operating income (distribution or reservation). Distributions do not have to be made in proportion to the capital contributions of the Members nor in proportion to the balance of their capital accounts. The Dutch Civil Code does not prohibit interim distributions.

5.2.2.5 Corporate Bodies

The Coop must have a meeting of Members and a management board. A Coop may have a supervisory board. The management board manages the operations
of the Coop and represents the Coop vis-à-vis third parties. The right to represent the Coop can also be vested in one or more members of the management board. Unless the articles of association provide otherwise, the managers are appointed from amongst the Members by the general meeting of Members. In general, one or more Members will be appointed as managers.

Each Member has at least one vote in the general meeting of Members, but the articles of association can attribute more than one vote to certain Members. Voting power that matches the equity contribution of each Member is allowed.

The general meeting of Members has the following powers (certain of these powers may be delegated):

- amend the articles of association;
- convert, merge, demerge and dissolve the Coop;
- appoint, suspend and remove managing directors;
- adopt the annual accounts and allocate the profits; and
- all other powers not conferred to other bodies by law or the articles of association.

Unless the articles of association provide otherwise, amendments to the articles of association must be adopted by the general meeting of Members with at least a two-thirds majority of the votes. Any amendment to the articles of association requires a notarial deed executed by a Dutch civil law notary.

5.2.2.6 Liability of Members

The Dutch Civil Code allows the liability of Members to be excluded in the articles of association, which is typically the case. If liability is excluded, the letters U.A. (uitgesloten aansprakelijkheid or exclusion of liability) have to be added to the name of the Coop. In such cases, absent of extraordinary circumstances, Members of a Coop U.A. will have no liability or obligation with respect to debts or obligations of the Coop. Members and former Members of a Coop U.A. are not liable for deficits in the event of liquidation or bankruptcy.

Similar to a shareholder in a B.V. (please refer to section 5.2.1.6), a Member could under certain extraordinary circumstances be held liable for the obligations of a Coop. This could be the case if, for instance, an act of such Member qualifies as tort (onrechtmatige daad) or if such Member qualifies as a policymaker (beleidsbepaler) or a co-policymaker (medebeleidsbepaler) of the Coop and there is improper management as a result of seriously negligent acts or omissions (ernstig verwijt).
5.2.7 Transfer of Membership Interests

Membership interests can be held by individuals, legal entities and, if the articles of association so provide, partnerships. In principle a membership interest in a Coop is a personal right. The articles of association may however provide that membership interests are freely transferable or make transfers subject to certain restrictions such as prior consent of the management board. For Dutch dividend tax purposes, the transferability of membership interests is sometimes restricted (see also chapter 7).

5.2.8 Annual Accounts

Annual accounts should be prepared by the management board within six months after the end of a financial year, which term can be extended by the general meeting of Members by four months. The rules on financial reporting, auditing and publication of the annual accounts that apply to the B.V. and N.V. equally apply to a Coop.

5.3 Partnerships and Contractual Investment Vehicles

Investment vehicles without legal personality include partnership structures such as the civil partnership (maatschap), the general partnership (vennootschap onder firma), the limited partnership (commanditaire vennootschap or 'C.V.') and contractual arrangements such as a contractual mutual fund (fonds voor gemene rekening or 'FGR').

Since the C.V. is much more frequently used as a real estate investment vehicle than other partnership structures, we will not discuss the civil partnership or general partnership separately in this publication. The key features of the C.V. are set out in section 5.3.1.

Another non-corporate investment vehicle that is commonly used is the FGR. Due to the specific tax attributes of an FGR, this vehicle is frequently used as a fund vehicle for making indirect real estate investments. The specifics of an FGR are described in more detail in section 5.3.2.

5.3.1 Main Characteristics of a C.V.

5.3.1.1 Introduction

A C.V. is a partnership which is established by one or more general partners (beherend vennoten) and one or more limited partners (commanditaire vennoten or stille vennoten) for the purpose of carrying on a business under a common name.
with a view to sharing the benefits derived from their cooperation through the C.V. Each general partner is jointly and severally liable for the debts and obligations of the C.V. whereas the liability of a limited partner is, in principle, limited to the amount of its capital contribution.

A C.V. is not a separate legal entity (rechtspersoon) distinct from its partners as a result of which it cannot acquire and hold legal title to assets in its own name. A C.V. can however sue and be sued and contract in its own name. Legal title to assets of the C.V. may be held by the partners jointly in a community of goods (gemeenschap), by one of the partners or may be held by a third party. In most cases, the limited partnership agreement will specify that a general partner or a custodian will acquire the C.V.’s assets and hold legal title thereof for the account of the C.V. Legally a C.V. is deemed to have a separate estate distinct from the estates of its partners.

5.3.1.2 Establishment of a C.V.
A C.V. is established by an agreement between two or more partners, one at least being a general partner and one being a limited partner. There are no formal requirements (such as a notarial deed or government approval) with respect to the formation of a C.V. As far as the terms and conditions of the limited partnership agreement are concerned, the concept of freedom of contract generally applies. Since a C.V. is based on an agreement between the partners, such an agreement is not only governed by specific provisions under Dutch law applicable to C.V.s but also by general principles of Dutch contract law.

5.3.1.3 The capital of a C.V.
For the valid establishment of a C.V., each partner is required to make a contribution to the C.V. Contributions may be made in cash or in kind. Furthermore, the contribution by a partner may consist of its labour, provided that a limited partner does not only contribute labour. There is no statutory minimum to the amount that must be contributed. Cash contributions and denomination of the partnership capital accounts can be made either in Dutch currency or in foreign currency. A C.V. may not issue shares, although it may issue ‘units’ or suchlike fractions representing a portion of the partnership’s capital. The capital of a C.V. is not to be divided into physical share certificates.

5.3.1.4 Profits and Distributions
Profits must be distributed in accordance with the limited partnership agreement. In general, there are no limitations with respect to the maximum distribution of profits and timing thereof. Dutch law allows that one partner is liable for all losses or specific losses but does not permit the exclusion of a partner from the right to
receive profits. Distribution of a fixed amount to one or more partners is allowed as long as the distribution can be paid out of the profit and as long as it does not result in one of the partners not being able to participate in the profits. If the limited partnership agreement remains silent on the issue, the partners are entitled to the profits of the C.V. in proportion to the value of their respective contributions.

5.3.1.5 Management of a C.V.

The C.V. is managed by the general partner. A general partner is responsible for the C.V.’s day-to-day affairs. In addition, the general partner is authorised to represent and validly bind the C.V. vis-à-vis third parties to the extent such relates to the C.V., unless the limited partnership agreement provides otherwise. If there are more general partners, each general partner, in principle, has the power and authority to individually represent and bind the C.V.

There are no formal requirements with respect to the internal responsibility of a general partner towards the limited partners, however, the limited partnership agreement may lay down that certain acts of the general partner are subject to the approval of the limited partners. It is generally accepted that the limited partners are entitled to exercise certain supervisory powers over the management of the C.V. and that certain categories of acts of management or control may be subjected to the prior approval of the limited partner (or partners). However, it should be noted that such supervisory powers should not result in the limited partner (or partners) exercising a predominant influence (overheersende invloed) as described in the following section.

5.3.1.6 Liability of the Partners

Notwithstanding a division of tasks and duties amongst the general partners, each general partner has unlimited liability for all the obligations of the C.V.

The Dutch Commercial Code (Wetboek van Koophandel) stipulates that a limited partner is not allowed to engage in any acts of management or control (daden van beheer) or be involved in any activities of the C.V., even if it were by virtue of a power of attorney. Pursuant to legal doctrine, this restriction also implies that the limited partner is prohibited from exercising a predominant influence (overheersende invloed) over the acts of the C.V. vis-à-vis third parties. According to the Dutch Commercial Code, a limited partner is not liable vis-à-vis a C.V. in excess of the amount it has contributed or has agreed to contribute to the C.V. This is different if the name of the limited partner (or characteristic elements of its name) is reflected in the name of the C.V. or if the limited partner engages in acts of management or
control or exercises a predominant influence over the acts of the C.V., as referred to above. Under such circumstances, a limited partner will in principle incur unlimited liability (as if it were a general partner) for the obligations of the C.V.

Under certain circumstances, a limited partner may be held liable for the obligations of the C.V. on other grounds. This may be the case if a limited partner (i) is held liable on the basis of tort (onrechtmatige daad), (ii) qualifies as a policymaker (beleidsbepaler) or a co-policy maker (medebeleidsbepaler) of the general partner and there is evidently improper management on the part of the general partner; or (iii) a limited partner voluntarily assumes liability for obligations of the C.V.

5.3.1.7 Transfer of Interests
Interests in a C.V. can be held by individuals, legal entities and partnerships. A C.V. is deemed to be entered into by the partners in view of the specific attributes of the other partners. Therefore in principle a partnership interest in a C.V. is strictly personal. The limited partnership agreement however typically provides that the interests in the C.V. may be transferred. Limited partnership interests may be freely transferable or such transfer may be made subject to certain restrictions. For tax transparency purposes, the transferability of partnership interests is usually restricted and made subject to the prior approval of all partners (see also chapter 7).

5.3.1.8 Dissolution of the C.V.
Unless otherwise provided for in the limited partnership agreement, a C.V. will be dissolved and liquidated in the following circumstances:

- expiry of the term of the limited partnership agreement;
- the completion of the good or transaction for the purpose of which the C.V. has been established;
- termination of the limited partnership agreement by one or more partners; and
- the death, dissolution, guardianship or bankruptcy of one or more partners.

Bankruptcy of the C.V. results in the bankruptcy of the general partners as they are jointly and severally liable for the debts of the C.V. Bankruptcy of the C.V. does not necessarily result in the bankruptcy of the limited partner(s).

5.3.1.9 Annual Accounts
C.V.s are not subject to the mandatory rules on financial reporting, auditing and publication of the annual accounts that apply to limited liability companies (N.V. and B.V.) and Coops. This, however, is different if all general partners are foreign
corporations in which case the C.V. needs to prepare annual accounts and is subject to the same rules that apply for limited liability companies and Coops (see section 5.2.1.8).

5.3.2 Main Characteristics of an FGR

5.3.2.1 Introduction
In the Netherlands, a contractual mutual fund (fonds voor gemene rekening or ‘FGR’) is a regularly used vehicle for making indirect real estate investments. Please note that since an FGR is a contractual arrangement the notion of ‘freedom of contract’ applies equally to an FGR as to any other agreement under Dutch law. There are no specific mandatory requirements an FGR is required to observe and hence it is a very flexible vehicle allowing the parties to such arrangement to deviate to a certain extent from the principles set out below.

5.3.2.2 General structure of an FGR
An FGR is a contractual arrangement between on the one hand (i) an entity that serves as the manager (beheerder or ‘Manager’) of the FGR and an entity that serves as the FGR’s depositary (bewaarder or ‘Depositary’) and on the other hand (ii) each of the investors/participants separately. The Manager is typically set up as a limited liability company whereas, for bankruptcy remoteness purposes, the Depositary is mostly organised as a special purpose foundation under Dutch law.

An FGR is formed by the Manager and the Depositary establishing and executing the terms and conditions of management and custody of the FGR (the ‘Terms and Conditions’) and the participants adhering to those Terms and Conditions through the execution of a subscription form and acceptance thereof by the Manager and the Depositary. In order to avoid the FGR from qualifying as a Dutch general partnership (maatschap), the Terms and Conditions should be drafted in such a way that cooperation amongst the participants is avoided.

As set out in more detail below, legal title to the assets and the liabilities assumed by an FGR will be held by and in the name of the Depositary for the account of the participants in accordance with the Terms and Conditions. Any agreements in respect of an FGR will be entered into by the Manager as attorney-in-fact for and in the name of the Depositary, but for account of the participants.

Pursuant to the Terms and Conditions, the Manager is charged with the management and administration of the FGR and is entitled and authorised (i) to acquire (verkrijgen) and to dispose of (beschikken over) the assets of the FGR and to enter into and assume obligations in the name of the Depositary; and
(ii) to perform any and all other acts necessary for or conducive to the investment object of the FGR including, without limitation, to exercise in its sole discretion all (governance) rights granted to the FGR and to fulfil all obligations assumed by the FGR under the documentation governing the relevant investment.

The management and administration of the FGR is performed for the account of the participants. Accordingly, any and all profits, losses, liabilities, costs and expenses resulting from the management and administration of the FGR are for the benefit of or to be borne by the participants. The Terms and Conditions contain the investment strategy and objectives of the FGR, as well as any applicable investment restrictions.

5.3.2.3 Liability of Participants
In order to ensure that the assets and liabilities of the FGR are separated from the estate of each of the participants and of the Manager, the assets of the FGR are usually held by a separate legal entity that is appointed as the FGR’s Depositary. To prevent the commingling of assets and to minimise the risk of bankruptcy, a Depositary may not - according to the objects clause in its articles of association - engage in any activity other than acting as depositary of the FGR.

Obligations relating to the FGR are obligations of the Depositary, assumed by the Manager in the name of the Depositary. Consequently, the Depositary has unlimited liability for obligations relating to the FGR vis-à-vis third parties. Participants are not liable for such obligations vis-à-vis third parties. The Terms and Conditions provide that the participants shall only be liable vis-à-vis the Depositary for the risks and the obligations relating to the FGR for an amount such participant has contributed or agreed to contribute to the FGR.

5.3.2.4 Legal title to assets held through an FGR
Legal title to all the assets of the FGR is and will be held and any liabilities of the FGR are and will be assumed by the Manager in the name of the Depositary. Accordingly, third party creditors in respect of an FGR have a claim on the Depositary and such third party creditors may take recourse on the assets of the FGR that are held in the name of the Depositary. Creditors of the Manager or of a participant do not have recourse to the assets of the FGR held in the name of the Depositary. All creditors of the Depositary have recourse to all of the assets held in the name of the Depositary. However, given that, according to the objects clause in its articles of association, the Depositary may usually not engage in any activity other than acting as depositary of the FGR, the Depositary is unlikely to have creditors other than creditors in relation to the FGR.
5.3.2.5 Annual Accounts

FGRs are not subject to the rules on financial reporting, auditing and publication of the annual accounts that apply to limited liability companies and Coops. The Terms and Conditions, however, typically provide that such financial statements will be provided.
6 REGULATORY ASPECTS OF REAL ESTATE INVESTMENT INSTITUTIONS

6.1 Introduction

Many investments in Dutch real estate are structured through real estate funds. In most cases, a real estate fund will qualify as an investment institution (beleggingsinstelling) within the meaning of article 1:1 of the Dutch Act on financial supervision (Wet op het financieel toezicht or the AFS). The AFS sets out the rules and regulations applicable to the financial markets and their supervision, and sets out the regulatory framework with respect to investment institutions under Dutch law.

The Dutch Authority for the Financial Markets (Autoriteit Financiële Markten or AFM) and the Dutch Central Bank (De Nederlandsche Bank or DNB) are the relevant supervisory authorities with regard to the AFS; the Netherlands has a ‘twin peaks’ supervision model. Whereas DNB is the competent regulator for system and prudential matters, the AFM is the competent regulator responsible for the conduct of business supervision. In the context of real estate investment funds, the AFM is the licensing body for (managers of) investment institutions.

The rules and regulations contained in the AFS with respect to investment institutions have been amended substantially due to the implementation of the European Directive 2011/61/EU on Alternative Investment Fund Managers (the AIFMD). The AIFMD had to be implemented by the Member States of the European Union, including the Netherlands, into national law on 22 July 2013. The AIFMD creates a passport for licensed managers of investment institutions across the European Union, to the extent shares or rights of participation in an investment institution are offered to professional investors (as defined in the AFS).

The AIFMD, and the licensing and registration requirements relating to it, applies to so-called “managers” of “investment institutions”, although investment institutions can also be internally managed in which case they do not have a separate manager. If an entity does not qualify as an investment institution, in principle the AIFMD does not apply. The scope of the terms “investment institution” and “manager” are considered in more detail below.
6.2 Qualification of investment institution and manager of an investment institution

6.2.1 Qualification investment institution

An investment institution is a vehicle in which the investors participate and which holds the investment fund’s investments. In order for a vehicle to qualify as an investment institution (beleggingsinstelling) within the meaning of article 1:1 of the AFS, the vehicle has to meet the following criteria, based on article 4 sub 1(a) AIFMD:

- a collective investment institution;
- which raises capital from a number of investors;
- to invest in accordance with a specified investment policy in the interests of the investors.

The European Securities and Markets Authority (ESMA) has provided further guidance in the Guidelines on key concepts of the AIFMD dated 13 October 2013 (the Guidelines). The Guidelines provide valuable points of reference for determining whether an entity qualifies as an investment institution. A few of these points of reference are considered below.

(a) “conducting a business” versus “investing”

First of all, an entity which is conducting a business and has a “general commercial or business purpose” does not qualify as a collective investment institution and therefore not as an investment institution. An entity has a “general or commercial business purpose” if it performs a business strategy by carrying on:

(i) a commercial activity consisting of purchasing, selling and/or exchanging goods or raw materials and/or providing non-financial services; or
(ii) a business activity consisting of producing goods or developing real estate; or
(iii) a combination of these activities.

Consequently, an operating company or joint venture which has a production business or carries on a trade business does not qualify as an investment institution.

In this context, it is also important that a holding company which is the head of a group of companies does not fall within the scope of the AIFMD. A company qualifies as a holding company when it satisfies the following cumulative criteria: the company,

(i) holds shares in one or more other companies;
(ii) has the commercial purpose of implementing one or more business strategies via its subsidiaries, affiliated entities or participations in order to enhance their long-term value; and

(iii) is a company which either:
   a. acts on its own account and its shares have been admitted to trading on a regulated market in the European Union; or
   b. is not incorporated with the main objective of generating returns for its investors by disposing of its subsidiaries or affiliated entities, as evidenced by the company’s annual report or other official documents.

It is important to mention that with the implementation of the AIFMD, more entities have been brought within the scope of the definition “investment institution”.

(b) Day-to-day management rests with the manager
A feature of an investment institution is that the day-to-day control and decision-making power rests with the manager/investment institution and not with the investors. If investors have day-to-day control or decision-making power, the entity will not qualify as an investment institution. Day-to-day control or decision-making power is described in the Guidelines as a direct and permanent decision-making power over entrepreneurial matters connected with the day-to-day management of the assets of the investment institution. In order to not qualify as an investment institution, the decision-making power of the investors must clearly exceed the normal exercise of the decision-making power or control by exercising voting rights during meetings of participants about matters such as mergers or liquidation, the election of shareholders’ representatives, the appointment of directors or supervisory directors or the approval of the annual accounts.

Therefore, the fact that investors are given a say in important managerial decisions, for example via an investment committee, does not automatically imply that the vehicle will no longer qualify as an investment institution.

(c) Debt participation ≠ investment institution
Another feature of an investment institution is that the invested capital is pooled for investment purposes, with a view to generating pooled returns for the investors. In this regard, it is interesting that the AFM currently holds the position, subject to any further clarification by the European Commission and ESMA on this point, that a collective investment vehicle which only raises capital from investors in the form of debt instruments (for example by issuing real estate bonds) does not qualify as an investment institution. Consequently, if that is the case the AIFMD should not be applicable.
(d) **A number of investors**

An undertaking only qualifies as an investment institution if it raises capital from a number of investors. Although other supervisory regimes may still be relevant, a managed account set up by an asset manager for a single investor does not qualify as an investment institution. However, according to the Guidelines, one should note that if the vehicle is not (by law, its articles or (fund) documentation) prevented from raising capital from more than one investor, it should be regarded as an entity which raises capital from a number of investors. This applies even if in practice the entity only has one investor.

Also, an undertaking which is prevented from raising capital from more than one investor nevertheless qualifies as an entity that raises capital from a number of investors if the sole investor: (a) invests capital which it has raised from more than one legal or natural person; and (b) forms an organisation or structure which in total has more than one investor within the meaning of AIFMD. This means that in a ‘master-feeder’ structure, where the sole investor in the master investment institution is the feeder investment institution, the master investment institution can still qualify as an investment institution within the meaning of the AFS, despite the fact that there is only one investor.

(e) **Investment policy**

An additional requirement for a vehicle to qualify as an investment institution is that the vehicle has adopted an investment policy for the way in which the pooled capital has to be managed to generate pooled returns for the investors. Such a policy may, for example, set out the asset classes in which funds can be invested, the geographical spread of the investments, the spread across sectors, the investment strategies to be followed, etc. If the decision-making power over how the pooled capital has to be invested is completely left to the vehicle, without any restrictions or guidelines, then there will in principle be no investment policy.

Factors which may (separately or cumulatively) point towards the existence of an investment policy include the following:

- **a.** the investment policy has been determined and fixed, at the latest by the time that the investors’ commitments to the investment institution become binding;
- **b.** the investment policy is set out in a document which forms part of, or is referred to in, the rules or articles of the investment institution;
- **c.** the investment institution or the manager has a legally enforceable obligation (irrespective of the grounds) to the investors to follow the investment policy, including any changes to it.
(f) Interaction between the criteria

When making the analysis whether a vehicle qualifies as an investment institution, in line with the European Commission, ESMA has noted that appropriate consideration should be given to the interaction between the different individual concepts of the definition of an investment institution and that an entity should not be considered an investment institution unless all the elements included in the definition of article 4(1)(a) AIFMD are satisfied.

As a general rule, where there is no definition or common understanding at EU level, national definitions should be used for further specification. The AFM published a Q&A most recently on 8 September 2015, in respect of the AIFMD on its website. In this Q&A reference is made to the Guidelines in respect of questions related to the qualification as an investment institution.

An example:

Three friends have formed a plan together to buy a property. Only two of the three provide the capital and the third person carries out the management of the property, including taking decisions on sales and purchases. The third person does not seek remuneration in connection thereto and he does not manage any other funds. The question here is whether he is managing the property as part of a profession or trade. In view of the starting points in the Q&A for determining whether he is managing the property “in a professional or trading capacity”, it can be argued that this is not the case and that the AIFMD is not applicable.

6.2.2 Qualification as the manager of an investment institution

Once it has been established that an entity is an investment institution, it is important to know which entity qualifies as its manager, because that manager may need to comply with the AIFMD by having to obtain a license from, or registration with, the AFM. This is because the AIFMD regulates managers of investment institutions and not the investment institutions themselves. In this respect a distinction must be drawn between externally and internally managed investment institutions.

The manager may be either:

a. ‘external’ i.e. an external manager, which is the legal person appointed by or on behalf of the investment institution and which is responsible for managing the investment institution; or

b. ‘internal’ i.e. where the legal form of the investment institution permits internal management and where the investment institution’s governing body chooses not to appoint an external manager, the investment institution itself.
Under the AIFMD, the manager is the entity appointed by the investment institution and made responsible for carrying out the portfolio management (the actual trading in assets) and the risk management. An entity will not qualify as a manager unless it carries out both of these tasks. For completeness sake, it is noted that an investment institution can also be internally managed in which case the tasks of portfolio management and risk management are conducted by the management board of the investment institution itself.

An illustration:
A property manager engaged by a real estate fund is involved in the day-to-day operational management of the real estate (maintenance, lettings etc.). He is responsible for implementing the operational policy set by the board for the properties entrusted to him. The day-to-day operational management carried out by him includes the activities related to this. The property manager does not qualify as a manager because his activities do not consist of portfolio management and/or risk management. The property manager is therefore not required to obtain a license or registration under the AIFMD.

6.3 Exemptions from license requirement

6.3.1 General
The licensing requirement for Dutch managers not only applies to offering participation rights in investment institutions, but also to managing investment institutions in the Netherlands. In addition, the licensing requirement applies if a Dutch manager manages investment institutions which are resident, or offers participation rights, outside the Netherlands. For example, in principle a Dutch manager needs a license from the AFM if it manages an investment institution resident in Singapore, or offers participation rights in an investment institution (wherever it is resident) in France.

The AFS provides for limited exemptions to the license requirement for (i) small managers, (ii) non-EU managers and (iii) managers in a designated state, as briefly described below.

Please note that a grandfathering-rule is also applicable for managers to the extent that (i) they managed investment institutions of the closed-end type before 22 July 2013 which have not made and do not make any additional investments after 22 July 2013 and, (ii) they manage investment institutions of the closed-end type whose subscription period for investors closed prior to the entry into force of the
AIFMD (i.e. 22 July 2011) and are constituted for a period of time which expires on 22 July 2016 at the latest. Such latter manager may continue to manage such investment institutions without needing to comply with the AIFMD, except for the requirement to make annually an annual report available for each financial year no later than 6 months following the end of the financial year.

6.3.2 Small managers

The main exemption from the license requirement for Dutch managers of investment institutions is the so-called small managers’ exemption. This exemption applies in case the manager (i) stays below the relevant thresholds of total assets under management and (ii) meets certain offering restrictions, as described in more detail below. A small manager within this category must register with the AFM using a registration form made available by the AFM.

(i) Thresholds

The small manager or registration regime only applies in case the amount of the assets of the investment institutions managed by the manager does not exceed a prescribed threshold. The thresholds depend on the type of investment institution managed by the manager. If the manager solely manages investment institutions which (i) are not leveraged and (ii) do not give investors any rights to repayment within a period of five years, the threshold for the total asset values is EUR 500 million. If the manager also manages other types of investment institutions, the threshold is EUR 100 million.

For the purpose of calculating the threshold, it is necessary to take into account (inter alia) the following guidelines. First, if the manager is affiliated with one or more other managers by common management, common control or a qualifying participation, the value of the assets of the investment institutions managed by the other manager(s) must be aggregated with the value of the assets managed by the manager itself. The value of the assets of excepted investment institutions (i.e. investment institutions which do not make any additional investments after 21 July 2013) does not have to be taken into account for this purpose. The specific method of calculating the threshold is set out in the delegated Regulation (EU) No 231/2013 of 19 December 2012.

(ii) Offering restrictions

In addition to the above thresholds, pursuant to the Dutch implementing rules of the registration regime the following conditions have to be met in order to make use of the registration regime. The participation rights in the investment institution managed by the manager:

1. are offered to fewer than 150 persons; or
2. can only be acquired for a consideration of, or a nominal value of, (at least) EUR 100,000; or
3. are only offered to professional investors.

As mentioned, small managers do not fall under the license obligation. However, they do have to meet a number of ongoing requirements, such as limited reporting requirements, continuous monitoring of managed assets and the notification of new investment institutions.

The offer documentation (such as the subscription form) and marketing materials must also include an image in the manner prescribed by the AFM (the so-called "Wild West sign" (Wild West-bordje)). Specific rules apply on the size and location of the pictograph in marketing materials and types of announcements (e.g. for documents consisting of multiple pages, the pictograph must be placed on the first page of the document). An example is shown below:

6.3.3 Non-EU Managers

Non-EU managers may offer interests in the Netherlands of investment institutions or may manage Dutch investment institutions without requiring a license if they meet the conditions of the so-called third country private placement regime. To this effect, the manager has to meet the following requirements:

(i) the offer is restricted to qualified investors within the meaning of the AFS and an appropriate selling is used;
(ii) the country where the manager is located is not listed on the FATF list of non-cooperative countries;
(iii) an agreement with the AFM and the home state supervisor of the relevant manager providing for the exchange of information must be in place;
(iv) a notification is made to the AFM, prior to commencement of the offering, by filing a specific notification form with the AFM;
(v) the notification form has to be accompanied by an attestation of the home state supervisor in which it confirms that it is able to effectively comply with the cooperation agreement between that competent authority and the AFM.

If the abovementioned requirements are complied with, the relevant manager may commence its activities in the Netherlands, without obtaining a license in the Netherlands. The manager however does have to comply with certain ongoing
transparency requirements, which are related to annual reports, disclosure to investors and disclosures to the Dutch regulators.

6.3.4 Managers in a designated state
For managers of investment institutions that are established and subject to full supervision in a so-called designated state (i.e. certain states where the supervision is considered adequate), an exemption to the license requirement also applies, provided that a number of conditions have been met. The following jurisdictions constitute designated states: Guernsey, Jersey and the United States (if the investment institution is registered with the Securities and exchange Commission).

6.4 Licensing and organizational requirements

6.4.1 General
If a real estate vehicle (i) qualifies as an investment institution within the meaning of the AFS; and (ii) it or its manager does not fall within the scope of one of the exemptions from the license obligation as described above (see section 6.3 ‘Exemptions from license requirement’), the manager has to obtain a license from the AFM. The key licensing and organizational requirements for managers of investment institutions relate to, in short, the suitability and integrity, business operations, the depositary and organizational requirements such as capital requirements. To the extent the shares or rights of participation in the investment institution are offered to retail investors the manager is subject to additional licensing and organizational requirements (comparable to the licensing requirements for a UCITS manager). More detail is provided below.

6.4.2 Suitability and integrity
All persons involved in the day-to-day policymaking (dagelijks beleidbepalers) and, to the extent applicable, the members of the supervisory board or a body having a function similar to the manager must be suitable (geschikt) to carry out the activities of the manager. The suitability of a person must be demonstrated by education, professional experience and competencies and the application of these on an ongoing basis.

The integrity (betrouwbaarheid) of all persons engaging in the policy of the manager must be beyond doubt. Integrity assessments by the AFM relate to the persons that are in position to influence the long or medium term strategy of the manager (such as board members, supervisory board members and majority shareholders). The AFM must establish that the integrity of a person is beyond doubt based on this person’s intentions, acts and antecedents.
6.4.3 Business operations

Also the business operations need to meet certain requirements. The manager must have legal personality, at least two natural persons must determine the day-to-day policy of the manager and the manager’s main office must be in the Netherlands. In addition, the manager must use appropriate human and technical resources at all times to ensure the proper management of the investment institutions.

The manager must establish and maintain a permanent risk management function, which may be performed by a third party. This risk management function shall be functionally and hierarchically separate from the operating units, including the portfolio management. It must implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each investment institution’s investment strategy and to which each investment institution is or can be exposed (including appropriate stress testing procedures). The governing body of the manager and, provided it exists, the supervisory function shall review the risk management function at least once a year.

The manager must establish a permanent compliance and internal audit function, which must have sufficient expertise and must be functionally and hierarchically separate from the processes it supervises.

The manager must lay down procedures with respect to its administrative organization and internal control principles (in practice mostly done in a handbook (administratieve organisatie/interne controle: AO/IC)) which must address, inter alia:

a. reporting requirements and procedures;
b. valuation procedures;
c. procedures on calculation of the assets under management;
d. procedures on calculation of leverage;
e. procedures on conflicts of interests and personal transactions;
f. risk management procedures;
g. procedures on recording of operational failures;
h. procedures on recording of portfolio and subscription and redemption transactions to ensure that these are notified in a durable medium to investors; and
i. procedures on due diligence to ensure that investment decisions on behalf of the investment institution are carried out in compliance with the objectives, investment strategy and, where applicable, risk limits of the investment institution.
The handbook AO/IC will be examined by the AFM and, if needed, will be commented on during the procedure for obtaining a license.

6.4.4 Depositary
The manager must ensure that a single depositary is appointed for each investment institution it manages. As a general rule, the depositary has to be located (has its statutory seat or by a branch) in the home member state of the investment institution. The appointment of the depositary has to be evidenced by a written contract. Under Dutch law, a depositary has to obtain a license from the AFM in order to be permitted to act as a depositary. An exemption to the license obligation is applicable to (i) licensed banks, (ii) licensed investment firms and (iii) depositaries which act as depositary of investment institutions which are at least five years closed-end and fall within the scope of one of the following two categories:

1. investment institutions that generally do not invest in assets that have to be held in custody (e.g. real estate);
2. investment institutions that generally invest in companies having the purpose of acquiring control.

If the criteria mentioned above are complied with, the depositary does not have to obtain a license and the depositary may be an entity which carries out depositary functions as part of its professional or business activities and is subject to mandatory professional registration recognized by law or to legal or regulatory provisions or rules of professional conduct and can furnish sufficient financial and professional guarantees to be able to perform the relevant depositary functions effectively and meet the commitments inherent to those functions.

The depositary has several oversight and monitoring functions. The depositary shall in general ensure that the AIFs cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of interests of an AIF have been received and that all cash of the AIF has been transferred into cash accounts opened in the name of the AIF or in the name of the manager acting on behalf of the AIF.

6.4.5 Legal ownership
For a licensed manager of an investment institution, which is set up in the form of an investment fund (i.e. not having legal personality), an additional requirement is applicable. The legal ownership of the assets of the investment institution has to be held by a separate legal entity. Such an entity is typically a Dutch foundation (stichting).
6.4.6 Capital requirements
As described in section 6.2 ‘Qualification of investment institution and manager of an investment institution’, an investment institution may either be ‘internally’ or ‘externally’ managed. The initial capital for internally managed investment institutions must at least amount to EUR 300,000. Where an external manager is appointed, the manager must have an initial capital of at least EUR 125,000. In addition to the initial capital, where the value of the portfolios of externally managed investment institutions – all managed by the same manager – exceeds EUR 250 million, the manager must provide an additional amount of ‘own funds’ equal to 0.02% of the amount by which the value of the portfolios exceeds EUR 250 million without the sum of the required initial capital and the additional own funds exceeding EUR 10 million.

6.4.7 Professional indemnity insurance
In addition to the rules on capital requirements, the manager must either:

a. have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
b. hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered, to cover potential professional liability risks resulting from its activities performed as the manager of an investment institution. The potential liability risks to be covered are the risks of losses arising from the activities of the manager for which the manager has legal responsibility. There are two main types of such risks: (i) risks in relation to investors, products and business practices, and (ii) risks in relation to business disruption, system failures, and process management.

6.4.8 Valuation
The manager must ensure that, for each investment institution it manages, appropriate and consistent procedures are established for the proper and independent valuation of the assets of the investment institutions and that the net asset value (NAV) of the investment institutions’ assets per share or unit is calculated and disclosed to investors. The valuation may either be performed by the manager or by an independent external valuator. Valuations must be performed at least once a year.

6.4.9 Remuneration policy
In order to ensure that no wrongful incentives are given, the manager must have remuneration policies and practices that promote sound and effective risk management for those categories of staff whose professional activities have a material impact on the risk profiles of the investment institutions they manage.
These categories of staff should at least include senior management, risk takers, control functions and any employees receiving total remuneration, placing them into the same remuneration bracket as senior management and risk takers. The manager shall set up remuneration policies and practices in accordance with the principles listed in Annex II to the AIFMD, setting forth, *inter alia*, that:

a. guaranteed variable remuneration is exceptional and may only occur in the context of hiring new staff and must be limited to the first year;
b. subject to the legal structure of the investment institution, a substantial portion, and in any event 50% of any variable remuneration, consists of shares or rights of participation in the investment institutions concerned or equivalent ownership interests; and
c. a substantial portion, and in any event 40% of the variable remuneration component, is deferred over an appropriate period in view of the life cycle and redemption policy of the investment institution concerned; this period must be at least three to five years.

The compliance with these principles may take into account the appropriateness of the principles considering the size, internal organization and the nature, scope and complexity of the manager concerned.

In addition, specific Dutch remuneration rules are applicable to managers of investment institutions. On 7 February 2015, the Act on the Remuneration Policy of Financial Undertakings (*Wet beloningsbeleid financiële ondernemingen*, the Remuneration Act) entered into force. Although the Remuneration Act as a general rule introduces a cap on variable remuneration at 20% of the fixed remuneration of that person on an annual basis (the so-called “bonus-cap”), the Dutch legislator has exempted managers of alternative investment funds from the cap on variable remuneration.

The following topics are however applicable to licensed managers of investment funds:

a. the obligation to have a sound remuneration policy in place and, in certain situations, to publish a description thereof;
b. a ban on guaranteed variable remuneration;
c. a cap (and under certain circumstances a ban) on severance payments;
d. rules regarding claw back and adjustment of variable remuneration; and
e. a ban on variable remuneration in case of state assistance.
Please note that the item listed under b–e above are also applicable to managers who benefit from the small managers exemption as described in section 6.3 ‘Exemptions from license requirement’ above.

6.5 Prospectus requirements

In accordance with the European Prospectus Directive (2003/71/EC), as amended, it is not permissible to offer securities (effecten) to the public in the Netherlands or have securities admitted to trading on a regulated market situated or operating in the Netherlands, unless a prospectus has been made generally available in respect of the offer or admission which has been approved by the AFM or the competent supervisory authority of another EU Member State. Such prospectus has to meet a detailed set of EU harmonized requirements.

Real estate vehicles may be subject to this provision: (i) if they are not qualified as investment institutions but do offer Prospectus Directive securities (such as tradable shares/rights of participation or bonds) to more than one person in the Netherlands; or (ii) if they qualify as closed-end investment institutions and tradable shares/rights of participation are offered to more than one person in the Netherlands. In case of the latter, the prospectus requirements applies in addition to the license requirement as referred to above.

There are several exemptions from the prospectus requirement. The most common exemptions which are benefitted from, can be summarized as follows (and are comparable to the exemptions referred to in section 6.3 ‘Exemptions from license requirement’): an offer of shares or rights of participation in an investment institution exclusively (a) to professional investors, (b) to fewer than 150 persons or (c) at a consideration of at least EUR 100,000 per participant; and/or (d) with a counter value of at least EUR 100,000.

6.6 Other requirements

Even if the manager of an investment institution can benefit from an exemption to the prospectus requirement and the license requirement (see section 6.3 ‘Exemptions from license requirement’ above) certain requirements may still apply to such an ‘unregulated’ manager and/or the investment institution. These requirements relate for example to the marketing materials and other documents in which an offer is
announced in the Netherlands, conduct of business rules and the use of placement agents.

**Marketing materials**
From 1 January 2012, the use of certain exemptions to the prospectus requirement is subject to a mandatory exemption notification in the form of a pictograph. Specific rules apply on the size and location of the pictograph in marketing materials and types of announcements (e.g. for documents consisting of multiple pages, the pictograph must be placed on the first page of the document).

Additionally, we note that marketing documentation may not be misleading or incomplete in any event, since, if this is the case, the issuer of the information can, under certain circumstances, be held liable vis-à-vis investors.

**Conduct of business rules**
The manager and the investment institution must adopt internal regulations with regard to: (i) dealing with inside information or private transactions in financial instruments by directors and staff; and (ii) managing conflicts of interest relating to transactions in financial instruments.

**Placement agents**
Pursuant to the Dutch implementation of MiFID (2004/39/EC), it is not permissible to provide investment services in the Netherlands without having obtained a license thereto from the AFM, unless an exemption or exception applies. Investment services include, *inter alia*: (i) the receipt and transmission of orders in financial instruments; (ii) the execution of orders in financial instruments for the account of clients; and/or (iii) the provision of advice regarding financial instruments. Financial instruments include rights of participation in an investment institution. Consequently, any party distributing the shares or rights of participation in a real estate investment institution or advising investors in this respect in the Netherlands (such as a placement agent) needs to obtain a license as an investment firm. However there are several exemptions from said license requirement. For example, the manager of an investment institution is exempted from the license requirement as an investment firm regarding the sale and redemption of shares or rights of participation in the investment institution that it manages.
6.7 Final considerations

This publication sets out the legal framework for investment institutions in the Netherlands. It may not be considered extensive. In view of the anticipated changes in the financial laws and regulations in the Netherlands, we would recommend regularly ensuring you have up-to-date information about the latest developments and the implications thereof for the various segments of the financial markets.
7 TAXATION OF REAL ESTATE

7.1 Introduction

This chapter addresses the tax implications of an investment in Dutch real estate by foreign individuals and legal entities. When assessing tax implications, it is important to establish the identity of the investor. Is it a foreign individual, a foreign legal entity or a foreign form of partnership? Does it invest directly or through a Dutch entity? Chapter 7 discusses these various possibilities from a Dutch tax point of view.

This publication deals with income tax, corporate income tax, dividend tax, transfer tax, value added tax and real estate tax. Inheritance tax and gift tax are not discussed.

7.2 Corporations

7.2.1 General

The taxation of legal entities and other companies is laid down in the Dutch Corporate Income Tax Act (Wet op de vennootschapsbelasting 1969; “CITA”). In the following sections, the taxation of domestic and foreign corporations is discussed. Furthermore, attention is given to the Fiscal Investment Institution and a distinction is made between direct and indirect investments.

7.2.1.1 Taxation of domestic corporations

Corporate income tax is levied from, amongst others, public limited liability companies (naamloze vennootschap or ‘N.V.’) and private limited liability companies (besloten vennootschap or ‘B.V.’), cooperatives (coöperatie or ‘Coop’), and open limited partnerships (open commanditaire vennootschap or ‘open C.V.’).

A closed limited partnership (besloten commanditaire vennootschap or ‘closed C.V.’) is transparent for Dutch corporate income tax purposes and thus not liable to corporate income tax. A limited partnership is considered to be ‘closed’ if explicit, unanimous and unconditional prior consent is required from all partners on admission and/or on the replacement of a limited partner. Reference is made
to section 7.4 for the tax regime for partnerships and mutual funds (including the closed C.V.).

A corporation that is incorporated under Dutch law is liable to tax on its worldwide income. Corporate income in 2016 is taxed at an applicable rate of 20% over the first EUR 200,000 of a company’s taxable profit and 25% on any taxable profit exceeding EUR 200,000. For the determination of taxable profit, reference is made to section 7.5.

7.2.1.2 Taxation of foreign corporations

Corporations not established in the Netherlands are, in principle, subject to corporate income tax in the Netherlands if they derive income from a business carried on through a permanent establishment or a permanent representative in the Netherlands. Furthermore, a non-resident corporation is subject to corporate income tax in the Netherlands if it derives income from a substantial shareholding (in general, 5% or more of the issued capital) in a Dutch company provided that: (i) the entity holds the substantial shareholding with the main purpose or one of the main purposes to avoid the levy of personal income tax and/or dividend tax for another person, and (ii) there is an artificial arrangement or a series of artificial arrangements. An artificial arrangement is considered to be present to the extent the arrangement is not set up on the basis of valid business reasons reflecting economic reality.

In analogy with domestic corporations, Dutch income in 2016 is taxed at an applicable rate of 20% over the first EUR 200,000 of a company’s taxable profit and 25% on any taxable profit exceeding EUR 200,000. For the determination of taxable profit, reference is made to section 7.5.

7.2.1.3 The Fiscal Investment Institution

Upon request, N.Vs, B.Vs and mutual funds may qualify for the status of Fiscal Investment Institution (fiscale beleggingsinstelling or ‘FBI’). Under certain conditions, foreign entities that are similar to the abovementioned Dutch legal forms may also receive FBI status. This status implies that the profits of the FBI are taxed at 0% rather than the standard tax rate of 20%-25%. Profits are thus effectively not taxed at corporate level. This makes the FBI a potentially attractive investment vehicle, also for foreign investors.

Certain conditions must be met to qualify for FBI status. A distinction is made here between FBIs that are listed and FBIs that are licensed to offer participations on the Dutch market on the one hand, and FBIs that are not listed and not in possession of such licence on the other. In short, the most relevant conditions are:
- the activities of the FBI may only consist of passive investment; i.e.,
  entrepreneurial activities are not permitted. In spite of this passive
  investment
  requirement, under certain conditions, the FBI is allowed to develop or
  redevelop
  its real estate and to finance related real estate owning companies;
- debt relating to financing real estate may not exceed 60% of the tax book value
  of the real estate and debt relating to other activities may not exceed 20% of
  the other assets;
- the annual profits of the FBI must be distributed to the shareholders within eight
  months of the end of the financial year. Certain profits from dispositions and
  revaluation may be contributed to a special reserve;
- for listed/licensed FBIs: an entity liable to taxation on profits may not hold 45%
  or more of the shares in the company. Furthermore, no individual may hold 25%
  or more of the shares;
- for unlisted/unlicensed FBIs: 75% or more of the number of shares must be held
  by individuals, entities not liable to taxation on profits and/or listed or licensed
  FBIs. Furthermore, no individual may own a substantial interest of 5% or more
  of (a certain class of) the shares in the FBI; and
- 25% or more of the FBI is not held by entities resident in the Netherlands, via a
  foreign mutual fund or a foreign joint stock company.

If a company qualifies for FBI status, Dutch taxation on the result of the investment
is limited to dividend withholding tax on the profits that are distributed annually (for
the taxation of dividend distributions, reference is made to section 7.2.3.1). The
amount of dividend tax to be withheld may be reduced by an amount that relates to
the (foreign) dividend tax that has been withheld on distributions to the FBI, provided
that certain conditions are met. Of course, the taxation of dividends distributed by
the FBI in the shareholder’s state of residence should also be considered.

7.2.2 Direct investment in real estate by foreign corporations

This section addresses the taxation of direct investments in real estate by
 corporations not resident in the Netherlands. The taxation of indirect investments
in real estate is discussed in section 7.2.3.

Foreign entities that invest in Dutch real estate directly are only liable for tax on their
Dutch-source income as described in section 7.2.1.2. Due to a deeming provision,
Dutch real estate is considered to constitute a Dutch business, thus foreign entities
that hold Dutch real estate are in principle liable to corporate income tax. Net profit
as well as capital gains that are attributable to the real estate in the Netherlands is
taxed; expenses directly or closely connected to the real estate in the Netherlands
are in principle deductible from the profit. This profit is taxed at an applicable rate
of 20% over the first EUR 200,000 of a company’s taxable profit and 25% on any
taxable profit exceeding EUR 200,000 (2016 rates). For the rules that apply in order to determine the taxable profit, reference is made to section 7.5.

If the Netherlands concludes a tax treaty with a state that considers the same company a taxable company as well, an assessment should be carried out of which state has been granted the right to tax income from the immovable property. Generally, the state where the immovable property is situated is granted the right to tax. The other state, should grant a relief to avoid double taxation.

7.2.3 Indirect investment in real estate by foreign corporations

Foreign investors not wishing to invest directly in Dutch real estate may decide to do so through a Dutch legal entity. A new corporation may be incorporated to acquire real estate. Frequently, foreign investors also acquire shares in an existing legal entity which already owns real estate. The shareholders in such a Dutch legal entity may be either individuals (discussed below in section 7.3.2) or legal entities (discussed below), both with their separate tax implications.

As addressed in section 7.2.1.2, in the event a foreign legal entity, for instance a corporation, owns shares in a Dutch corporation this will, under certain circumstances, also give rise to a tax liability in the Netherlands for the income from these shares. This, however, will only be the case if (i) the interest forms a substantial interest (in general 5% or more of the issued capital), (ii) the entity holds the substantial shareholding with the main purpose or one of the main purposes to avoid the levy of personal income tax and/or dividend tax for another person, and (iii) there is an artificial arrangement or a series of artificial arrangements. An artificial arrangement is considered to be present to the extent the arrangement is not set up on the basis of valid business reasons reflecting economic reality.In that case, according to Dutch national tax legislation, dividends and capital gains are taxed at the normal rates (20% - 25%). Based on applicable tax treaties or directives, the right to tax such dividends and capital gains by the Netherlands may be limited.

7.2.3.1 Dividend tax

Dividends paid by a Dutch company, except for dividends paid by Coops (see below), are in principle subject to 15% dividend withholding tax (dividendbelasting). The distributing company is obliged to file a dividend withholding tax return, to withhold this tax and remit it to the Dutch tax authorities. Non-resident corporations receiving dividends from the Netherlands will often be eligible for a reduction or exemption of dividend withholding tax if a tax treaty or the EU Parent-Subsidiary Directive (see below) applies. To the extent the recipient is subject to corporate
income tax in its state of residence, it may be able to credit the dividend tax that is withheld.

Dividend withholding tax can also be due if a company repurchases its own shares and the repurchase price exceeds the average paid-up capital of those shares. Reimbursement of paid-up share capital and share premium following a formal reduction of the nominal value of the shares is under conditions not subject to dividend withholding tax. Liquidation distributions, insofar as they exceed the amount of fiscally recognised capital, are also subject to dividend withholding tax.

**Dividend tax and Coops**

Dutch Coops are in principle not subject to Dutch dividend tax. However, under certain abusive situations, distributions made by a Dutch Coop are subject to dividend tax. This is the case if the following criteria are met:

(i) The Coop holds shares, directly or indirectly, with the main purpose or one of the main purposes to avoid the levy of Dutch dividend tax or foreign tax at another level;

(ii) It does so, as part of a construction which has not been set up on the basis of business reasons which reflect the economic reality (and is therefore considered artificial).

On 27 May 2016, the Dutch State Secretary of Finance announced a proposal to end the difference in dividend tax treatment between Coops and NV/BVs for (particularly) international holding structures. More details on the proposal will be announced on the opening-day of Dutch parliament (Prinsjesdag) in September. The new rules should enter into force from 1 January 2018 (at the latest). As the announcement is very short and unclear, it is at this point still uncertain what the proposal will eventually entail.

**EU Parent Subsidiary Directive**

The implementation of the EU Parent Subsidiary Directive in Dutch tax law provides for an exemption of withholding tax on dividends paid to a qualifying EU parent company. Generally, the exemption applies if, at the time of the dividend distribution, the EU parent company holds an interest in the distributing company that would have qualified for application of the participation exemption if that parent had been a Dutch tax resident (i.e. from a minimum interest of 5%; see section 7.2.3.2 below).

Since 27 January 2015, the EU Parent Subsidiary Directive contains a mandatory general anti-abuse rule (the ‘GAAR’). The GAAR requires Member States to refrain from granting the benefits of the Directive (withholding exemptions) if (one of) the
main purpose(s) of an arrangement is to obtain a tax advantage that would defeat the object or purpose of the Directive and such arrangement is not “genuine”. An arrangement is not “genuine” if it lacks economic reality.

With effect of 1 January 2016, the GAAR of the Parent-Subsidiary Directive was implemented in Dutch Corporate Income Tax Act. As a result, non-resident substantial shareholders of Dutch companies may be subject to Dutch CIT on the dividend income from their Dutch subsidiary (see section 7.2.1.2 above).

### 7.2.3.2 Holding companies

Due to the extensive tax treaty network and attractive participation exemption regulations, corporations resident in the Netherlands are often used as holding companies. Dutch real estate companies are often held via Dutch holding companies (such as the B.V. and the Coop) as this may provide for extra flexibility. For example, dividends and capital gains realized in connection with the shares in the Dutch real estate company may be exempt (under conditions) from corporate income tax under application of the participation exemption. The Coop could be a good alternative for the B.V. since it is, in general, not liable to dividend withholding tax (reference is made to section 7.2.3.1.). The Coop is normally subject to corporate income tax and therefore eligible for tax treaty benefits. In addition, Dutch corporate investors or foreign corporate investors with a Dutch permanent establishment may apply the Dutch participation exemption to their membership in the Coop (see below). The Coop may also serve as the parent company of a fiscal unity (see below in this section).

**Participation exemption**

Under the participation exemption, dividends, other profit distributions, currency gains and capital gains derived from the qualifying participation are exempt from corporate income tax and losses are non-deductible. The participation exemption applies if a company that is resident in the Netherlands (or a non-resident company with a permanent establishment in the Netherlands) has a participation of at least 5% of the nominal paid-up share capital in an active corporation or has an interest of 5% in an open C.V. or mutual fund (reference is made to sections 7.4.2 and 7.4.3, respectively) or has a membership in a Coop. However, it should be noted that there are more types of participations on which the participation exemption may apply. Furthermore, to qualify for the participation exemption, participations should generally be held for business reasons and not as mere portfolio investments. According to a deeming provision, a participation in a company of which the assets, directly or indirectly, consist for more than 50% of real estate, is considered not to be a portfolio investment and the participation exemption should apply.
If the participation exemption does not apply because the participation is held as a mere portfolio investment, a credit facility is available with respect to underlying taxes. Generally, the underlying tax rate is determined at 5%. Neither the participation exemption nor the credit facility applies to investments in a Fiscal Investment Institution (fiscale beleggingsinstelling, see section 7.2.1.3).

**Fiscal Unity (fiscale eenheid)**

Profits and losses of a parent company can be consolidated with the profits and losses of one or more of its subsidiaries if these companies form one tax group (fiscal unity). A fiscal unity can be formed on the request of the companies involved. Transactions between the companies within the fiscal unity are ignored for Dutch corporate income tax purposes. However, the law provides for claw back regulations if hidden reserves are transferred within the fiscal unity, followed by an exit within (in principle) six years of either the transferor or transferee out of the fiscal unity.

To form a fiscal unity, the parent company is required to have full ownership (including the attached voting rights) of at least 95% of all shares of all share classes in the subsidiary. This ownership must represent at least 95% of statutory voting rights and, under all circumstances, must grant the right to receive at least 95% of the subsidiaries’ profit and at least 95% of the subsidiaries’ capital. Both companies must have their place of effective management in the Netherlands. Furthermore, the companies must have the same fiscal year and profits must be calculated according to the same tax regulations.

Since 2016 the law allows for (i) the formation of a fiscal unity between a Dutch parent company and a Dutch second-tier subsidiary held via one or more EU/EEA intermediate subsidiaries, and (ii) the formation of a fiscal unity between Dutch subsidiaries held, directly or indirectly, via EU/EEA intermediate subsidiaries, by an EU/EEA parent company.

During the existence of a fiscal unity, the companies involved must observe certain conditions that are laid down in law. The fiscal unity can be terminated upon request, or will be terminated automatically if any of the conditions is no longer met. Under certain additional conditions, a non-resident company that carries on a business through a permanent establishment in the Netherlands can be included in a fiscal unity to the extent that the profits derived from that permanent establishment are taxable in the Netherlands.
7.3 Individuals

7.3.1 General
The taxation of individuals in the Netherlands is laid down in the Dutch Income Tax Act (Wet op de inkomstenbelasting 2001; “ITA”). In the following sections the taxation of domestic and foreign individuals is discussed and a distinction is made between direct and indirect investments.

7.3.1.1 Taxation of domestic individuals
Individuals resident in the Netherlands are in principle taxed on their worldwide income. The income of an individual is attributed to three different tax boxes, each with their associated income elements. The main feature of this box system is that income in each box is determined and taxed separately. Income cannot be set off between the boxes, i.e. losses of one box can, in principle, not be set off against positive income from another box.

7.3.1.2 Taxation of foreign individuals
Individuals who are not a resident in the Netherlands will, in principle, only become subject to Dutch income tax, if and to the extent they perform labour or invest capital in the Netherlands. Certain tax deductions are only available to residents. However, residents of the EU, European Economic Area, Switzerland, or the islands Bonaire, Sint-Eustatius and Saba, whose income (at least 90% thereof) is subject to income tax or wage tax in the Netherlands, have access to the same tax deductions and tax credits as residents of the Netherlands. Like domestic individuals, the income of a foreign individual is attributed to three different tax boxes, each with their associated income elements as described hereinafter.

Box I
In box I, individuals are taxed, amongst others, on profit from a Dutch business (permanent establishment), income from employment performed in the Netherlands and results from other activities in the Netherlands (resultaat uit overige werkzaamheden). The taxable income in box I is taxed at progressive rates. In principle, Dutch social security contributions are also payable on the income in box I. However, individuals not resident in the Netherlands are often not subject to such contributions. The progressive tax rates in box I for the year 2016 are as follows:

<table>
<thead>
<tr>
<th>Taxable income box I</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st bracket up to EUR 19,922</td>
<td>8.40%</td>
</tr>
<tr>
<td>2nd bracket between EUR 19,923 - EUR 33,715</td>
<td>12.25%</td>
</tr>
<tr>
<td>3rd bracket between EUR 33,716 - EUR 66,421</td>
<td>40.40%</td>
</tr>
<tr>
<td>4th bracket above EUR 66,421</td>
<td>52%</td>
</tr>
</tbody>
</table>
**Box II**

In box II, income from substantial shareholdings (*aanmerkelijk belang*) is taxed at a fixed rate of 25%. Income from substantial shareholdings comprises regular benefits (such as dividends) and alienation benefits (such as capital gains on a disposal). In general, an individual has a substantial shareholding if he or she, either alone or together with his or her partner, holds directly or indirectly at least 5% of the issued capital of a company, or 5% of a particular class of shares. Individuals not resident in the Netherlands are liable to tax in box II only if they have a substantial shareholding in a company resident in the Netherlands.

**Box III**

In box III, the income from savings and investments is taxed. For individuals not resident in the Netherlands, taxes in box III are, amongst others, payable on passive investments in real estate located in the Netherlands. Income in box III is taxed at a rate of 30% over a 4% deemed annual return on the net asset value of the savings and investments measured on 1 January of the relevant tax year. Based on Dutch domestic tax law, non-resident individuals could not claim the tax free allowance. However, following a decision of the Dutch Supreme Court on 4 March 2016 (and preceding decisions by the European Court of Justice) the Dutch State Secretary for Finance decided on 25 April 2016 that non-resident individuals can claim the tax free allowance of EUR 24,437 (2016; amount is indexed annually). This means that an investment by an individual that is taxed in box III with a net asset value of EUR 24,437 on 1 January 2016, is effectively not taxed in 2016 in the Netherlands. The allowance can be claimed for tax years for which the tax assessment has not been issued or for which it is possible to lodge an objection.

As of 1 January 2017 the deemed annual return will be (progressively) calculated on the basis of the following table:

<table>
<thead>
<tr>
<th>Net asset value box III</th>
<th>Deemed annual return</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st bracket up to EUR 100,000</td>
<td>2.9%</td>
</tr>
<tr>
<td>2nd bracket between EUR 100,000 and EUR 1,000,000</td>
<td>4.7%</td>
</tr>
<tr>
<td>3rd bracket above EUR 1,000,000</td>
<td>5.5%</td>
</tr>
</tbody>
</table>

**7.3.2 Direct investment in real estate by individuals**

This section addresses the taxation of direct investments in real estate by individuals not resident in the Netherlands. The taxation of indirect investments in real estate is discussed in section 7.3.3.
The liability to Dutch tax for individuals not resident in the Netherlands is limited, but includes income from Dutch real estate. Where the Netherlands has entered into a tax treaty with the state of residence of the taxpayer, the right to tax income from real estate is generally attributed to the state in which the real estate is located. In general, the state of residence of the individual should grant a relief for income from real estate situated in the Netherlands to avoid double taxation.

Dutch real estate directly owned by individuals can either be taxed in box I or box III. Based on the statutory order of precedence, box I comes before box III. This means that if income from real estate is taxed in box I, this income will not be taxed in box III.

*Taxation in box I*

If the real estate is taxed in box I, both the (annual) operating income from the real estate as well as realised capital gains from the disposal are taxed at the applicable progressive rates (reference is made to section 7.3.1.2). Income from Dutch real estate is taxed in box I in the following two cases.

A Profit from a business

Profits realised from real estate owned by an individual not resident in the Netherlands is taxed in box I if the real estate can be attributed to a Dutch business owned by the individual. Based on jurisprudence of the Dutch Supreme Court, a business can be defined as a sustainable organisation of capital and labour which participates in the economic process with the intention of making a profit. Case law indicates that there is a business operation if an individual strives by the application of its own labour, capacities and relationships, to realise returns that are higher than those to be achieved through passive investment. This is the subject of a factual analysis whereby the risk profile of the individual (e.g. the level of debt financing, developer’s risks) is also considered relevant.

Naturally, real estate used by the individual/entrepreneur in its Dutch operational business belongs to the business assets in box I. An example would be a factory building used by a manufacturing business operated in the Netherlands. Specific regulations apply to the determination of profits from income from real estate, several aspects of which are dealt with in section 7.5.

B Result from other activities

If real estate is not part of a business as described above (under A), income derived from real estate may still be taxed in box I as ‘result from other activities’. There can be a result from other activities if labour is provided (which may be limited in scope) and the individual aims to realise a benefit that is also foreseeable. Unlike
the operation of a business, a continuous basis of the activity is not required, i.e. incidental benefits may be subject to tax. The result from real estate may be taxed in box I in the following situations:

- special knowledge or similar kinds of knowledge of the taxpayer result in a taxable profit. For example, real estate that is purchased for a relatively low price, due to the availability of certain experience, expertise and relationships that results in a profit on subsequent alienation of the real estate. It should be noted that profits from pure speculation do not come under the result from other activities;
- a greater degree of labour is provided that exceeds normal, passive, asset management. For example, the purchase of a plot of land, preparation of the site for construction and the sale of the land in separate plots. Splitting up real estate into apartment rights can, under certain circumstances, also generate a result from other activities. Furthermore, under certain circumstances, the labour of other persons can also be attributable to the labour of the individual, for example, the activities of an architect or a contractor.

In addition, real estate is deemed to be part of the regime of result from other activities in specific situations. This relates, for example, to individuals that lease or let real estate to a corporation in which they or related persons have a substantial interest or to a business of a related person.

Specific regulations apply to the determination of the result from other activities, which are largely the same as those applying to profit from the operation of a business. Reference is made to section 7.5.

**Taxation in box III**

If income from Dutch real estate is not taxed in box I, it is subject to tax in box III. In box III, not the actual return realised from real estate is taxed, but a deemed return of 4% on a net asset value, thereby taking into account the tax free allowance of EUR 24,437 (2016). This deemed return, that is taxed at a rate of 30%, covers net income as well as capital gains. From 1 January 2017 onwards, the deemed return in box III is calculated on the basis of progressive rates (reference is made to section 7.3.1.2).

### 7.3.3 Indirect investment in real estate by individuals

Foreign investors not wishing to invest directly in Dutch real estate may also do so through a Dutch legal entity. A new corporation may be incorporated to acquire real estate. Frequently, foreign investors also acquire shares in an existing legal entity, which already owns real estate.
For investments in real estate made by individuals via a Dutch corporation, a distinction has to be made between individuals owning at least 5% of the issued share capital of the corporation (taxed in box II) and individuals who own less than 5% of the issued share capital (in principle not taxed in the Netherlands). In both situations, the profit of the Dutch real estate corporation is, in principle, taxed in the manner described in section 7.2.3., moreover the dividends distributed by this Dutch corporation are, in principle, subject to a 15% dividend withholding tax. Under the application of tax treaties or (European) directives, the dividend withholding tax rate may be reduced to 0% (see section 7.2.3.1).

**Taxation in box II**

Individuals owning at least 5% of the issued capital have a substantial interest. The taxable income from a substantial interest is taxed in box II at a rate of 25%. Taxable income includes dividends distributed by the corporation and capital gains realised on the alienation of the substantial interest shares. In most cases, pursuant to double taxation treaties, the Netherlands will only be able to tax dividends and not capital gains. However, some tax treaties allow the Netherlands to tax capital gains on the alienation of shares if the underlying assets consist (primarily) of real estate. Taxation of dividends is normally limited to the levy of dividend tax, for which the rate based on such treaties varies between 0% and 15%.

### 7.4 Partnerships and mutual funds

The various forms of partnerships are discussed in chapter 5. The parties to a partnership may be individuals, legal entities and (other) forms of cooperation. The limited partnership (*commanditaire vennootschap* or ‘C.V.’) is a commonly used Dutch contractual form of partnership. It offers limited liability to limited partners, possibly in combination with tax transparency of the CV, provided that the C.V. is regarded as “closed” (see 7.4.1. below) for Dutch tax purposes. Tax transparency means that the partnership as such is not subject to corporate income tax, but the assets, liabilities and income of the partnership are allocated to the partners on a pro rata basis. The partners may become subject to income tax or corporate income tax. Just as the closed C.V., partnership forms such as the civil partnership and the general partnership are generally considered to be tax transparent. The tax treatment of the civil partnership and the general partnership and their partners is therefore similar to the tax treatment of the closed C.V. and its partners.
The following sections consider the various possibilities for tax treatment of a C.V. and its partners. Firstly, it is important to determine whether the C.V. is open or closed.

### 7.4.1 Closed C.Vs

A closed C.V. is not subject to tax itself, as it is tax transparent. The partners (limited and managing) are themselves liable for tax. The State Secretary of Finance has provided guidance in a decree in respect of the requirements subject to which a C.V. can be considered tax transparent. A C.V. is considered tax transparent when the admission and replacement of limited partners (not including cases of inheritance or legacy) are subject to the prior written consent of all partners (including the managing partner). If a partner has not responded within four weeks of the request, consent is deemed to been given.

It has to be assessed whether a C.V. conducts a business enterprise for tax purposes in the Netherlands. If so, the income of the (limited) partners/individuals is taxed in box I. The partners are considered to derive profits from a business. This also applies to (limited) partners/individuals not resident in the Netherlands (see also section 7.3.2). If the C.V. does not conduct a business enterprise for tax purposes, (limited) partners/individuals are generally taxed in box III. This also applies to (limited) partners/individuals not resident in the Netherlands, if and to the extent the C.V. owns assets from which the income is taxed in the Netherlands. Both corporations established in the Netherlands and foreign corporations that participate in a closed C.V. owning Dutch real estate will, in principle, be liable to corporate income tax in the Netherlands in proportion to their participation (reference is made to section 7.2.2).

### 7.4.2 Open C.Vs

A C.V. is “open” if the admission or replacement of limited partners is possible without the consent of all partners. The State Secretary of Finance takes the position that a C.V. is only “closed” if the mutual prior consent of all partners (i.e. all general and limited partners) is required for the admission or replacement of limited partners.

An open C.V. is subject to corporate income tax (for that part of its profits that is attributed to the limited partners). Its taxable profits are calculated in the same manner as those of the corporations discussed above. The participations of the limited partners are treated as shares. If a limited partner/individual is entitled to at least 5% of the profits, it owns a substantial interest, which is treated in the same way as a substantial interest in a corporation. In the event of distribution of profits, dividend tax must be withheld by an open C.V. The rate of dividend tax is 15%. Distributions of profit to a limited partner/legal entity not resident in the Netherlands
will also be subject to the withholding of 15% dividend tax by the open C.V. Dividend tax may be reduced on the basis of tax treaties and/or on the basis of the EU Parent-Subsidiary Directive, which includes open C.V.s. (see section 7.2.3.1)

7.4.3 Mutual funds

Like open C.V.s, mutual funds (fonds voor gemene rekening or ‘FGR’) are subject to corporate income tax. As discussed in Chapter 5, investment institutions can, in general, be divided into investment companies and investment funds. An investment fund has no legal personality; it is a pool of assets managed and held in custody on behalf of the collective participation by third parties. For tax purposes, it is important to distinguish between open investments funds or mutual funds on the one hand and closed investment funds on the other.

The Corporate Income Tax Act 1969 contains a definition of an FGR, in which the most important elements are:

- the purpose of the fund is to realise benefits for those holding rights of participation by the investment of monies for their collective account;
- the rights of participation must be evidenced by transferable certificates of such rights; and
- these certificates are, in general, considered transferable if they can be sold without the permission of all those holding rights of participation.

In the view of the State Secretary of Finance, transferability, and thus an FGR, exists if the consent of only one of the holders of rights to participation does not have to be obtained (similar to the open C.V.). For the purpose of box II (substantial interest), certificates of rights of participation in an FGR are treated as shares. If a holder of rights of participation owns at least 5% of the fund’s certificates in circulation, there is a substantial interest. The fund’s distribution of profits is subject to dividend tax. The rate of dividend tax is 15%, but can be reduced based on tax treaties and/or on the basis of the EU Parent-Subsidiary Directive, which includes FGRs. (See section 7.2.3.1)

A closed investment fund is transparent for tax purposes. This means that no tax on profits is levied at the level of the fund; tax is levied on the participants. The State Secretary of Finance has provided guidance in a Decree with respect to the requirements subject to which an FGR can be considered tax transparent. This can be the case if the disposal of participations is subject to the prior written consent of all participants. If a participant has not responded within four weeks of the request, he or she is deemed to have given his or her consent.
An investment fund can also be considered closed (i.e. tax transparent) if participations can only be transferred to the investment fund itself or to direct relatives. In that case, prior consent is not required.

In general, a closed investment fund does not operate a business, it only invests. The value of the rights of participation in a closed investment fund held by individuals/non-entrepreneurs is thus taxed in box III. As a consequence, the returns on the rights of participation are fixed at a deemed return of 4% of the value of the pro rata part of the underlying assets, less the pro rata part of the value of the underlying debts relating to that real estate as well as debts taken up to finance the acquisition of the participation. As described in section 7.3.1.2, from 1 January 2017, the deemed return in box III is calculated on the basis of progressive rates. The deemed return is taxed at a rate of 30%. In a closed investment fund that exploits real estate, foreign individuals and non-entrepreneurs are also taxed in box III.

Corporations owning rights of participation in a closed investment fund include the results of the closed investment fund directly in their tax returns. If the corporation is established in the Netherlands, profits are taxed at the rate of 25% corporate income tax (20% for the first EUR 200,000 of taxable profit) and any negative result is deducted from the profit realised from other taxable activities in the Netherlands. Foreign corporations holding rights of participation are also liable for Dutch corporate income tax at the rate of 20%-25% on their annual income and on realised capital gains, insofar as these concern results from real estate located in the Netherlands.

7.4.4 Direct investment in real estate by partnerships

Under current Dutch law, Dutch forms of cooperation cannot independently acquire real estate, since these partnerships do not have a legal personality (see section 5.1). It is however possible that the exploitation of real estate is for the risk and account of such a partnership. To determine the tax implications, whether or not the partnership is subject to tax must first be assessed. In the assessment of tax liability, foreign forms of collaboration which are comparable to the Dutch C.V. are subject to the same criteria as those used for Dutch C.V.s. If the partnership is not subject to tax itself, the legal form of the partners has to be considered for the tax implications of the real estate investment. If the partners are corporations, the contents of section 7.2.2 apply by analogy. If the partners are individuals, the provisions of section 7.3.2 apply by analogy. If the partnership is subject to tax itself, it is generally taxed in the same way as foreign corporations as described in section 7.2.3.
7.5 Profit determination

If real estate is owned by an individual and taxed in box I (i.e. business profits or results from other activities) or that belongs to the assets of a corporation, all income, net operating income as well as capital gains, realized during the existence of the business (or the corporation) is part of taxable profits. The attribution of annual profits is determined by means of sound business practice (goed koopmansgebruik). Briefly, this system implies certain economic principles (like the realization principle, the caution principle and the matching principle) are applied to allocate income and expense items to the relevant year. Hereafter, some specific items will be discussed, namely financing, depreciation and the possibility of postponing taxation by creating a reinvestment reserve.

7.5.1 Financing

In principle, interest on loans attributable to investments in Dutch real estate is tax deductible. The Netherlands do not apply general thin capitalisation of earnings strippings rules. However, CITA stipulate various interest deduction limitations that should be regarded as only applying to corporations, i.e. not on individuals. The three main rules are briefly discussed below.

First of all, section 10a of the CITA disallows the deduction of interest on loans from related parties taken up in connection with certain ‘tainted’ transactions. Under article 10a CITA, any interest expense incurred in connection with a loan obtained (legally or in substance, directly or indirectly) from a related entity will not be tax deductible if and to the extent such loan has been obtained in connection with one of the following tainted transactions (however, certain exemptions may apply):

- a distribution of profits or a repayment of share capital by the taxpayer, or a related entity that is subject to Dutch corporate income tax, to a related person;
- a capital contribution by the taxpayer, or a related entity that is subject to Dutch corporate income tax, to a related entity; and
- an acquisition of or an increase in interest by the taxpayer, or a related entity that is subject to Dutch corporate income tax, of an entity that, after such acquisition or increase, is to be considered as an entity related to the taxpayer.

Secondly, section 13l of the CITA revokes tax deductibility insofar the taxpayer’s financing costs are deemed excessive according to a mathematical approach (rather than a true historic approach).
As a third set of rules, a limitation applies to acquisitions of subsidiaries that are financed by so-called excessive acquisition debt and were included in the fiscal unity with the acquirer on or after 15 November 2011.

7.5.2 Depreciation

Based on sound business practice, the potential depreciation is the difference between the acquisition costs and the expected residual value. In the case of buildings, the residual value is, in practice, often set at nil. Furthermore, no depreciation may be applied to land. The potential depreciation is in general applied in a linear fashion over the expected economic life of the real estate.

However, ordinary depreciation is only possible insofar as the tax book value of the property is not below a certain minimum value. This minimum value relates to the WOZ value of the relevant property. The WOZ value is determined by the municipalities annually on the basis of the Property Valuation Act (Wet waardering onroerende zaken or ‘WOZ’) and serves as a basis for certain municipal taxes (reference is made to section 7.8). With respect to properties leased to third parties, depreciation is limited to this WOZ value. Properties used within an individual’s own enterprise can be depreciated by up to 50% of the WOZ value.

Under specific circumstances, extraordinary depreciation is still possible below the minimal value.

7.5.3 Reinvestment reserve

Under certain conditions, it is possible to add the capital gains from the sale of real estate to a reinvestment reserve. This postpones paying tax on the gain and reduces the (depreciable) book value of the real estate in which a qualifying reinvestment is made. With respect to the situation where, within a fiscal unity, a reinvestment reserve is used in relation to the acquisition of real estate by a company (Company A) other than the company that originally sold the real estate (Company B), the CIITA deems that Company B has acquired the real estate using the reinvestment reserve and directly transferred it to Company A. Should either Company A or B exit the fiscal unity within six years, the hidden reserve created by using the reinvestment reserve would then be covered by the claw-back provisions discussed in section 7.2.3.2.

7.6 Transfer tax

The acquisition of real estate located in the Netherlands (or the rights to which such real estate is subject) is, in principle, subject to 6% transfer tax; a reduced rate
of 2% applies to the acquisition of residential real estate. Transfer tax is payable by the acquirer on the acquisition of either the legal ownership or the economic ownership.

Transfer tax is, in principle, also payable on the acquisition of a substantial interest (legal or economic) in a real estate corporation. A real estate corporation is a corporation that meets the following criteria:

- 50% or more of the assets consist of real estate (including real estate outside the Netherlands); and
- at least 30% of the assets consist of real estate in the Netherlands; and
- the real estate is held as an investment and/or with the purpose to exploit the real estate as such (i.e. the real estate is not a regular business asset such as a hotel building in a hotel business).

The abovementioned criteria contain a one year reference period. If the criteria were met at any time in the year preceding the acquisition but not at the time of the acquisition itself, the acquisition will be treated as the acquisition of shares in a real estate company.

An acquisition of shares in a real estate corporation generally only becomes subject to transfer tax if the acquirer, together with its family members or affiliated legal entities, acquires a 33.3% interest or more in a corporation or adds to such an interest.

If a corporation does not qualify as a real estate company, the acquisition of shares in such corporation is not subject to real estate transfer tax (i.e. also if an interest of more than 33.3% is acquired).

The above only applies to the acquisition of shares in corporations (i.e. entities that have legal personality). The acquisition of partnership interests in for instance a Dutch partnership (which is not a legal person according to Dutch law) holding an interest in Dutch real estate, is in principle always subject to real estate transfer tax (unless an exemption applies). However, a special exception applies to this rule for certain mutual funds. If certain conditions are met it is possible to acquire an interest in such fund without real estate transfer tax becoming due, provided that this interest is less than 33.3%.

The law contains a number of exemptions. An exemption of real estate transfer tax for instance applies to reorganisations within a group, various types of mergers and acquisitions by official government bodies. There is also an exemption from transfer tax if transfer tax and value added tax become due in the same transaction.
This exemption can, generally speaking, apply to newly build real estate if certain conditions are met.

In the event of acquisition of real estate within the six months following the previous acquisition, the second transaction is effectively exempt from transfer tax up to the extent transfer tax was levied on the first acquisition. Until 1 January 2015, the six month period was temporarily extended to a period of 36 months. It is not unusual for the first acquirer to stipulate that he reserves this benefit, which is technically for account of the second acquirer. In such situations the purchase price due by the second acquirer is then typically increased with the real estate saving of the second acquirer.

Transfer tax is levied on either the consideration paid, or the economic value of the real estate, whichever is higher. Transfer tax is due by the acquirer of the real estate, and he is principally liable for it.

7.7 Value added tax

The supply of goods and services made by taxable persons in the Netherlands are, in general, subject to Value Added Tax (omzetbelasting or BTW: VAT). The general VAT rate is 21%. A reduced rate of 6% is applicable to certain goods and services. A taxable person rendering VAT taxable supplies of goods or services must be registered with the Dutch Tax Authorities. Subsequently, a VAT identification number will be granted. In principle, a taxable person can deduct all VAT on goods and services charged to him or her (‘input VAT’) on a euro-for-euro basis; provided that the goods and services are used for activities that are subject to VAT.

7.7.1 Transfer of real estate

The supply of real estate and rights to which the real estate is subject are exempt from VAT. An exception is made for the supply of a building (or parts thereof) and the land belonging to it, before, on or within two years after the moment of first use, as well as the supply of qualifying building sites.

If the supply of real estate is VAT exempt, there is a possibility to opt for the supply to be subject to VAT. Such an option is only possible if the buyer declares that the real estate is to be used for activities for which at least 90% (in exceptional cases 70%) of all input VAT can be deducted. In general, parties will make use of this option if the seller of the real estate has purchased the real estate within ten years prior to the current supply and VAT was due on its purchase. For VAT purposes, real estate is ‘tracked’ for nine years following the year of first use, these nine years
are generally referred to as the so-called ‘revision-period’. If a seller supplies real estate within the revision period and the supply is VAT exempt, the seller is held to repay (part of) the input VAT which was previously deducted on occasion of the purchase of the real estate to the Dutch tax authorities. To avoid this so-called revision VAT becoming due, the seller and buyer can jointly opt for a VAT taxable supply of the real estate.

If the real estate is part of a totality of assets (also known as a ‘transfer of a going concern’ or ‘TOGC’) that is transferred, such transfer is not considered a taxable event for VAT purposes. This means that the revision-period continues in the hands of the purchaser, i.e. it does not recommence. In that case, the transferor should notify the purchaser of the amount of input VAT relating to the preceding purchase of that real property, since the purchaser may at some point be confronted with revision VAT with respect to the remaining revision period.

Like for transfer tax purposes, the supply of the economic ownership of real estate can also constitute a supply for VAT purposes.

7.7.2 Lease of real estate

In principle, leasing of real estate is a VAT exempt activity. That means that the owner does not charge VAT on the lease payments, and therefore cannot deduct the input VAT on investment and maintenance costs of the real estate or the input VAT for the purchase of the real estate.

However, owner and tenant can, subject to certain conditions, collectively opt for lease subject to VAT. To be able to opt for a VAT-taxed lease, the tenant should be entitled to deduct VAT on costs for at least 90%. Additionally, the option for VAT-taxed lease should be implemented correctly. As a result of the option, the owner can deduct all the input VAT on investment and maintenance costs or the VAT on the real estate for which a VAT taxed lease applies.

7.7.3 Example of deduction of input VAT and the revision period

A buyer purchases real estate on 1 January 2011 subject to 21% VAT. The financial year of the buyer is equal to the calendar year. The buyer intends to lease the real estate out subject to VAT (parties opt for a VAT-taxed lease). Therefore, the buyer is entitled to deduct all input VAT on the purchase of the real estate. As of 1 January 2016, the buyer leases the real estate exempt from VAT (i.e. without opting for a VAT taxable lease). From that time on, the buyer must annually repay one tenth of the initially deducted input VAT to the tax authorities for as long as the revision period lasts. This means that for each year the real estate is leased VAT exempt, one tenth of the initially deducted input VAT must be repaid to the Tax
Authorities at the end of the financial year. The revision period in this example ends on 31 December 2020.

This revision of input VAT can also occur if real estate is transferred without opting for a transfer subject to VAT. If, for instance, the real estate is supplied after five years whereby parties did not opt for a VAT taxed transfer, the seller must repay five-tenth of the initially deducted input VAT to the Tax Authorities at once, as the seller is fictitiously considered to use the real estate for VAT exempt use for the remainder of the VAT revision period. If, however, parties have opted for a transfer subject to VAT, no revision VAT has to be repaid. The real estate is then considered as being used for activities subject to VAT for the remainder of the VAT revision period.

7.7.4 Concurrence of VAT and transfer tax
Transfer tax is payable on the acquisition of either the economic ownership or the legal ownership of real estate. An exemption from transfer tax does, however, apply to a transfer of real estate that is subject to VAT by virtue of law, if the buyer cannot deduct the input VAT (at all) or the real estate has not been taken into use (or if the moment of first use or the commencement date of the lease agreement (whichever happened first) took place within the last 6 months.

7.8 Real estate tax
Municipalities in the Netherlands levy an annual tax on the properties within their area. A levy ‘real estate tax’ (onroerende zaak belasting: or ‘OZB’) is generally imposed on both owners and users of real estate, except for residential real estate where only the owner receives an assessment. The rate of OZB varies between municipalities and is based on the WOZ value of the real estate. Municipalities determine the WOZ value annually.

7.9 Landlord levy
The Landlord levy taxes professional landlords (those who rent out over 10 houses are deemed ‘professional’ landlords) for the purposes of the Valuation of Immovable Property Act, on the value of rented houses with a rent that does not exceed the rent-control ceiling. In 2016, the rent-control ceiling amounted to € 710,68.
Annex 1  KNB Model contract of sale

BKO91H  Version 1/2/2013

CONTRACT OF SALE AND PURCHASE

([address])

seller’s real estate agent:  
buyer’s real estate agent:  

The undersigned:

1.  

telephone number:  
fax number:  
e-mail address:  

together referred to below as: the Seller;

2.  

telephone number:  
fax number:  
e-mail address:  

together referred to below as: the Buyer;

have agreed that:

the Seller will sell to the Buyer and the Buyer will buy from the Seller:

(a)  

together referred to below as: the Property;

(b)  the movable(s) referred to in Article 14 that are in or on the Property,
The purchase price of the Property is:
EUR ● (●).
●The purchase price of the movables referred to at (b) is:
EUR ● (●).
●The total purchase price is therefore:
EUR ● (●).

DEFINITIONS

In this contract of sale and purchase the following definitions apply:

1. Sale and Purchase:
the agreement of sale and purchase contained in this contract of sale and purchase;

2. Client Account:
the special account referred to in section 25 of the Notaries Act (Wet op het notarisambt) and held in the name of the notary referred to at 5 below ● or the civil or general partnership in which he works together with other notaries ●, which account is kept at ● under account number ●;

3. Deed of Delivery:
the deed which is required for the transfer of title and must be executed in the presence of the notary referred to at 5;

4. Delivery Date:
the date referred to in Article 9;

5. Notary:
civil law notary ●, or his deputy ● or another civil law notary attached to ●.

This Sale and Purchase is made subject to the following special and standard conditions. In the event of any inconsistency between the special and standard conditions, the special conditions will prevail.

SPECIAL CONDITIONS

Costs and taxes

Article 1

1. (a) The notarial costs of this Sale and Purchase and the costs of the delivery and transfer of the Property, as well as the turnover tax due on the said costs, will be paid by ● Buyer ● Seller.
● OPTION ALL SEARCH COSTS TO BE PAID BY THE PARTY REFERRED TO IN PARAGRAPH 1 (a).
(b) The costs referred to in paragraph (a) will be increased by any disbursements incurred in connection with the Sale and Purchase, such as the search and registration costs of the Land and Public Registers Agency as well as the search costs of other (public) registers and the Verification Information System (VIS), and the turnover tax due on the said costs.

● END OF OPTION

● OPTION THE OTHER SEARCH COSTS TO BE PAID BY THE PARTY WHOM THE SEARCH CONCERNS

(b) The costs referred to in paragraph (a) will be increased by any disbursements incurred in connection with the Sale and Purchase, such as the search and registration costs of the Land and Public Registers Agency and the turnover tax due on such costs. The search costs of other (public) registers and the Verification Information System (VIS), and the turnover tax due on the said costs relating to Seller and Buyer respectively will be paid by the party whom the search concerns.

● END OF OPTION

2. The transfer duty (if due) calculated on the basis of the value of the Property, increased or reduced as provided for in the Legal Transactions (Taxation) Act (Wet op belastingen van rechtsverkeer), will be paid by ● Buyer ● Seller.

3. Where the transfer duty is payable by the Buyer and the tax basis for the purposes of the transfer duty can be reduced as referred to in section 13 of the Legal Transactions (Taxation) Act, the Buyer shall pay to the Seller the difference between the amount of transfer duty that would have been due without the said reduction and the amount of transfer duty actually due.

   The amount paid by the Buyer to the Seller will be reduced by such an amount that the total amount paid by the Buyer in transfer duty and the amount that the Buyer pays to the Seller under paragraph 3 of this article is equal to the amount that the Buyer would pay in transfer duty if section 13 of the Legal Transactions (Taxation) Act did not apply.

● OPTION SELLER NOT AN ENTREPRENEUR + NO MOVABLES

4. The Seller warrants with regard to the Property that he is not acting as an entrepreneur within the meaning of the Turnover Tax Act (Wet op de omzetbelasting) 1968, and that no turnover tax is therefore owed in respect of the delivery.

● END OF OPTION

● OPTION SELLER NOT AN ENTREPRENEUR + MOVABLES

4. The Seller warrants with regard to the Property and the movables referred to in Article ● 14 that he is not acting as an entrepreneur within the meaning of the Turnover Tax Act (Wet op de omzetbelasting) 1968, and that no turnover tax is therefore owed in respect of the deliveries.

● END OF OPTION

● OPTION SELLER IS AN ENTREPRENEUR + NEW REAL PROPERTY
4. The Seller warrants with regard to the Property that he is acting as an entrepreneur within the meaning of the Turnover Tax Act (*Wet op de omzetbelasting*) 1968, and that the delivery will take place before, on or no later than two years after the date on which the Property is first occupied, with the result that turnover tax is payable on account of the delivery of the Property.

**END OF OPTION**

**OPTION SELLER IS AN ENTREPRENEUR + OLD REAL PROPERTY + NO REQUEST FOR DELIVERY SUBJECT TO VAT**

4. The Seller warrants with regard to the Property that he is acting as an entrepreneur within the meaning of the Turnover Tax Act (*Wet op de omzetbelasting*) 1968, and that the delivery will take place after two years have elapsed since the date on which the Property is first occupied. The Seller and the Buyer will not make a joint request for the delivery to be treated as a delivery liable to turnover tax, with the result that no turnover tax is due on account of the delivery of the Property.

**END OF OPTION**

**OPTION SELLER IS AN ENTREPRENEUR + OLD REAL PROPERTY + REQUEST FOR DELIVERY SUBJECT TO VAT**

4. The Seller warrants with regard to the Property that he is acting as an entrepreneur within the meaning of the Turnover Tax Act (*Wet op de omzetbelasting*) 1968, and that the delivery will take place after two years have elapsed since the date on which the Property is first occupied. The Seller and the Buyer have agreed to make a joint request for the delivery to be treated as a delivery liable to turnover tax, with the result that turnover tax is due on account of the delivery of the Property.

**END OF OPTION**

**OPTION SELLER IS AN ENTREPRENEUR + OLD REAL PROPERTY + TOTALITY OF GOODS**

4. The Seller warrants with regard to the Property that he is acting as an entrepreneur within the meaning of the Turnover Tax Act (*Wet op de omzetbelasting*) 1968, and that the Property belongs to a totality of goods (or part of a totality of goods) as referred to in section 37d of that Act, with the result that the Seller does not owe any turnover tax in respect of it.

**END OF OPTION**

**OPTION SELLER IS AN ENTREPRENEUR + OLD REAL PROPERTY + ENCUMBRANCE + PURCHASE PRICE LOWER THAN VALUE**

4. The Seller warrants with regard to the Property that he is acting as an entrepreneur within the meaning of the Turnover Tax Act (*Wet op de omzetbelasting*) 1968. The Seller and the Buyer have agreed in respect of the delivery of the Property, with reference to the decision of the State Secretary for Finance of 14 July 2009, no. CPP2008/137M, that they opt for a letting subject to the levy of turnover tax if the delivery is defined as a letting on the grounds of the provisions of section 3, subsection 2, in conjunction with section 11, subsection 1 (b) (5), final sentence, of the said Act.
4. The Seller warrants with regard to the Property that he is acting as an entrepreneur within the meaning of the Turnover Tax Act (Wet op de omzetbelasting) 1968 and that no turnover tax is owed in this connection since the delivery takes place within a group that is treated as a single entity for the purposes of turnover tax.

5. The turnover tax referred to in the previous paragraph is included in the aforementioned purchase price of the property.

5. The purchase price of the property is increased by the turnover tax referred to in the previous paragraph.

6. The Seller warrants that the Property has not been and is not used by him for the purposes of his business and will not be used by him for such purposes before the delivery.

The Seller warrants that the tenant/tenants of the Property is/are charged turnover tax on the rental, 90% or more of which is deducted by the tenant/tenants as tax paid at the preceding stage.

The Seller warrants that the tenant/tenants of the Property pays/pay no turnover tax on the rental.

The Buyer warrants that 90% or more of his use of the Property will be for activities for which a right of deduction of turnover tax exists and that he will start using the Property before the end of the financial year following the financial year in which delivery takes place.
The Buyer warrants that he will issue, for the purpose of the taxed transfer request, a declaration signed by him and showing that he meets the 90% criterion.

The Buyer also warrants that he will inform the Seller, by means of a declaration signed by the Buyer and sent within four weeks of the end of the Buyer’s financial year following the financial year of delivery or following delivery by the Buyer before the end of the former financial year, whether the relevant criterion has been met since the Property was first used by him. The Buyer shall send a copy of this declaration within the same period of four weeks to the inspector of the region of the Tax and Customs Administration under which the Buyer comes. The Seller and the Buyer mutually undertake to submit the taxed transfer request in the Deed of Delivery or to submit it before the signature of the Deed of Delivery.

The Buyer is aware that the request to treat the delivery of the Property as a delivery liable to turnover tax can be granted only if he meets the aforementioned 90% criterion in his financial year in which the delivery of the Property takes place and the following financial year and that a demand for further tax will (or may) be imposed on him by the Tax and Customs Administration if it transpires that he has not met the aforementioned criterion. The turnover tax to be collected later concerns the revised turnover tax of the Seller and the other turnover tax deducted at the previous stage regarding the sale and delivery of the Property to the Buyer.

In connection with the above, the Seller warrants:
- that the review period started on ●;
- that with regard to his purchase of the Property an amount of ● has been deducted; and
- that with regard to the sale costs incurred by him an amount of ● has been or will be deducted.

END OF OPTION

OPTION: 70% OR MORE OF THE USE MADE BY THE BUYER OF THE PROPERTY QUALIFIES FOR VAT PURPOSES

7. The Buyer warrants that 70% or more of his use of the Property (which percentage replaces the percentage of 90% or more on the basis of the list of designated industries and sectors referred to in the decision of the State Secretary for Finance of 14 July 2009, no. CPP2008/137M) will be for activities for which a right of deduction of turnover tax exists and that he will start using the Property before the end of the financial year following the financial year in which the delivery takes place.

The Buyer warrants that he will issue, for the purpose of the taxed transfer request, a declaration signed by him and showing that he meets the 90% criterion.

The Buyer also warrants that he will inform the Seller, by means of a declaration signed by the Buyer and sent within four weeks of the end of the Buyer’s financial year following the financial year of delivery or following delivery by the Buyer before the end of the former financial year, whether the relevant criterion has been met since the Property was first used by him. The Buyer shall send a copy of this declaration within
the same period of four weeks to the inspector of the region of the Tax and Customs Administration under which the Buyer comes. The Seller and the Buyer mutually undertake to submit the taxed transfer request in the Deed of Delivery or to submit it before the signature of the Deed of Delivery.

The Buyer is aware that the request to treat the delivery of the Property as a delivery liable to turnover tax can be granted only if he meets the aforementioned 70% criterion in his financial year in which the delivery of the Property takes place and the following financial year and that a demand for further tax will (or may) be imposed on him by the Tax and Customs Administration if it transpires that he has not met the aforementioned criterion. The turnover tax to be collected later concerns the revised turnover tax of the Seller and the other turnover tax deducted at the previous stage regarding the sale and delivery of the Property to the Buyer.

In connection with the above, the Seller warrants:

- that the review period started on ●;
- that with regard to his purchase of the Property an amount of ● has been deducted; and
- that with regard to the sale costs incurred by him an amount of ● has been or will be deducted.

●END OF OPTION

●OPTION: LESS THAN 70% OF THE USE MADE BY THE BUYER OF THE PROPERTY QUALIFIES FOR VAT PURPOSES

7. The Buyer declares that less than 70% of his use of the property will be for activities for which there is entitlement to deduction of turnover tax.

●END OF OPTION

●OPTION NO VAT ON DELIVERY OF MOVABLES IN CONNECTION WITH EXEMPTED ACTIVITIES

8. The Seller warrants that no turnover tax is owed in respect of the delivery of the movables sold with the property as referred to in Article ●14 since these movables are used exclusively for the purpose of exempted activities.

●END OF OPTION

●OPTION NO VAT ON DELIVERY OF MOVABLES IN CONNECTION WITH TOTALITY OF GOODS

8. The Seller warrants that no turnover tax is owed in respect of the delivery of the movables sold with the property as referred to in Article ●14 since there is a transfer of a totality of assets or part thereof as referred to in section 37d of the Turnover Tax Act (Wet op de omzetbelasting) 1968.

●END OF OPTION

●OPTION VAT ON DELIVERY OF MOVABLES AND VAT INCLUDED IN THE PURCHASE PRICE
8. The Seller warrants that turnover tax is owed in respect of the delivery of the movables sold with the property as referred to in Article 14 and that such turnover tax is included in the purchase price of these movables.

END OF OPTION

OPTION VAT ON DELIVERY OF MOVABLES AND NOT INCLUDED IN THE PURCHASE PRICE; VAT PAYABLE TO SELLER

8. The Seller warrants that turnover tax is owed in respect of the delivery of the movables sold with the property as referred to in Article 14 and that such turnover tax is not included in the purchase price of these movables; the purchase price of these movables will be increased by the amount of the said turnover tax and paid together with the purchase price.

END OF OPTION

OPTION VAT ON DELIVERY OF MOVABLES AND NOT INCLUDED IN THE PURCHASE PRICE; VAT PAYABLE TO THE TAX AND CUSTOMS ADMINISTRATION

8. The Seller warrants that turnover tax is owed in respect of the delivery of the movables sold with the property as referred to in Article 14 and that such turnover tax is not included in the purchase price of these movables, since a reverse charge mechanism is applicable in this respect and the turnover tax owed must be paid by the Buyer to the collector of taxes on submission of a tax return.

END OF OPTION

9. Where reference is made to ‘delivery’ in paragraph 4, paragraphs 4, 6, 7 and 8 of this article, this is intended to mean supply within the meaning of the Turnover Tax Act (Wet op de omzetbelasting) 1968, or an act involving an encumbrance deemed to be a letting solely within the meaning of Article 3, paragraph 2, in conjunction with Article 11, paragraph 1 (b) (5) final sentence.

10. If the Buyer does not meet the requirements for a delivery or letting that is liable to the levy of turnover tax although the parties have opted for this in accordance with paragraph 4 of this article, the Buyer shall reimburse the Seller in full and at the latter’s first request for the resulting damage suffered by the Seller. In this connection damage is deemed to mean not only turnover tax to be paid by the Seller to the Tax and Customs Administration or the reduced amount of turnover tax to be received back by it from the Tax and Customs Administration but also the penalties and interest connected with this.

Representations by the Seller

Article 2

The Seller warrants that:
a) on the date of signature of the Deed of Delivery the Seller is fully authorised to transfer the Property and any movables sold with it;

b) to date no orders have been made or announced in writing by government authorities that have not yet been carried out, or that have been carried out by a government authority but have remained unpaid, save as may be specified in Article 15;

c) to date no enforcement decisions have been announced or notified by government authorities in respect of the Property;

d) on the date hereof the Property is not vacant within the meaning of the Housing Allocation Act 2014 (Huisvestingswet 2014) and the regulations made under the said Act;

●OPTION PROPERTY NOT A LISTED BUILDING

e) on the date hereof the Property is not included in any (pending application for) designation, listing order or registration:
   1. as a listed building within the meaning of the Monuments and Historic Buildings Act (Monumentenwet) 1988;
   2. as a listed building by any local or provincial authority.

●END OF OPTION

●OPTION PROPERTY IS A LISTED BUILDING WITHIN THE MEANING OF THE MONUMENTS AND HISTORIC BUILDINGS ACT 1988 BUT NOT A LOCAL OR PROVINCIAL LISTED BUILDING

e) on the date hereof the Property is included in a (pending application for) designation, listing order or registration as a listed building within the meaning of the Monuments and Historic Buildings Act (Monumentenwet) 1988.

f) no government subsidy for which conditions have yet to be satisfied has been applied for or granted in connection with the Property;
the technical systems and the mains, pipes, cables and wiring present in the Property are functioning properly at present and their use is not restricted in any way by order of the competent authorities;

no obligations in respect of the Property exist at present under any hire-purchase agreement, options and/or contractual rights of first refusal, nor will any such obligations exist when the Deed of Delivery is signed;

when the Deed of Delivery is signed the Property and any movables sold with it will not be the subject of any claim and will not be used by third parties without any right or title thereto;

OPTION COMPLETION WITH VACANT POSSESSION

When the Deed of Delivery is signed the Property will be vacant, with the exception of any movables sold with the Property, and will be free of tenancies and other rights of use or claims by virtue of security of tenure;

any movables sold with the Property will also then be free of any right of use, encumbrance, attachment and other charges and restrictions;

END OF OPTION

OPTION COMPLETION SUBJECT TO TENANCY

OPTION: RENT NOT SPECIFIED

1. The Property is let at present for a rent of EUR per , inclusive exclusive of turnover tax, in accordance with the Schedule attached to this contract of sale.

OPTION: RENT SPECIFIED

2. The Property is let at present. On the most recent due date, the following rents were paid for the Property by the following tenants and co-tenants as defined in Articles 7:266 and 7:267 of the Civil Code:

Parts of VAT payable by tenants and co-tenants

These rents do not include charges for .

The rent was last adjusted or reviewed, as the case may be, on .

When the Deed of Delivery is signed, any rental instalments not yet due will not have been received, nor will they have been subjected to any attachment.

END OF OPTION

OPTION LETTING LIABLE TO VAT

The letting liable to turnover tax follows does not follow from the transitional measure on a taxed letting to tenants who cannot deduct the transfer tax in its entirety (or virtually in its entirety) (transitional scheme for amendment of the law on 31 March 1995).

END OF OPTION

OPTION (TWO OR MORE) WRITTEN TENANCY AGREEMENTS

1. The tenancy agreements are recorded in instruments signed under hand. These instruments that record the tenancy agreements set out the full legal relationship
between the landlord and the tenants. No arrangements disadvantageous to
the landlord, other than those contained in the tenancy agreements, have been
made with the tenants.

● END OF OPTION

● OPTION WRITTEN TENANCY AGREEMENT (1 TENANT)

2. The tenancy agreement is recorded in an instrument signed under hand. This
instrument that records the tenancy agreement sets out the full legal relationship
between the landlord and the tenant. No arrangements disadvantageous to the
landlord, other than those contained in the tenancy agreement, have been made
with the tenant.

● END OF OPTION

● OPTION NO WRITTEN TENANCY AGREEMENTS

2. The tenancy agreements are not recorded in notarial instruments or instruments
signed under hand. The tenancy agreements are not inconsistent with the terms
customarily agreed in respect of premises such as the Property; no arrangements
that derogate from Article 7:216, paragraph 1, of the Civil Code have been made
(right of removal).

No arrangements disadvantageous to the landlord, other than those contained
in the tenancy agreements, have been made with the tenants.

● END OF OPTION

● OPTION NO WRITTEN TENANCY AGREEMENT (1 TENANT)

2. The tenancy agreement is not recorded in a notarial instrument or instrument
signed under hand. The tenancy agreement is not inconsistent with the terms
customarily agreed in respect of premises such as the Property; no arrangements
that derogate from Article 7:216, paragraph 1, of the Civil Code have been made
(right of removal).

No arrangements disadvantageous to the landlord, other than those contained
in the tenancy agreements, have been made with the tenant.

● END OF OPTION

● OPTION CORRECT PERFORMANCE BY TWO OR MORE TENANTS

3. To date the tenants have duly performed their obligations.

● END OF OPTION

● OPTION CORRECT PERFORMANCE BY ONE TENANT

3. To date the tenant has duly performed his obligations.

● END OF OPTION

4. No legal action concerning the Property is pending before any rent tribunal.
   Moreover, the Seller does not have any information that a tenant has such an
   intention.

5. No application for a rent review has been made in respect of the Property, nor
   has notice of such an application been given.
•OPTION NO RIGHT OF FIRST REFUSAL OR OPTION TO BUY FOR TENANTS (TWO OR MORE TENANCY AGREEMENTS)

6. The tenancy agreements contain no right of first refusal or option to buy.

•END OF OPTION

•OPTION NO RIGHT OF FIRST REFUSAL OR OPTION TO BUY FOR TENANT (ONE TENANCY AGREEMENT)

6. The tenancy agreement contains no right of first refusal or option to buy.

•END OF OPTION

•OPTION DEPOSITS/BANK GUARANTEES IN THE CASE OF TWO OR MORE TENANTS

7. The tenants have paid the following deposit deposits:

- No interest is owed on such deposit(s) interest is owed on such deposit(s) at the rate of percent a year from .
- The following bank guarantee(s) has have been furnished in favour of the landlord:

- The bank guarantee(s) may not be invoked by the Buyer.

•END OF OPTION

•OPTION DEPOSIT/BANK GUARANTEE IN THE CASE OF ONE TENANT

7. The tenant has paid the following deposit:

- No interest is owed on such deposit interest is owed on such deposit at the rate of percent a year from .
- The following bank guarantee has been furnished in favour of the landlord:

- The bank guarantee may not be invoked by the Buyer.

•END OF OPTION

•OPTION NO GROUND LEASE / BUILDING/PLANTING RIGHT

k) there is no ground lease (emphyteusis) or building/planting right (superficies).

•END OF OPTION

•OPTION GROUND LEASE

k) 1. The standard conditions/terms of the ground lease (emphyteusis) of , dated , apply to the Property. Also applicable to the property are the special conditions under which the Property was leased under a ground lease. This is evidenced by a deed executed on before , notary in , a copy of which deed was entered in Mortgage Register 4, part , number at the office of the Land and Public Registers Agency in on .

2. The ground lease is perpetual continuous determinate and expires on .

- The ground lease cannot be reviewed until , and the ground rent cannot be reviewed until .
- The ground rent may be index-linked for the first time on .
The ground rent may be reviewed for the first time on 1.

3. The permitted use under the terms of the ground lease is 1.

The Property has been built 1 altered in accordance with the terms of the ground lease.

4. The ground rent should be paid in advance in 1 equal instalments, due on 1 and 1 of each year, and now amounts to EUR 1.

1 The ground rent has been paid in advance up to and including 1.

1 The ground rent has been bought out 1 in perpetuity 1 up to and including 1.

END OF OPTION

OPTION BUILDING/PLANTING RIGHT

k) 1. The conditions, including the building/planting right (right of superficies) established in relation to the Property apply to the Property. This is evident from a deed executed on 1 before 1, notary in 1, a copy of which deed was entered in Mortgage Register 4, part 1, number 1 at the office of the Land and Public Registers Agency in 1 on 1, a

2. The building/planting right is perpetual 1 continuous 1 determinate and expires on 1.

1 The building/planting right cannot be reviewed until 1, and the rent cannot be reviewed until 1.

1 The rent for the building/planting right may be index-linked for the first time on 1.

1 The rent for the building/planting right has been paid in advance up to and including 1.

3. The permitted use under the terms of the building/planting right is 1.

The Property has been built 1 altered in accordance with the terms of the building/planting right.

4. The rent for the building/planting right should be paid in advance in 1 equal instalments, due on 1 and 1 of each year, and now amounts to EUR 1.

1 The rent for the building/planting right has been paid in advance up to and including 1.

1 The rent for the building/planting right has been bought out 1 in perpetuity 1 up to and including 1.

END OF OPTION

l) there are 1 no easements. 1, other than 1;

m) there are 1 no title-related obligations within the meaning of Article 6:252 of the Civil Code. 1, other than 1;

n) no covenant to insert a fresh covenant in any subsequent transfer deed needs to be imposed upon the Buyer. 1, other than 1;

o) there are no special charges or restrictions as referred to in Article 7:15 of the Civil Code 1, other than 1;
p) there are no encumbrances (obligations to allow certain acts) as referred to in the Public Works (Removal of Impediments in Private Law) Act (Belemmeringenwet Privaatrecht) other than;

q) according to an electronic extract from the land register provided by the Land and Public Registers Agency on [date]
  • no restrictions under public law in relation to the Property have been entered in the municipal register of restrictions;
  • there is no reference to the Property in the municipal register of restrictions;
  • the municipal register of restrictions is not yet available and no further information is therefore available at present;
  • the following restrictions under public law are known to exist:
    •

r) the value of the Property for the purposes of the Valuation of Immovable Property Act (WOZ) for the year is EUR;
  the charges, taxes and duties payable for the year by the owner and/or the person entitled to the real rights with respect to the property are as follows:
  - immovable property tax: EUR per annum;
  - water rates: EUR per annum;
  - water board charges etc: EUR per annum;
  - sewage (connection) charge: EUR per annum;
  - local tax payable by the owner on encroachments over public land: EUR per annum;
  - other periodic charges: EUR per annum;

s) all charges, taxes and duties referred to in this article, in so far as due and payable, have been paid;

t) the Property is insured – and will be kept insured until the date of signature of the Deed of Delivery – against fire damage on extended cover with in an amount of EUR and to the Seller’s knowledge there is no increased risk; the latest insurance premium has been paid;
  • any movables sold with the Property have been and will be kept adequately insured until the time of signature of the Deed of Delivery under the Seller’s household contents policy;

u) no legal action, binding advice procedure, arbitration or mediation is currently pending or has been notified with respect to the Property and/or any movables sold with the Property;

v) the Property, any movables sold with the Property and the systems referred to at (g) above are not encumbered with any lien and will also not be encumbered by any lien when the Deed of Delivery is signed;

w) the Property is at present connected directly to the public water, gas, electricity and sewerage systems;
the Property is connected to the infrastructure of the telephone and cable television network and has lawful and unrestricted access to the public highway in the manner evident on the spot;
x) the Seller has used the Property exclusively for residential purposes; as;
OPTION: ENERGY PERFORMANCE CERTIFICATE AVAILABLE, ORIGINAL WILL BE HANDED OVER ON COMPLETION
y) the Seller has an energy performance certificate or equivalent document as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen) in respect of the Property, a copy of which has not yet been handed to the Buyer. The Seller shall hand the original certificate to the Buyer when the Deed of Delivery is signed;
END OF OPTION
OPTION: ENERGY PERFORMANCE CERTIFICATE AVAILABLE AND HANDED TO BUYER
y) the Seller has handed the Buyer an energy performance certificate or equivalent document as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen);
END OF OPTION
OPTION: NEW PROPERTY LESS THAN 10 YEARS’ OLD
y) a calculation – or a certified copy of such calculation – in respect of the construction of the Property, showing that the Property had been or was being built in accordance with an energy performance coefficient as referred to in the Building Decree (Bouwbesluit) 2003-2012, was attached to the application for the relevant environmental permit planning permission. This certified calculation is not more than 10 years’ old and has been handed by the Seller to the Buyer. In consequence of the above, the Seller is not obliged to prepare and hand to the Buyer a separate energy performance certificate;
END OF OPTION
OPTION: NO ENERGY PERFORMANCE CERTIFICATE AND NO APPLICATION WILL BE MADE BY SELLER
y) the Seller does not have an energy performance certificate or equivalent document as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen), nor will the Seller apply for these documents before the date of signature of the Deed of Delivery;
END OF OPTION
OPTION: NO ENERGY PERFORMANCE CERTIFICATE, BUT WILL BE APPLIED FOR BY SELLER BEFORE COMPLETION
y) the Seller does not have an energy performance certificate or equivalent document as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen), and will apply for these documents before the date of signature of the Deed of Delivery;
**END OF OPTION**

**OPTION: NO ENERGY PERFORMANCE CERTIFICATE REQUIRED**

y) an energy performance certificate or equivalent document as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen) is not required for the Property;

**END OF OPTION**

z) the procedure referred to in Article 2:94c of the Civil Code did not apply at the time when the Seller acquired the Property; it was followed by the Seller at the time when he acquired the Property.

aa) the procedure referred to in article 2:94c of the former article 2:204c of the Civil Code did not apply at the time when the Seller acquired the Property; it was followed by the Seller at the time when he acquired the Property.

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**Duty of notice**

**Article 3**

The Seller warrants that he has given the Buyer all information that should properly be brought to the Buyer's attention, subject to the proviso that the Seller is not required to supply information about matters that are already known to the Buyer or about which he could have learned by carrying out his own survey, in so far as it is reasonable to expect the Buyer, in keeping with common practice, to carry out such a survey.

**Seller's representations concerning contamination**

**Article 4**

The Seller also makes the following representations:

a) he is not aware of any facts, on the basis of (among other things):
   - his personal expertise,
   - publications in local or other newspapers,
   - a soil test carried out in the past,
   - the use to which the Property has been put,
   that show that the Property is contaminated by toxic, chemical and/or other dangerous or hazardous substances to such an extent that under existing environmental laws and/or case law on environmental matters a clean-up operation or similar measures is/are likely to be necessary.

**OPTION NO STORAGE TANKS**

b) As far as he is aware, the Property contains no (underground) storage tanks such as oil tanks and septic tanks.

**END OF OPTION**

**OPTION ONE STORAGE TANK**

b) As far as he is aware, the Property contains one (underground) storage tank.

As far as he is aware, the said tank is not in an unfit state of repair.
The storage of liquids has been discontinued and notice of such discontinuation has been given to the competent authority. The tank has been emptied and refilled with sand or another substance prescribed under current regulations, as evidenced by the clean-up certificate issued by a firm of accredited decontamination engineers, which should be handed over to the Buyer upon the signing of the Deed of Delivery.

● END OF OPTION

● OPTION TWO OR MORE STORAGE TANKS

b) As far as he is aware, the Property contains (underground) storage tanks. As far as he is aware the said tanks are not in an unfit state of repair. The storage of liquids has been discontinued and notice of such discontinuation has been given to the competent authority. The tanks have been emptied and refilled with sand or another substance prescribed under current regulations, as evidenced by the clean-up certificate issued by a firm of accredited decontamination engineers, which should be handed over to the Buyer upon the signing of the Deed of Delivery.

● END OF OPTION

● c) As far as he is aware, there are no materials containing asbestos or other materials harmful to health in the Property, other than .

Other representations by the Seller

Article 5

The Seller finally makes the following representations:

a) as far as he is aware, the present use of the Property does not breach any provisions of public and/or private law and no building and/or alteration work has been carried out without the required permits.

b) as far as he is aware, there is no obligation for the Property to be offered for sale to the municipality, the province or the State of the Netherlands pursuant to the Municipalities ( Preferential Rights) Act (Wet voorkeursrecht gemeenten).

c) as far as he is aware, the municipality has not adopted any urban renewal plan or environmental order within the meaning of the of the former Urban and Rural Regeneration Act (Wet op de stads- en dorpsvernieuwing) involving the Property. Nor, as far as he is aware, has the area in which the Property is situated been designated as an area in which the buildings and structures present should be modernised or replaced.

d) as far as he is aware, the Property has not been included in any designation, listing order or registration of the property as an urban or village conservation area or in a pending request for an opinion on such matters.

e) as far as he is aware, there are no policy proposals for any plan as referred to in paragraph c) of this article or for compulsory purchase. [if the Property consists
of a ground lease or building/planting right] for premature termination of the ground lease (emphyteusis) building/planting right (right of superficies).

f) he has not been notified of restrictions of any kind whatever under public law relating to the Property.

g) as far as he is aware, no permit to split the property as referred to in section 22 of the Housing Allocation Act 2014 (Huisvestingswet 2014) has been applied for with respect to the property.

h) he has no knowledge of any circumstance that might prevent the tenant from properly fulfilling his obligations in the future.

Representations by the Buyer

Article 6

The Buyer makes the following representations:

a) he expressly accepts the charges and restrictions described in this contract of sale, and those which are or could be known to him from the existing situation after a survey as referred to in Article 3;

b) he acknowledges that he has received a copy of:
   - the tenancy agreement;
   - the bank guarantee furnished by the tenant;
   - the deed creating the ground lease (emphyteusis);
   - the deed creating the building/planting right (right of superficies);
   - the standard conditions for the ground lease (emphyteusis) building/planting right (right of superficies);
   - the Seller’s proof of title;
   - the energy performance certificate or equivalent document as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen).

c) he intends to use the Property for the purpose described in Article 2, at.

d) he warrants that the procedure referred to in Article 2:94c of the Civil Code does not apply to him has been followed will be followed as soon as possible, but by the signing of the Deed of Delivery at the latest.

e) he agrees that no energy performance certificate or equivalent document as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen) need be handed over when the Deed of Delivery is signed or, as the case may be, that this document will not be handed over upon the signing of the Deed of Delivery and accepts the consequences and risks thereof.

The Buyer declares that he will indemnify the Seller against any demand or claim in this respect.

The Buyer acknowledges that he has been informed by the Notary of the consequences of the absence of the aforementioned energy performance certificate.
and declares that he will indemnify the Seller against any demand or claim in this respect.

Condition(s) subsequent
Article 7

●OPTION TWO OR MORE CONDITIONS SUBSEQUENT
This Sale and Purchase will be terminated if the following condition ●conditions subsequent is ●are fulfilled:
●a) that on ●at the latest the Buyer has not:
obtained an unqualified undertaking (i.e. an undertaking not subject to any conditions that have not yet been fulfilled) from a ●credit institution or an insurance company having an authorisation as referred to in the Financial Supervision Act ●officially recognised lending institution for the granting of one or more loans in respect of the Property – and, if the lender concerned so requires, secured by the rights under a life assurance policy to be taken out for an insured capital not exceeding the principal sum referred to below – up to a principal sum of EUR ●upon the terms and conditions usually applied by the ●officially recognised ●lending institutions referred to above, and ●that the guarantee for such loan to be obtained from the foundation known as Stichting Waarborgfonds Eigen Woningen has not been promised before such date, and the Buyer has notified the Seller and the Notary in writing, accompanied by supporting documents, ●namely at least two rejections from two ●officially recognised ●lending institutions as referred to above, no later than on the first working day following the aforementioned date, that he wishes to cancel this Sale and Purchase on the ground that the aforementioned ●undertaking(s) has ●have not been obtained or has ●have been obtained too late; ●and/or
●b) that on the agreed date of signature of the Deed of Delivery the Seller is not free to deliver the Property because there is an obligation to offer the Property for sale to the municipality, the province or the State of the Netherlands under the Municipalities (Preferential Rights) Act (Wet voorkeursrecht gemeenten); ●and/or
●c) [if the Property concerns a ground lease or building/planting right]
that the consent (if required) of the owner of the land, approving the transfer of the Property, has not been obtained on the agreed date of signature of the Deed of Delivery; and/or
●d) that on ●at the latest, the Buyer has not obtained, on such terms as he can reasonably accept, any official permit required to enable him to reside in the Property ●(with his family), or an undertaking that such a permit will be issued, unless the Buyer has notified the Notary in writing, no later than on the first working day following the aforementioned date, that he wishes to honour this Sale and Purchaser, and/or
●e) the Sale and Purchase is cancelled pursuant to the provisions of Article ●17 of this Contract of Sale; and/or
If a condition subsequent is fulfilled, it will operate retroactively as between the parties to the date when the Sale and Purchase was concluded.

The parties agree to cooperate fully in order to obtain the aforementioned permit(s), consent and undertaking(s) in good time.

**OPTION IF OPTION a) IS NOT CHOSEN**

The Buyer expressly declares that he has not agreed any ‘subject to financing’ clause and that he is aware of the consequences of this.

**END OF OPTION**

**END OF OPTION FOR TWO OR MORE CONDITIONS SUBSEQUENT**

**OPTION NO CONDITIONS SUBSEQUENT (EXCEPT ‘WVG’)**

This Sale and Purchase will be terminated if the following condition subsequent is fulfilled, namely if the Seller is not free to deliver title to the Property on the agreed date of signature of the Deed of Delivery because there is an obligation to offer the Property for sale to the municipality, the province or the State of the Netherlands pursuant to the Municipalities ( Preferential Rights) Act (Wet voorkeursrecht gemeenten / WVG).

If the condition subsequent is fulfilled, it will operate retroactively as between the parties to the date when the Sale and Purchase was concluded.

The Buyer expressly declares that he has not agreed any ‘subject to financing’ clause and that he is aware of the consequences of this.

**END OF OPTION FOR NO CONDITIONS SUBSEQUENT**

**Deposit**

**Article 8**

**OPTION PAYMENT OF DEPOSIT OR FURNISHING OF BANK GUARANTEE**

As additional security for the fulfilment of his obligations the Buyer shall at his discretion:

- pay a deposit of ten per cent (10%) of the aforementioned total purchase price into the Client Account; or

- furnish a written bank guarantee for an amount equal to ten per cent (10%) of the aforementioned total purchase price, on at the latest, and in other respects in the manner specified in the standard conditions.
Delivery

Article 9

The Deed of Delivery will be executed before the Notary on [ ], or on such earlier or later date as the Buyer and the Seller may agree.

Jurisdiction and choice of law

Article 10

1. Any disputes arising out of or in connection with this Sale and Purchase contract will be heard and decided exclusively by the court in whose jurisdiction the Property is situated..
2. This Sale and Purchase will be governed by the law of the Netherlands.
3. The time limits referred to in this contract of sale will be governed by the General Extension of Time Limits Act (Algemene termijnwet).

Entry in the public registers

Article 11

1. The Buyer / Seller / Buyer and Seller instruct / do not instruct the Notary to enter the Sale and Purchase in the appropriate public registers of the Land and Public Registers Agency as quickly as possible by filing a copy of / extract from this contract of sale with the registrar of the Agency.

END OF OPTION

END OF OPTION

END OF OPTION

END OF OPTION
the signature of this contract of sale in respect of an agreement of sale and purchase relating to the Property between the same parties.

**OPTION COSTS OF REGISTRATION**

3. The costs of registering the Sale and Purchase, such as the costs of searches and registration of the Land and Public Registers Agency and the turnover tax owed on such costs will be borne by the Buyer and Seller equally.

**END OF OPTION**

**Standard Conditions / limitation of liability**

**Article 12**

The services to be rendered by the Notary are governed by the ‘Standard Conditions’ applied by the Notary, which contain a limitation of liability. A copy of these Standard Conditions has been attached to this contract of sale (Schedule). The Buyer and the Seller acknowledge that they have received a copy of the Standard Conditions. The Standard Conditions can also be consulted at www.

**Cooling-off period**

**Article 13**

1. The Buyer will have the right to cancel this contract of sale during a period of three days after a copy of this contract of sale has been supplied to the Buyer.

2. If the period of three days referred to in the previous paragraph finishes on a Saturday, Sunday or official public holiday, it will be extended up to the end of the next day that is not a Saturday, Sunday or official public holiday. The period of three days will also be extended in such a way that it contains at least two days that are not a Saturday, Sunday or official public holiday. Any notice of cancellation should therefore have been received before 24.00 hrs on. The Buyer undertakes to send a copy of the notice of cancellation to the Notary.

**Movables**

**Article 14**

The movables included in the Sale and Purchase are:

- specified in Schedule certified by the parties and appended to this contract of sale.

**Orders for improvements and/or repairs**

**Article 15**

The orders for improvements and/or repairs referred to in Article 2 (b) are:
●specified in the copy of notice number ● (Schedule ●) certified by the parties and appended to this contract of sale,

●

These improvements/repairs will be made at the expense of ● no later than on the Delivery Date.

●Consent, authorisation and cooperation of third parties

Article ●16

●

●Special conditions on contamination

Article ●17

a) To ascertain whether there is any contamination of the Property, instructions to carry out a soil and ground water survey will be given to ●.

The costs of the survey, irrespective of the results, will be shared by the parties, the Seller bearing ● per cent and the Buyer ● per cent of the said costs.

b) If the survey report shows that the soil or the ground water belonging to the Property is contaminated and that this contamination:

- is classified as serious contamination under the current environmental legislation and/or case law on environmental matters, and/or

- may reasonably be deemed unacceptable to the Buyer in view of the intended use of the Property as known to both parties, and/or

- is such that the costs of decontaminating the soil or ground water are in excess of EUR ●,

the ●Seller●/Buyer●/both the Seller and the Buyer may cancel this Sale and Purchase by giving written notice to the Notary to be sent within five days after the survey report has been communicated to the parties, provided that this notice reaches the Notary on the day before the Delivery Date at the latest.

The parties undertake to reopen negotiations if, within five days after the survey report has been communicated to them, either of them notifies the Notary in writing that he wishes to reopen negotiations. If in such circumstances the Sale and Purchase has not yet been cancelled by the other party, the term of five days within which the Sale and Purchase may be cancelled will be postponed by one month from the aforementioned written notice to the Notary.

If the parties reach agreement, this should be recorded in writing and the aforementioned right of cancellation will then lapse.
c) The risk that it may be established at some later time that on the date when the Deed of Delivery was signed the Property was affected by contamination which is not revealed in the survey report and:
   - is classified as serious contamination under the current environmental legislation and/or case law on environmental matters, and/or
   - may reasonably be deemed unacceptable to the Buyer in view of the intended use of the property as known to both Parties;
will be shared by the parties, the Seller bearing ● per cent and the Buyer ● per cent of that risk.
The Seller’s liability will cease upon the expiry of five years from the signature of the Deed of Delivery, if the Buyer’s cause of action has not previously been extinguished by law or become statute-barred. This liability of the Seller is limited to a sum of EUR ●.

●Other special conditions
Article ●18●

STANDARD CONDITIONS

Description of the duty to deliver
Article I

1. The Seller is obliged to deliver to the Buyer ownership of the Property or, as the case may be, a ground lease (emphyteusis) or building/planting right (right of superficies) which:
   a) is unconditional and not subject to any curtailment, cancellation or annulment of any kind, but without prejudice – in the case of a ground lease or building/planting right – to the provisions of the ground lease or building/planting right and the statutory provisions;
   b) is not subject to attachments, seizures or mortgages or registrations thereof, and is not subject to any other encumbrances, with the exception of those mentioned in this contract of sale
   c) is not encumbered by title-related obligations as referred to in Article 6:252 of the Civil Code, with the exception of those mentioned in this contract of sale;
   d) is not subject to other special charges and restrictions, except any specified in this contract of sale.
Any movables sold with the Property are free of encumbrances and not subject to attachments or seizures.
2. The Seller and the Buyer hereby give the Notary and his staff a power of attorney:
a) to do everything which is necessary (including the termination of loans) in order to secure cancellation of entries of mortgage and/or attachments or seizures to which the Property is subject and to procure such cancellation; the costs of such cancellation will be borne by the Seller;
b) to inspect all documents and registers considered by the Notary to be of importance to the performance of this Sale and Purchase.

3. In so far it appears from this contract of sale that the Property is let, it will be delivered subject to the Buyer’s obligation to continue to perform the existing tenancy agreement(s).
If any tenancy agreement relating to the Property expires following the signing of this contract of sale, the Seller shall give immediate notice of this to the Buyer and may not enter into any new tenancy agreement without the Buyer’s prior written consent. The above provision also applies to any amendment to an existing tenancy agreement.
If the Buyer withholds his consent to the making of a new tenancy agreement or to the amendment of an existing tenancy agreement, the Buyer will be required to compensate the Seller for the consequent loss of rent.
If the Buyer withholds his consent to the making of a new tenancy agreement, the risk of the property being occupied by squatters will be borne by the Buyer, as will any consequences under the Housing Allocation Act – and the regulations made under it – of the fact that the property is unoccupied.

4. If the dimensions or size of the Property as specified by the Seller or the further description of it or the representations made in the special conditions is/are incorrect or incomplete, neither party may derive any right from this. However, this will be subject to an exception if and in so far as the specification or description by the other party:
- has been warranted according to this contract of sale;
- has not been made in good faith;
- concerns a hitherto undisclosed fact which qualifies for entry in the public registers but has not hitherto been entered in them, without prejudice to the provisions of Article 7:17 of the Civil Code.

5. The Property will be transferred together with all accompanying rights and powers and free of any special charges and restrictions, save for those expressly accepted by the Buyer in the special conditions.

6. The completion (i.e. transfer of actual possession of the Property and of any movables sold with it) will take place upon the signing of the Deed of Delivery and in the state and condition in which the Property and/or the movables are at that time, subject to the proviso that such state and condition may not be worse – other than due to the acts or omissions of the Buyer – than the present state and condition of the Property and movables, normal wear and tear excepted.
The Seller shall – as a careful debtor – take proper care of the Property and any movables sold with it until Completion.
7. The Seller shall give the Buyer and/or his real estate agent and/or the Buyer’s authorised representative the opportunity of inspecting the Property and any movables sold with it shortly before the signing of the Deed of Delivery.

8. Subject to the condition precedent that the Property is delivered, the Seller hereby assigns to the Buyer all claims that the Seller may be able to enforce now or at any other time, by way of contract or delict (tort) or in any other way, against third parties, including (but not limited to) the Seller’s predecessor(s) in title, the architect(s), builder(s), contractor(s), subcontractor(s), fitter(s) and/or supplier(s) in respect of the Property and any movables sold with it, or any part or parts therein or thereof, as well as the rights under any subsidy schemes, guarantee schemes and certificates of guarantee, all this in so far as such claims or rights are assignable and without any duty of indemnification.

The Seller undertakes to furnish the Buyer with all relevant information and documents at his disposal.

Only after the Property and any movables sold with it have been transferred will the Buyer be authorised to effectuate the assignment of the aforementioned rights by giving notice of this assignment to the persons against whom the said rights can be exercised.

9. The transfer of the Property will take place by (digital) entry of a copy of the Deed of Delivery in the public registers of the Land and Public Registers Agency.

Force majeure, risk and insurance

Article II

1. The risk in respect of the Property and any movables sold with it will pass to the Buyer upon the signing of the Deed of Delivery

2. The Seller shall take out and maintain at his own expense until the signing of the Deed of Delivery insurance for the buildings and structures belonging to the Property at rebuilding value with an insurance company of sound repute and upon the terms and conditions usually applied by Dutch non-life insurance companies. Failing this, the Buyer may, at the expense and in the name of the Seller, take out such insurance or, as the case may be, extend the existing insurance and/or raise it to rebuilding value. The Buyer may require the Seller to produce to him the insurance policy and premium receipts concerned and may also ask the insurance company for information.

3. If either party is entirely unable to fulfil his obligations owing to an occurrence beyond his control (force majeure) other than during a foreseeable period of time, the Sale and Purchase will be cancelled following a written statement to that effect by the other party. The statement should give the reason for the inability to fulfil the obligations.

4. If, as a result of damage to the Property other than of a minor nature, the Seller is able to fulfil only part of his obligations, he shall give immediate notice of this to the Buyer by registered letter and send a copy of the notice to the Notary. A copy of the
applicable insurance policy together with the insurance terms and conditions should be sent with the notice.

If the Seller does not give this notice in time, the Buyer may cancel the Sale and Purchase before the Delivery Date by registered letter within four weeks of the date on which the damage has come to the attention of the Buyer.

5. The Seller shall notify the Buyer by registered letter, within two weeks after the Buyer has received the notice referred to in paragraph 4, but before the Delivery Date at the latest, whether he will repair the Property (or cause it to be repaired) and restore it to the condition in which it was when the Sale and Purchase was concluded and, if so, within what period the repair will take place. The Seller shall at the same time send a copy of the relevant letter to the Notary.

6. If the Seller does not give the notification referred to in paragraph 5 or does not do so in time or if the Seller declares that he will not repair the Property (or cause it to be repaired) before the Delivery Date, the Buyer may cancel the Sale and Purchase by registered letter within four weeks of receipt of the notification from the Seller or, if no notification has been received, within four weeks after the date of the notice referred to in paragraph 4. The Buyer may similarly cancel the Sale and Purchase if the Seller has not fulfilled his obligations under paragraph 4. The period of four weeks will in that case run from the date on which the damage comes to the attention of the Buyer.

7. If the Seller gives notice that he will repair the Property (or cause it to be repaired) within a period that expires after the Delivery Date and the Buyer has not cancelled the Sale and Purchase pursuant to the provisions of paragraph 6:
   a) the Buyer will opt for payment of the purchase price in consideration of the transfer of the Property in its current (damaged) condition, including the transfer of all rights to which the Seller is entitled in respect of the damage either under the insurance or on any other account against third parties. The risk that the transfer will affect the amount of the insurance payment will in that case be borne by the Buyer. The Seller shall do everything possible to furnish the Buyer with the information necessary in order to assess this risk; or
   b) the delivery will be suspended until the working day after the last day of the period specified by the Seller for the repair in the notification referred to in paragraph 5, subject to a maximum of four weeks after the Delivery Date, unless the parties agree otherwise. The Seller is obliged to repair the damage in full within this period in so far as this concerns damage usually covered under an insurance policy with a Dutch insurance company.

8. In the case of paragraph 7 (b) above, the Seller is obliged to reimburse to the Buyer, by no later than the date of the signing of the Deed of Delivery of the repaired Property, the loss or damage suffered by the Buyer as a result of the postponement of the Delivery Date.
Assumption of obligations
Article III

1. If obligations of a personal nature have been imposed upon the Seller which he in turn is required to impose upon the Buyer and any subsequent buyer (i.e. covenants to insert a fresh positive covenant in any subsequent conveyance), the Buyer shall – provided he has expressly accepted such obligations, as shown in Article 6 of the special conditions – assume and fulfil such obligations and also impose the same obligations upon his successors by particular title, in the manner described in the Deed of Delivery.

2. The Buyer is not required to take over any insurance contracts concluded by the Seller.

3. Orders by government authorities for work to be carried out on the Property that are made after the date of signature of this contract of sale by the Buyer and the Seller and were not previously announced by written notice will be for the account of the Buyer. If the work has to be carried out before the signing of the Deed of Delivery, the Seller shall consult with the Buyer about the carrying out of such work.

Payment and apportionment
Article IV

1. As from the date when the Deed of Delivery is signed all income and expenditure in respect of the Property shall be for the account of the Buyer. Rent due up to and including the date of signature of the Deed of Delivery will be collected by and at the risk of the Seller. In so far as taxes and/or duties are levied on the user in relation to the Property, they will not be apportioned between the parties. The Seller shall pay in full the charges, taxes and duties payable by the owner or the owner of the real rights for the current periods on the date of signature of the Deed of Delivery, without prejudice to the apportionment between the parties.

2. If tenants have paid deposits, such deposits and any current interest on them will be apportioned between the Seller and the Buyer upon the signing of the Deed of Delivery. If any bank guarantees have been issued on behalf of tenants in favour of the Seller, the Seller shall hand over the documents concerned to the Buyer upon the signing of the Deed of Delivery; the Seller shall make every effort to ensure that these bank guarantees are made out in favour of the Buyer.

3. Payment of the purchase price and any turnover tax and apportionment of the income and expenditure as specified by the Seller to the Notary in a statement supplied in good time before the signing of the Deed of Delivery and any turnover tax charged
thereon and any deposits will be made (in accordance with the said statement) through the completion statements of the Notary.

All sums owed by the Buyer will be paid by the Buyer in full upon the signing of the Deed of Delivery by remittance to the Client Account no later than on the date of signing of the Deed of Delivery and at the value on that date.

4. For the benefit of creditors who should – in connection with the correct conclusion of the Sale and Purchase and the delivery of the Property – be paid from the purchase price in accordance with the professional and practice rules applicable to the Notary, the Seller hereby obtains a warranty that their claims will be paid by the Notary directly from the purchase price and will be, for this purpose, be remitted from the Client Account to their bank or giro account; the Notary will accordingly be obliged to pay to the Seller himself only such part of the purchase price as remains thereafter. The Seller agrees to accept the Notary’s decision on which of the creditors notified by the Seller in good time fulfil the aforementioned criterion and up to what amounts. The warranty does not extend to the residual amount due to the Seller.

The Seller and the creditors referred to above in this paragraph are entitled to receive payment from the Notary of the sum to which each of them is entitled and the Buyer is entitled to payment only when the Notary has ascertained, on the basis of written searches of the public registers, that the transfer has taken place in conformity with the provisions of Article I, paragraph 1 and the Notary has complied with the professional and practice rules applicable to the Notary.

The Seller and the Buyer are aware that – in connection with such searches – a period of one or more working days may elapse between the date of signing of the Deed of Delivery and the date of payment.

5. The party who is liable to pay the transfer duty under the terms of this contract of sale shall deposit the said duty with the Notary upon the signing of the Deed of Delivery for payment to the collector of taxes.

In the event referred to in Article 1, paragraph 3 of the special conditions, the Buyer shall deposit the amount due to the Seller as referred to therein with the Notary upon the signing of the Deed of Delivery for payment to the Seller as soon as the amount of transfer duty actually due has, in the Notary’s opinion, been determined.

In so far as the Buyer is jointly and severally liable for the charges, taxes and duties as referred to in the last sentence of paragraph 1 of this Article up to the date of signing of the deed of delivery, the Seller shall, if the Buyer so requires, pay the charges, taxes and duties to the Notary for onward payment to the person(s) entitled upon the signing of the Deed of Delivery.

6. If turnover tax is due the Seller shall ensure that the Buyer receives in good time an invoice within the meaning of the Turnover Tax Act (Wet op de omzetbelasting) 1968.

The Buyer shall also furnish the Notary with a copy of this invoice in good time.

7. To provide for the eventuality that the purchase price must be refunded to the Buyer, the Buyer will obtain, for the benefit of persons who have remitted the purchase price
(or part thereof) directly to the Client Account, a warranty that these amounts will be refunded by the Notary by remittance to the account from which they were debited; the Notary shall accordingly owe the Buyer only the amounts remitted by himself. The warranty does not extend to the amounts transferred by the Buyer himself.

Deposit

Article V

1. If it has been agreed that the Buyer will pay a deposit as additional security for the performance of his obligations, this must be remitted to the Client Account; interest received by the Notary on such deposit will be refunded to the Buyer. The Notary shall confirm in writing to the Seller or to the Seller’s real estate agent that he has received the deposit or, as the case may be, the bank guarantee.

2. The deposit paid by the Buyer will be forfeited by operation of law if the Buyer, after being given notice of default in the manner referred to in Article VI, fails to perform his obligations during the period specified for that purpose in the notice of default. If the Seller demands performance of the Sale and Purchase, the foregoing will apply (in each case) only in respect of that part of the deposit owed by the Buyer as a daily penalty under Article VI, paragraph 2 (a).

3. The Notary shall pay the deposit to the Seller upon the signing of the Deed of Delivery and in the manner referred to in Article IV or, as the case may be, if the Buyer, after being given notice of default in the manner referred to in Article VI, fails to perform his obligations during the period specified for that purpose in the notice of default, the Notary shall pay the deposit to the Seller in proportion to the daily penalty forfeited by the Buyer.

In the former case the deposit, in so far as not previously paid to the Seller, will be deducted from the purchase price and from that part of the costs and taxes that are owed by the Buyer on the basis of the provisions of this contract of sale and are not paid by or on behalf of the Buyer from other funds.

After the signing of the Deed of Delivery, the Notary shall – subject to analogous application of Article IV, paragraph 4, second sentence – pay to the Buyer the part of the deposit not paid to the Seller and any interest on the deposit, in so far as these amounts are not necessary to pay the costs and duties owed by the Buyer.

4. The Notary shall refund the deposit to the Buyer if the Seller – after being given notice of default in the manner described in Article VI – fails to perform his obligations during the period specified for that purpose in the notice of default and also if the Sale and Purchase has been cancelled on grounds other than breach of contract (non-performance) by the Buyer.

5. If both parties fail to perform their obligations or if the Notary is unable to judge which of the parties is in default or whether there is default, the Notary shall retain the deposit – except where identical payment instructions are received from both parties – until
it has been determined, by judgment of a court that has the force of res judicata or by judgment of a court that is enforceable forthwith, to which of the parties he should pay the deposit. If a bank guarantee has been issued, such bank guarantee must be extended for the duration of the aforementioned period, failing which the Notary will be obliged to collect payment under the bank guarantee.

6. If it has been agreed that the Buyer will furnish a bank guarantee, such bank guarantee will:
   a) be unconditional and continue in force until at least one month after the agreed date of signing of the Deed of Delivery;
   b) have been issued to the Notary by a credit institution or insurance company with an authorisation within the meaning of the Financial Supervision Act (Wet op het financieel toezicht) or by a foreign bank of sound repute, this being a matter to be assessed solely by the Notary; and
   c) contain a clause to the effect that the amount of the guarantee will be immediately paid to the Notary at his request.

If the amount of the guarantee is paid to the Notary, he shall deal with it in the manner provided for above.

7. The parties hereby authorise the Notary to deduct the expenses incurred by him from the deposit or, as the case may be, from the payment received under the bank guarantee, plus any interest accrued on such deposit or payment.

8. For the purposes of this article, the Notary alone shall decide whether the Sale and Purchase has been performed and whether either party or both parties is/are in default or, finally, whether the Notary is himself unable to judge which of the parties is in default, subject to the proviso that during a period of one month after the Notary has issued a written statement with respect to the above the parties have the right to submit any dispute on such statement to the court having jurisdiction.

9. The parties shall indemnify the Notary against all consequences of holding the deposit or the payment under the bank guarantee in accordance with this paragraph.

Breach of contract (non-performance)

Article VI

1. In the event of non-performance or late performance of the Sale and Purchase other than as a result of events beyond a party’s control (force majeure), the party who has failed to perform will be liable for all damage, including costs and interest, suffered by the other party on account thereof, irrespective of whether or not the party who has failed to perform is in default within the meaning of the following paragraph.

2. If either party fails to perform one or more of his obligations – including but not limited to late payment of the deposit or late furnishing of an adequate bank guarantee – and does not remedy such failure within eight days of being served with notice of default
by bailiff’s notification, the party concerned will be in default and the other party, may choose between the following alternatives:

a) demand performance of the Sale and Purchase, in which case the party in default will forfeit a penalty, due and payable forthwith, of three per mille of the purchase price for each day that passes from the end of the aforementioned term of eight days until the day of performance; or

b) cancel the Sale and Purchase by a written statement to that effect and demand payment of a penalty, due and payable forthwith, of ten per cent of the purchase price.

3. Any penalty paid or due will be deducted from any compensation due, together with interest and costs.

4. This will include any turnover tax due on the penalty.

5. The notice of default procedure and the penalty scheme described in paragraph 2 of this article will no longer apply after the Notary has verified by written examination of the public registers that the transfer has been carried out in accordance with the provisions of Article I, paragraph 1, and after the Seller and any creditors referred to in Article I, paragraph 4, as well as the Buyer have each received from the Notary the amount to which they are entitled.

Conditions subsequent
Article VII

Any conditions subsequent which may have been agreed between the Seller and the Buyer will cease to have effect after the Deed of Delivery has been signed.

Costs in the case of cancellation
Article VIII

If the Sale and Purchase is cancelled by mutual consent, the costs of the work performed by the Notary in relation to this contract of sale and its execution will be borne equally by the Seller and the Buyer, each bearing half of such costs.

If the Sale and Purchase is cancelled as a result of the fulfilment of a condition subsequent, the aforementioned costs will be borne by the party who invokes such condition subsequent or on whose behalf the condition subsequent was included.

If the Sale and Purchase is cancelled on account of non-performance by one of the parties, the aforementioned costs will be borne by that party.

If the Sale and Purchase is cancelled by the Buyer pursuant to his statutory right to cancel the contract within three days of the date on which he receives a copy of this contract of sale, he will bear the aforementioned costs.
Final provisions

Article IX

1. For the purposes of this Sale and Purchase and its consequences and until the Deed of Delivery has been signed, the parties choose as their address for service the office of the Notary in whose custody this contract of sale will remain.

2. If two or more persons are Buyers or if two or more persons are Sellers, the following rules will apply:
   a) the Buyers (or, as the case may be, the Sellers) may exercise their rights under this contract only jointly, subject to the proviso that:
      - the Buyers hereby give each other an irrevocable power of attorney to cooperate in the delivery and transfer on each other’s behalf;
      - the Sellers hereby give each other an irrevocable power of attorney to cooperate in the delivery and transfer on each other’s behalf;
   b) the obligations of the Sellers under this Sale and Purchase are joint and several;
   c) the obligations of the Buyers under this Sale and Purchase are joint and several.

3. The Seller and the Buyer are obliged to notify each other and the Notary immediately if circumstances occur that could be relevant to the Sale and Purchase or to its performance, including a petition for divorce, judicial separation or termination of the community of property of which the Property forms part. The Seller and the Buyer are obliged to consult each other about such circumstances before taking any measure and/or physical or juristic act, unless this cannot reasonably be postponed.

4. Where reference is made in this contract of sale to ‘payment to the Notary’ or ‘deposit with the Notary’ this means payment into the Client Account.

5. The Seller and the Buyer instruct the Notary to undertake such activities as are necessary for the performance of this Sale and Purchase.

   The Seller and the Buyer hereby give the Notary a power of attorney to arrange, in the eventuality that this Sale and Purchase is cancelled or ends as a result of the entry into force of a condition subsequent, for the cancellation of the entry of this Sale and Purchase in the public registers.

6. By countersigning this contract of sale the Notary confirms that he assumes the obligations to which he is subject under this Sale and Purchase and that he accepts the powers of attorney and other powers given to him herein.

Signed in ● on ●

Seller: ____________________  Buyer: ____________________  Notary: ____________________

●Consent of spouse or registered partner of the Seller

160  LOYENS & Loeff  Investing in real estate in the Netherlands
Declaration of the Buyer

The Buyer declares that he has received a copy of the contract of sale printed above.

Signed in confirmation of receipt in • on •

_______________________
OPTION: ENTRY OF SALE AND PURCHASE IN THE PUBLIC REGISTERS

Notary’s declaration

The undersigned:
●, notary practising in ●, declares that paragraphs 1, 2 and 5 of Article 7:3 of the Civil Code do not prevent the entry of the Sale and Purchase in the public registers.

Signed in ● on ●

END OF OPTION
Annex 2  ROZ Model lease agreement of office space

LEASE AGREEMENT OF OFFICE SPACE
and other commercial space within the meaning of article 7:230a of the Dutch Civil Code

Based on model established by the Real Estate Council (ROZ) on 30-1-2015, filed on 17-2-2015 with the registry of The Hague District Court, entered there under number 15/20 and published on the website www.roz.nl.

[●date]
between
[●NAME LANDLORD]
as Landlord
and
[●NAME TENANT]
as Tenant

Translation from Dutch
This translation can only be used in combination with and as explanation to the Dutch text. In the event of a disagreement or dispute relating to the interpretation of the English text the Dutch text will be binding. This lease agreement is subject to Dutch law.

This document does not in any way constitute an offer by the [●Landlord/Tenant]. The [●Landlord/Tenant] shall only be bound by a final written agreement duly signed on its behalf. By accepting this document, each recipient of this document confirms its agreement that the [●Landlord/Tenant] is and will remain free to withdraw from any and all discussions and/or negotiations at any time and without any obligation or form of compensation being due, and each recipient of this document waives and agrees to waive any rights it may have to claim any damages from the [●Landlord/Tenant] arising from any unilateral termination of negotiations at any time.
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SCHEDULES

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Schedule 11 Copy of passport [authorised representative of the Tenant]
THIS LEASE AGREEMENT OF OFFICE SPACE dated [●date] and made between:

(1) [●NAME LANDLORD B.V.], a private company with limited liability (besloten vennootschap met beperkte aansprakelijkheid), incorporated and existing under Dutch law, having its registered office (statutaire zetel) in [●Place], the Netherlands and its office address at [●Address] ([●Zipcode]), [●Place], the Netherlands, registered with the trade register of the chamber of commerce under number [●Number], (the Landlord); [and]

(2) [●NAME TENANT B.V.], a private company with limited liability (besloten vennootschap met beperkte aansprakelijkheid), incorporated and existing under Dutch law, having its registered office (statutaire zetel) in [●Place], the Netherlands and its office address at [●Address] ([●Zipcode]), [●Place], the Netherlands, registered with the trade register of the chamber of commerce under number [●Number], (the Tenant);

BACKGROUND:

(A) ●; and

(B) ●.

IT IS AGREED as follows:

1 THE LEASED SPACE, INTENDED USE

1.1 The Landlord leases to the Tenant, and the Tenant leases from the Landlord, the business premises, located at [●] recorded in the Land Register as [●] measuring approximately [●]m² ([●] GFA/LFA/other) (Schedule 1 (Measurement according to [●])) in total, measured according to [●] (the Leased Space). The Leased Space is further indicated on the floor plan/drawing initialled by the parties and attached to this lease (the Lease) as Schedule 2 (Floor plan/drawing of the Leased Space). The condition of the Leased Space on the handover date is described in the delivery report (proces-verbaal van oplevering) to be initialled by the parties and attached to this Lease as Schedule 3 (Delivery report (to be added on handover date).

1.2 The Leased Space is designated to be used by or on behalf of the Tenant exclusively as [●].

1.3 The Tenant is not permitted to give the Leased Space a designated use other than the one mentioned in clause 1.2 of this Lease, without the prior written permission of the Landlord.

1.4 The highest permissible load of the floors of the Leased Space is [●as much as is structurally permitted/●kN/m²*].

1.5 When entering into this Lease, the Tenant [●did/did not] receive a copy of the energy label, as referred to in the Energy Performance (Buildings) Decree (Besluit energieprestatie gebouwen), for the Leased Space.

1.6 If it transpires that the area referred to in clause 1.1 of this Lease is incorrect, the parties agree that:
(a) [discrepancies with the actual size (undersized or oversized) will not affect the rent] or
(b) [in case of a discrepancy with the actual size, greater than [●]%], the excess will be charged.

2 CONDITIONS

2.1 The GENERAL TERMS AND CONDITIONS FOR LEASE OF OFFICE SPACE and other commercial space within the meaning of Article 230a, Book 7 of the Dutch Civil Code, filed with the registry of The Hague District Court on 17-2-2015 and registered there under number 15/21 (the General Conditions (Schedule 5)) form part of this Lease. The parties are familiar with the content of these General Conditions. The Tenant and Landlord have received a copy of the General Conditions.

2.2 The General Conditions referred to in clause 2.1 of this Lease are applicable, except for those cases in which there is a specific deviation from those provisions in this Lease or in which the application of those provisions is not possible with regard to the Leased Space.

3 DURATION, EXTENSION AND TERMINATION

3.1 This Lease commences on [●] (hereinafter Commencement Date) for [●a period of [●] year(s) and runs until [●]/open-ended].

3.2 After the expiry of the period referred to in clause 3.1 of this Lease, this Lease will be continued, unless notice of termination is given by [●only the Tenant/●Tenant or Landlord] in accordance with clauses 3.3 and 3.4 of this Lease, for [a consecutive period of [●] year(s), thus until [●] / open-ended*]. This Lease will then be continued for [a] consecutive period[s] of [●] year(s) / open-ended].

3.3 Notice of termination of this Lease is given by the Tenant to the Landlord or by the Landlord to the Tenant with effect from the end of the current lease period or, in case of an open-ended lease at any time, with due observance of a [●one year/●month[s] period.

3.4 Notice must be given by bailiff’s notification or by registered letter.

4 RENTAL, TURNOVER TAX, RENT REVIEW, OBLIGATION FOR PAYMENT, PAYMENT PERIODS

4.1 The initial annual rent of the Leased Space on the commencement date is EUR [●].

4.2 The parties agree that the Landlord [●charges/does not charge] turnover tax on the rent.

If the parties agree on rent exempt from turnover tax, the Tenant must make a separate payment to the Landlord in addition to the rent in order to compensate the loss incurred or to be incurred by the Landlord and/or its legal successor(s) because the turnover tax on the Landlord’s investments and running costs are no longer tax-deductible. In that case, the provisions of Article 19 of the General Provisions do not apply.
4.3 The parties declare in reference to article 11, first paragraph, subparagraph b under 5 of the Turnover Tax Act 1968 (Wet op de omzetbelasting 1968) that they have agreed on taxed rent. Turnover tax will also be charged on the payment that the Tenant must make for the supply of goods and services by or on behalf of the Landlord, as provided for in clause 5 of this Lease and clause 18 of the General Conditions. By signing this Lease, the Tenant declares - also for the benefit of the Landlord’s legal successor(s) - that the Leased Space will be used permanently for purposes for which there is a complete or nearly complete right to deduction of turnover tax as laid down in article 15 of the Turnover Tax Act 1968.

4.4 The Tenant’s financial year runs from [●] to [●].

4.5 The rent will be adjusted annually on [●] and for the first time with effect from [●], in accordance with clause 17.1 to 17.3 of the General Conditions.

4.6 The payment that the Tenant owes for the goods or services to be supplied by or on behalf of the Landlord is determined in accordance with clause 18 of the General Conditions. This payment will be subject to a system of advance payments with subsequent settlement, as stated there.

4.7 The Tenant will no longer owe turnover tax on the rent if the Leased Space can no longer be leased subject to turnover tax, even though the parties had agreed to this. In this case, the payments referred to in clause 19.1 of the General Conditions will apply instead of the turnover tax and this payment is set out in advance in clause 4.8 of this Lease.

4.8 The Tenant’s payment obligation is made up of the following components:

For each payment period of [●] calendar month(s), the following amounts apply on the lease commencement date:

(a) the rental; EUR ●
(b) the advance payment on the supply of goods and services by or on behalf of the Landlord plus the applicable turnover tax; EUR ●
(c) in case of taxed rent, the turnover tax due on the rent; EUR ●
(d) [●]% of the basic indexed rent due to loss of VAT Landlord on the operating costs (not service charges); EUR ●
(e) [VAT loss as a result of the non-deductibility of VAT on the incorporation costs of the Leased Space. This amount is no longer due as of [●] final date of review period] as a result of the end of the review period].

This amount is not subject to indexation.

TOTAL EUR ●

4.9 In view of the commencement date of this Lease, the Tenant’s first payment relates to the period from [●] to [●] and the amount owed for the first period is EUR [●]. The Tenant must pay this amount on or before [●].
4.10 The periodic payments to be made by the Tenant to the Landlord under this Lease as stated in clause 4.8 of this Lease, are due in a single amount, in advance, and in euros, and must be paid in full on or before the first day of the period to which these payments refer.

4.11 Unless otherwise stated, all amounts in this Lease and the accompanying General Provisions exclude turnover tax.

5 SUPPLIES AND SERVICES

5.1 The following goods and services are supplied by or on behalf of the Landlord:
   (a) [●]; and
   (b) [●].

5.2 The Landlord is entitled to alter the supply of goods or services referred to in clause 5.1 of this Lease by type and size, after consultation with the Tenant, or to discontinue the supply.

6 SECURITY

6.1 Before the commencement date, the Tenant must:
   6.2 [● provide a bank guarantee (Schedule 6 (Security)) for / pay a deposit in the amount of●] EUR [●].

6.3 Interest [●is / is not] paid on the deposit.

7 MANAGER

7.1 Until the Landlord gives notice to the contrary, the property manager will be [●].

7.2 Unless otherwise agreed in writing, the Tenant is required to consult the property manager with regard to the content and all further matters relating to this Lease.

7.3 Notice of termination of the Lease must also be sent to the Landlord.

8 INCENTIVES

The parties declare that no incentives have been agreed other than as stated in this Lease.

9 ASBESTOS, ENVIRONMENT

9.1 [●The Landlord is unaware whether / The Tenant is aware that [●]] (Schedule 7 (Environmental survey)) there is asbestos in the Leased Space. The Landlord’s lack of knowledge about the presence of any asbestos in the Leased Space expressly does not constitute a guarantee from the Landlord that there is no asbestos.

9.2 [●The Landlord is unaware whether / The Tenant is aware that [●]] there is pollution in, on or to the Leased Space that is of such a nature that the adoption of measures is necessary on the basis of current legislation on the date the Lease is signed. The Landlord’s lack of knowledge about the presence of any pollution in, on or to the Leased Space expressly does not constitute a guarantee from the Landlord that there is no pollution.

10 SUSTAINABILITY, GREEN LEASE

The parties recognise the importance of sustainability and agree to support each other in achieving the aims that have been or are to be jointly formulated and to regularly discuss progress in that regard.
11 SPECIAL CONDITIONS

Additional tax provisions

11.1 In addition to Clause 4.3 of this Lease, the Landlord and Tenant have agreed to rental subject to Turnover Tax, and shall avail themselves of the opportunity to waive, on the basis of article 11, first paragraph, subparagraph b under 5 of the Turnover Tax Act 1968, the service of a joint option request for a rental subject to Turnover Tax.

11.2 If the Tenant and the Landlord have agreed to rental without Turnover Tax and the Tenant at any time after execution of this Lease meets the conditions for a rental with Turnover Tax, then a party cooperates at the request of the other party to jointly option request to submit to the competent unit of the tax administration (belastingdienst).

11.3 In deviation of clauses 4.7 and 4.8 (d) and (e) of this Lease, the compensation as set out in clause 19.1 General Conditions is set in advance on the actual damage.

11.4 If the Landlord may not - or may no longer - charge Turnover Tax over the fee for the additional supplies and services, the Tenant owes the Landlord, in addition to the fee for the additional supplies and services, a separate fee to offset the disadvantage of the Landlord or its legal successor(s) suffers or will suffer, if and insofar as the Turnover Tax on the cost of additional supplies and services for the Landlord or its legal successor(s) is not deductible or no longer is deductible. This separate compensation is set in advance on the actual damage.

11.5 Clause 19.3 General Conditions does not apply.

11.6 In addition to the taxes, burdens, levies and premiums as set out in clause 20.1 General Conditions, if the Landlord is assessed, also for the account of Tenant are: taxes and levies, other than turnover tax, owed in connection with the ancillary supplies and services to be provided as set out in Clause 5 Lease, amongst others, however not limited to, energy tax.

Display energy label

11.7 In addition to clause 7.4 General Provisions and based on the Energy Performance (Buildings) Decree, the Tenant will tolerate and is obligated to continuously keep visible the mandatory continuing display of the energy label in or on the Leased Space.

THIS LEASE AGREEMENT has been entered into on the date stated at the beginning of this Lease.

Remainder of page intentionally left blank

Signature page(s) follow
SIGNATURE PAGE

Landlord

[● Name Landlord B.V.]

___________________________  __________________________
By:                                          By:
Title:                                        Title:

Address:
Attention:
Tel:
Fax:
E-mail:

Tenant

[● Name Tenant B.V.]

___________________________  __________________________
By:                                          By:
Title:                                        Title:

Address:
Attention:
Tel:
Fax:
E-mail:
Separate signature(s) of the Tenant(s) (each) acknowledging receipt of a copy of the GENERAL TERMS AND CONDITIONS FOR LEASE OF OFFICE SPACE and other commercial space within the meaning of Article 7:230a of the Dutch Civil Code, as specified in clause 2.1 of this Lease.

[●Name Tenant B.V.]

___________________________  ____________________________
By:  By:
Title:  Title:
GENERAL TERMS AND CONDITIONS FOR LEASE OF OFFICE SPACE

Based on model the model adopted by the Real Estate Council of the Netherlands (ROZ) on 30-1-2015, filed on 17-2-2015 with the registry of The Hague District Court, entered there under number 15/21 and published on the website www.roz.nl. ROZ excludes any liability for adverse effects caused by the use of the text of the model.

Translation from Dutch

This translation can only be used in combination with and as explanation to the Dutch text. In the event of a disagreement or dispute relating to the interpretation of the English text the Dutch text will be binding. These general conditions are subject to Dutch law.
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1 SCOPE OF THE LEASED SPACE
The leased space also includes the systems and facilities that are present in the leased space, insofar as these are not excluded in the delivery report to be initialed by the parties and attached as an appendix to this lease.

2 SUITABILITY OF THE LEASED SPACE
2.1 In order to determine whether facts and circumstances that impair quiet enjoyment under the lease qualify as a defect within the meaning of Clause 204, Book 7 DCC, that which the Tenant may reasonably expect at the commencement of the lease with regard to the leased space is relevant.

2.2 Insofar as the Landlord has knowledge before the commencement of the lease of facts or circumstances that would impede the Tenant's use of the leased space in accordance with the agreed designated use, it must inform the Tenant thereof.

2.3 The Tenant is obliged to thoroughly examine the space to be leased prior to entering into the lease, or to arrange for a third party to do so on its behalf, in order to determine whether the space to be leased is suitable or can be made suitable by or on behalf of the Tenant for the agreed designated purpose for which the Tenant intends to use it.

3 CONDITION OF THE LEASED SPACE AT THE COMMENCEMENT OF THE LEASE
3.1 The leased space is handed over by the Landlord at the commencement of the lease and accepted by the Tenant in good condition, unless the parties have agreed otherwise in writing. If no delivery report is drawn up at the commencement of the lease, this means, notwithstanding Clause 224(2), Book 7 DCC, that the Tenant has received the leased space in good condition, without any defects and damage-free.

3.2 The general, structural and technical condition in which the Tenant accepts the leased space at the commencement of the lease is documented by the Tenant and the Landlord in a delivery report to be initialed by or on behalf of the parties and attached as an appendix to the lease. This delivery report forms part of the lease.

4 GOVERNMENT REGULATIONS AND PERMITS
4.1 Both on and after the commencement date as referred to in Clause 3.1 of the lease, the Landlord is responsible for obtaining and retaining the required permits/licences, exemptions and authorisations that are needed for the use of the leased space as referred to in Clause 1.1 of the lease, notwithstanding the conditions of Clauses 4.4 and 4.5.

4.2 The costs associated with obtaining the permit/licence, dispensation and authorisation referred to in Clause 4.1, as well as the costs of adapting the leased space in order to comply with the conditions of the permit/licence, dispensation and authorisation are payable by the Landlord, however notwithstanding the conditions of Clauses 11.2 and 11.5 on the maintenance, repair and renovation obligations of the Tenant with regard to the facilities that already form part of the leased space.

4.3 Both at and after the commencement of the lease, the Tenant is responsible for obtaining and retaining the required permits/licences, exemptions and authorisations that do not fall under Clause 4.1, and which are necessary for the use of the leased
space by the Tenant in accordance with the agreed designated use in Clause 1.2 of the lease. This also includes all government notices that are compulsory/made compulsory with regard to the use of the leased space in accordance with the aforementioned agreed designated use. The aforementioned government notices include notices that are compulsory on the basis of the most recent Building Decree (Bouwbesluit) and the most recent General Rules for Establishments (Environmental Management) Decree or Activities (Environmental Management) Decree (Besluit algemene regels voor inrichtingen milieubeheer of Activiteitenbesluit).

4.4 The refusal or withdrawal of a permit/licence, dispensation or authorisation as referred to in Clause 4.3 does not produce a defect, unless that refusal or withdrawal is the result of an act or omission of the Landlord.

4.5 The costs associated with obtaining the permit/licence, dispensation or authorisation referred to in Clause 4.3, as well as the costs of adapting the leased space in order to comply with the conditions of the permit/licence, dispensation and authorisation are payable by the Tenant, however notwithstanding the conditions of Clauses 11.2 and 11.4 on the maintenance, repair and renovation obligations of the Landlord with regard to the facilities that already form part of the leased space.

5 USE

5.1 During the entire term of the lease, the Tenant itself is required to make actual, full and proper use of the leased space exclusively in accordance with the designated use as stipulated in the lease. The Tenant must also duly observe existing limited rights, qualitative obligations and requirements which have been or may be made by government authorities or public utility companies (including requirements with respect to the Tenant’s business, with respect to the use of the leased space, and with respect to all that is present in or on the leased space). The Tenant is also required to provide and keep the leased space provided with sufficient furnishings, fixtures and fittings. Public utility companies in this lease also means similar companies engaged in the delivery, transport and measuring of the consumption of energy, water, etc.

5.2 The Tenant must act in accordance with the law and local by-laws as well as with accepted practices relating to renting and letting, regulations of the government, public utility companies and insurance companies. With respect to activities relating to protection, fire prevention and lift systems, the Tenant is permitted to engage only companies that the Landlord has previously approved and which are recognised by the National Centre for Prevention (Nationaal Centrum voor Preventie (NCP)) or by the institute responsible for lift systems (Stichting Nederlands Instituut voor Lifttechniek) respectively. The Landlord may not unreasonably withhold approval. If it is agreed within the context of supplies or services to be provided by or for the Landlord that the aforementioned activities must be performed on instructions of the Landlord, the Tenant is not allowed to perform the aforementioned activities itself or arrange to have these performed by a third party. The Tenant must at all times comply with the instructions for use issued by the aforementioned companies. The Tenant
must also comply with the instructions given in writing or orally by or on behalf of the Landlord in the interests of the proper use of the leased space and of the indoor and outdoor areas, the systems and facilities of the building or building complex of which the leased space forms part. This includes reasonable instructions regarding maintenance, appearance, noise levels, public order, fire protection, parking and the correct operation of the systems or the building or building complex of which the leased space forms part.

5.3 When using the leased space or the building or building complex of which the leased space forms part, the Tenant may not create nuisance or cause inconvenience. The Tenant must ensure that third parties who are present on its behalf do likewise.

5.4 The Tenant is entitled and obliged to use the communal facilities and services that are or will be available in the interest of the proper functioning of the building or building complex of which the leased space forms part.

5.5 The Landlord is entitled to give instructions for the installation of illuminated and other advertising and/or signs or for alterations, additions or other changes visible from the exterior that the Tenant wishes to make, and may not unreasonably withhold permission for this purpose. The Landlord may give instructions in relation to the design, location, measurements and choice of materials, among other things. The Tenant is obliged to comply with those rules and rules from competent authorities relating to alterations or additions made by the Tenant.

5.6 The Landlord is authorised to give itself, a Tenant(s) or third parties access to the roofs, outer walls, areas not accessible to the public or the Tenant, the immovable appurtenances within the building or building complex, and the gardens and land of that building or building complex, for the installation of aerials or for other purposes. If the Landlord wishes to exercise this right, it must inform the Tenant in advance and bear in mind the interests of the Tenant when exercising this right.

5.7 The Landlord may refuse the Tenant entry to the leased space if the Tenant has not yet complied with its obligations under the lease when it first wishes to begin using the leased space. This has no consequences for the commencement date as referred to in Clause 3.1 of the lease and for the Tenant’s obligations under the lease.

6 SUBLETTING

6.1 Without the prior written permission of the Landlord, the Tenant is not permitted to relinquish all or part of the leased space to third parties by leasing, subletting or allowing the use thereof, nor may it transfer all or part of the tenancy rights to third parties or contribute these rights to a partnership or legal person.

6.2 If the Tenant acts contrary to Clause 6.1, it will forfeit an immediately due and payable fine to the Landlord, equal to twice the daily rent that applies to it at the time, for every calendar day that the breach continues without prejudice to the Landlord’s right to demand specific performance, terminate the agreement and/or claim damages.

6.3 The Tenant is entitled to sublet or allow the use of space by a group company within the meaning of Clause 24b, Book 2 DCC, provided that this is in keeping with the
use as referred to in Clause 1.2 of the lease and this subTenant/user will not sublet and/or allow any use of this space by a third party. The Tenant may not deviate in the subletting agreement to the detriment of the main lease. The above does not affect the Tenant’s obligations under the lease. The Tenant remains the Landlord’s sole point of contact.

7 ENVIRONMENTAL AND ENERGY LABEL

7.1 The Tenant and Landlord must meticulously comply with directives, regulations and instructions of the government or other competent authorities with regard to the separated presentation of waste for collection. If this obligation is not complied with or is not complied with completely, the negligent party will be liable for the ensuing financial, criminal and possible other consequences.

7.2 The Tenant is not permitted:

(a) to have environmentally hazardous substances including malodorous, inflammable or explosive substances in, on, attached to or in the immediate vicinity of the leased space;

(b) to use the leased space in such a way that it gives rise to soil or other environmental pollution.

7.3 The Landlord does not indemnify the Tenant against any government orders to conduct an environmental survey of the leased space or to adopt measures if pollution is found under, in, on or around the leased space.

7.4 Insofar as the Landlord is obliged to display an energy label in the leased space, the Tenant must give the Landlord the opportunity to do so without setting any further conditions.

7.5 The Tenant and Landlord each may not without the other party’s written permission make alterations/additions in or to the leased space that demonstrably have an adverse effect on the energy index of the leased space as stated on the energy label referred to in Clause 1.5 of the lease.

8 RULES OF CONDUCT, INSTRUCTIONS AND PROHIBITORY CONDITIONS

8.1 While using the leased space, the Tenant may not cause any nuisance or inconvenience, or cause damage in, on, to or under the leased space, building or building complex of which the leased space forms part. Damage to the leased space includes the use of means of transport that cause or can cause damage to the floors and walls. The Tenant must ensure that third parties who are present on its behalf observe these rules. This also applies to the building or building complex of which the leased space forms part.

8.2 The tenant is not permitted:

(a) to place a heavier load on the floors of the leased space, the building or building complex of which the leased space forms part than is indicated in the lease or structurally permitted;

(b) to make alterations to or to install facilities in, on or to the leased space that are in conflict with regulations of the government and public utility companies, with
the conditions under which the owner of the leased space acquired ownership of such space or any other restricted rights, or to make alterations or install facilities which may be a nuisance to other tenants or people living in the neighbourhood or hinder them in the use of their space.

8.3 The Tenant is not permitted, without the prior, written authorisation of the Landlord, to enter or allow entry to the service areas and plant rooms, roof terraces, roofs, drains and the areas and places not reserved for general use of the leased space or the building or building complex of which the leased space forms part, or to park vehicles in unauthorised areas.

8.4 With regard to the times for loading and unloading and the manner in which this is performed, the Tenant must comply with the rules imposed by the government and other competent authorities, and with the reasonable instructions of the Landlord.

8.5 The Tenant must always keep the escape routes and emergency doors in the leased space, and in the building or building complex of which the leased space forms part, clear and guarantee the availability of fire-extinguishing equipment.

The Landlord must also refrain from blocking the aforementioned escape routes and emergency doors.

8.6 If the leased space is equipped with a lift, rolling conveyor, escalator, automatic door mechanism or similar device, or if the leased space is accessible by means of one or more of these or similar facilities, people will use these facilities entirely at their own risk. The Tenant is responsible for the proper and skilled use of any technical systems that form part of the leased space.

9 DAMAGE

9.1 The Tenant must immediately give the Landlord notice of any defect and of damage or impeding damage that arises from that defect or from another cause or circumstance. The Tenant must give the Landlord a reasonable period - in view of the nature of the defect - to start remedying a defect for which the Landlord is responsible. The Tenant must confirm this notice, including the reasonable period, as soon as possible in writing to the Landlord.

9.2 The Landlord must take appropriate measures to prevent and limit damage to the leased space and to the building or building complex of which the leased space forms part.

If the damage or impeding damage cannot be attributed to the Tenant and the costs of reasonable measures are demonstrable and reasonable, the Landlord must reimburse the Tenant for these costs immediately on request.

10 LIABILITY

10.1 The Tenant is liable towards the Landlord for all damage to the leased space, unless the Tenant proves that the damage is not attributable to either it or those under its responsibility.

10.2 The Tenant indemnifies the Landlord against fines that are imposed on the Landlord as a result of the Tenant’s behaviour or negligence.
10.3 The Landlord is not liable for damage as a result of a defect and the Tenant in case of a defect cannot lay claim to a rent reduction or set-off, except for the right to set-off as referred to in Clause 206(3) DCC.

10.4 The conditions of Clause 10.3 do not apply in the following circumstances:
(a) in case of damage if a defect is the result of a serious attributable breach of the Landlord;
(b) if the Landlord was aware about a defect at the commencement of the lease and did not make any further arrangements with the Tenant in that regard;
(c) if the leased space turns out on the commencement date, as referred to in Clause 3.1 of the lease, not to be suitable for the use as referred to in Clause 1.1 of the lease due to circumstances that are attributable to the Landlord;
(d) if the Landlord should have been aware about a defect at the commencement of the lease and the Tenant could not or ought not to have been aware thereof due to its duty to investigate or did not have to carry out any investigation in that regard;
(e) if the Landlord has not observed the reasonable period stipulated by the Tenant in writing, as referred to in Clause 9.1, for starting to remedy a defect for which the Landlord is responsible.

11 COSTS OF MAINTENANCE, REPAIRS AND RENEWAL, INSPECTIONS AND SURVEYS

11.1 The terms maintenance, repair and renovation as used in the lease and the general conditions are defined as follows:
(a) maintenance: ensuring that an item remains in good condition, alternatively in its condition on the commencement date of the lease, subject to normal wear and tear;
(b) repair: restoring or replacing an item to a condition that makes it possible to reuse this item as it was used on the commencement date of the lease;
(c) renovation: the replacement of an item as a result of it reaching the end of its technical life.

11.2 The costs of maintenance, repairs and renovations to the leased space as stated below in Clause 11.4 are payable by the Landlord. The costs of other maintenance, repairs and renovations, including the costs of inspections and surveys to the leased space, are payable by the Tenant.

If the leased space is part of a building or building complex, the above also applies to the costs of work performed for the benefit of the building or building complex of which the leased space forms part, such as work performed to common systems, spaces or other common facilities, on a pro-rata basis.

11.3 Unless otherwise agreed by the parties, the work referred to in Clauses 11.2, 11.4 and 11.5 will be performed by or on the instructions of the party that is liable to pay for the work. The parties must commence with the performance of the aforementioned work in good time.
11.4 The following work will be carried out at the expense of the Landlord:

(a) maintenance, repair and renovation of structural parts of the leased space, such as foundations, columns, beams, structured floors, roofs, terraces, structural walls, and exterior walls;
(b) maintenance, repair and renovation of the stairs, steps, sewers, gutters and external frames belonging to the leased space, unless the Tenant has failed to comply with its obligations under Clause 11.5 item k;
(c) replacement of parts and renovation of systems belonging to the leased space;
(d) outside paintwork.

The costs of the work referred to under a-d are payable by the Landlord, unless the work must be considered as minor repairs, including minor and daily maintenance within the meaning of the law or work on items that have not been installed in or on the leased premises by or on behalf of the Landlord.

11.5 By way of clarification, notwithstanding or in addition to Clause 11.2, the following work will be carried out at the expense of the Tenant:

(a) exterior maintenance if and insofar as this relates to work that may be considered to be minor repairs, including minor and daily maintenance within the meaning of the law, as well as interior maintenance that does not include maintenance as referred to in Clause 11.4, all notwithstanding the following conditions;
(b) maintenance, repairs and renovation of switches, lamps, lighting (including fittings), batteries, indoor paintwork, sockets, hinges and locks, glazing and glass doors, mirrors, windows and other panes;
(c) maintenance and repairs of roller blinds, Venetian blinds, awnings and other sun blinds;
(d) maintenance and repairs of the suspended ceiling including fittings, doorbell systems, sink units, pantry equipment and plumbing;
(e) maintenance and repairs of pipe work and taps for gas, water and electricity, fire, burglary and theft prevention supplies and all that pertains thereto;
(f) maintenance and repairs of partitions dividing properties as well as the maintenance of the gardens and grounds including the pavement;
(g) the periodic and corrective maintenance, as well as the periodic inspections and remote management of the technical systems belonging to the leased space, including renovation of small parts. This work may only be performed by companies approved by the Landlord;
(h) controls and inspections whether or not prescribed by the government and those deemed reasonably necessary (both periodic and incidental) in the area of the soundness and safety or to inspect the proper performance of technical or other systems belonging to the leased space or its immovable appurtenances; the aforementioned controls and inspections will be carried out on the instruction of the Landlord; the conditions below in Clauses 18.3 to 18.8 apply to the extent possible;
(i) maintenance, repairs and renovation of upholstery and floor coverings that have been or will be installed by or for the Tenant, whether or not pursuant to a provisional sum made available to the Tenant by the Landlord;
(j) cleaning and keeping the leased space clean, both inside and outside, including cleaning the windows, roller shutters, blinds, canopies and other awnings, window frames and walls of the leased space and removing any graffiti from the leased space;
(k) emptying grease traps, cleaning and unblocking drains, gutters and all drains/sewage pipes of the leased space up to the municipal main sewer of the leased space, sweeping chimneys and cleaning ventilation ducts.

11.6 The costs of maintenance, repairs and renovation of alterations and additions introduced by or for the Tenant are payable by the Tenant.

11.7 If the Tenant fails to carry out the maintenance, repairs or replacement work at its own expense after a demand to do so - or if this work is carried out improperly or badly in the opinion of the Landlord - the Landlord will be entitled to carry out or to have the maintenance, repairs or replacement work it deems necessary carried out at the Tenant’s expense. If the work to be carried out at the expense of the Tenant cannot be postponed, the Landlord will be authorised to carry out this work or to have it carried out immediately at the Tenant’s expense.

11.8 If the Landlord has to carry out maintenance, repairs or replacement work, it must consult the Tenant beforehand concerning how the Tenant’s interests can be taken into account as far as possible when carrying out this work. If this work is carried out outside normal working hours in accordance with the Tenant’s wishes, the extra costs incurred will be payable by the Tenant.

11.9 The Tenant is responsible for the proper and skilled use of the technical systems located in the leased space. The Tenant is also liable for the maintenance performed on the systems by itself or on its instructions. The fact that the maintenance has been performed by a company approved by the Landlord does not discharge the Tenant from this liability.

11.10 If the Tenant and Landlord have agreed that maintenance, repairs and renovation work in, on or to the leased space, the building or building complex of which the leased space forms part, as referred to in Clause 11.2, 11.5 and 11.6 and that is payable by the Tenant, is not to be carried out on the instructions of the Tenant but on those of the Landlord, the costs thereof will be charged by the Landlord to the Tenant. For this purpose the Landlord will enter into maintenance contracts in some cases.

12 ALTERATIONS AND ADDITIONS BY THE TENANT

12.1 The Tenant must at all times notify the Landlord in writing of any alteration or addition. This includes but is not limited to all alterations that could affect the permits/licences that apply to the leased space. The Tenant must ensure it stipulates that the party which performs the alterations and additions must waive its right of retention.
12.2 The Tenant is entitled, without the Landlord’s permission, to make alterations and/or additions to the leased space that are necessary for the Tenant’s business operations, provided that the alterations and additions do not relate to or affect the structural construction of the leased space and/or technical facilities that form part of the leased space, the building or the building complex of which the leased space forms part.

12.3 The Tenant requires the Landlord’s prior written permission for all alterations and additions other than those referred to in Clause 12.2.

12.4 The alterations and/or additions referred to in Clause 12.2 do not include alterations and additions to the exterior of the leased space, including the Tenant’s name signs and advertising. The written permission of the Landlord is always needed for this purpose and the Tenant must follow the Landlord’s reasonable instructions. The Landlord may not unreasonably withhold its approval. The Landlord is further not permitted without the Landlord’s written permission to tape over display or other windows or otherwise make them opaque.

12.5 Before making any alterations and/or additions to the leased space, the Tenant must always investigate further to determine whether there is any asbestos in the location where the alterations and/or additions will be made. The Tenant must give the Landlord notice of these further investigations and consult with the Landlord if asbestos is found. The Tenant indemnifies the Landlord against all possible damage and consequences if it performs or has a third party perform the aforementioned work in the presence of asbestos.

12.6 The Tenant warrants that other users of the building or building complex of which the leased space forms part will not experience any nuisance, damage and/or inconvenience from the alterations and/or additions, regardless of whether permission is required and/or granted.

12.7 If a third-party permit/licence, dispensation or authorisation is needed, the Tenant will make application for this and abide by all related rules.

12.8 All costs and charges relating to the alterations and additions are payable by the Tenant insofar as these have been incurred by or on behalf of the Tenant.

12.9 The alterations or additions made by the Tenant, whether or not with the authorisation of the Landlord, do not form part of the leased space. The Landlord does not have any obligation to maintain, repair or renovate these alterations and additions.

12.10 The Tenant is liable for damage as a result of alterations or additions to the leased space made by or on its behalf.

12.11 The Tenant must observe the Landlord’s reasonable instructions and indemnifies the Landlord against third-party claims for damage resulting from the alterations made and facilities introduced by the Tenant.

12.12 If an alteration or addition causes nuisance, inconvenience and/or actual or impending damage, the Tenant must take all measures to remedy the damage and prevent the nuisance and inconvenience.
12.13 If items installed by the Tenant have to be temporarily removed because of work to the leased space, or to the building or building complex of which the leased space forms part, the costs of removal, any storage and reinstallation will be payable by the Tenant.

12.14 The Tenant is obliged to remove alterations and additions before the end of the lease and repair the resultant damage, unless the Landlord releases it from this obligation.

12.15 The Tenant waives all rights and entitlements on the basis of unjustified enrichment in connection with the alterations or additions made by or on behalf of the Tenant that have not been removed at the end of the lease, unless otherwise agreed between the parties in writing.

13 MAINTENANCE AND RENOVATIONS BY THE LANDLORD

13.1 The Landlord is permitted to carry out, or to arrange for third parties to carry out work and inspections in, on or to the leased space or the building or building complex of which the leased space forms part or adjacent properties, for the purpose of maintenance, repairs and renovations. This includes installing additional facilities, alterations or work required in connection with environmental or other requirements or measures of the government, public utility companies or other competent authorities.

13.2 If the Landlord wishes to renovate the leased space, it must submit a renovation proposal to the tenant. A renovation proposal is deemed to be reasonable, if it has the consent of at least 51% of the Tenants of the leased space involved in the renovation and if those Tenants jointly lease at least 70% of the number of square metres of lettable floor area, including empty space of the building or building complex of which the leased space forms part and that is involved in the renovation. For purposes of calculating the percentage, the Landlord will be regarded as the tenant of the vacant square metres of the lettable floor area.

13.3 Renovation includes full and partial demolition, replacement, new construction, additions and alterations to the leased space or to the building or building complex of which the leased space forms part.

13.4 The conditions of Clause 220(1)(2) and (3), Book 7 DCC do not apply. Renovations and maintenance to the leased space, even if invasive for the Tenant's business activities, or to the building or building complex of which the leased space forms part, do not produce a defect for the Tenant. The Tenant must tolerate maintenance and renovations to the leased space, or to the building or building complex of which the leased space forms part, and give the Landlord the opportunity to carry out this work. The Landlord must take reasonable and proportional measures to limit the impairment of the quiet right of enjoyment under the lease as far as possible.

13.5 The Landlord is authorised to change the appearance and design of those parts of the leased space in respect of which the Tenant does not have an exclusive right of use, such as common areas, lifts, stairs, escalators, stairwells, hallways, entrances or other immovable appurtenances, and to relocate those parts of the leased space provided that the use as referred to in Clause 1.2 of the lease remains possible.
14 REQUESTS/PERMISSION

14.1 Any amendment/addition to this lease must be agreed in writing.

14.2 If and insofar as the Landlord’s or Tenant’s permission is required in any provision of this lease, the Landlord or Tenant may not unreasonably refuse or delay this permission, which is deemed to have been given only if issued in writing.

14.3 Permission granted by the Landlord or Tenant is for one instance only and does not apply to other or subsequent cases. The Landlord or Tenant is entitled to attach reasonable conditions to its permission.

15 ORGANISATIONAL CHANGE AT THE TENANT/LANDLORD
The parties are obliged to give each other written notice of any intended relevant changes in their organisation, including the structure under company law. The above notice must reach the other party in such time that it can still adopt all measures in relation to the intended change. These measures include but are not limited to legal actions, such as filing a notice of opposition to a motion for legal merger or division.

16 VALUATION AND VIEWING OF THE LEASED SPACE

16.1 If the Landlord wishes to carry out or have a third party carry out a valuation of the leased space, or wishes to perform work in, on or to the leased space, the Tenant is obliged to grant access to the Landlord or the individual who acts on behalf of the Landlord and to enable them to perform the work.

16.2 In order to carry out the work referred to in the first paragraph, the Landlord and/or all the individuals designated by it are entitled after consulting the Tenant to enter the leased space between 7 a.m. and 5:30 p.m. on working days. In case of emergency the Landlord is also entitled to enter the leased space without consulting the Tenant and, if necessary, outside the aforementioned times.

16.3 In case of the intended lease, sale or auction of the leased space and for one year prior to the end of the lease, the Tenant is obliged, without deriving any rights, to allow the Landlord or its designated agent, access and the opportunity to view the leased space on at least two working days a week, after prior notification from the Landlord or its designated agent. The Tenant must tolerate the customary ‘to let’ or ‘for sale’ signs or notices on or near the leased space.

17 RENT ADJUSTMENT

17.1 A rent adjustment in accordance with Clause 4.5 of the lease occurs on the basis of the adjustment of the monthly price index figure according to the consumer price index (CPI) series for all households (2006=100), published by Statistics Netherlands (Centraal Bureau voor de Statistiek, CBS). The adjusted rent is calculated according to the following formula: the adjusted rent is equal to the rent which applies on the adjustment date multiplied by the index figure for the calendar month falling four months before the calendar month in which the rent is adjusted, divided by the index figure for the calendar month falling sixteen calendar months before the calendar month in which the rent is adjusted.
17.2 The rent will not be adjusted if an indexation of the rent would lead to a lower rent than the most recent rent. In such a case, that most recent rent remains unchanged until in a subsequent indexation the index figure of the calendar month falling four calendar months before the calendar month in which the rent is adjusted is higher than the index figure of the calendar month falling four calendar months before the calendar month in which the most recent adjustment took place. In that case, the index figures of the calendar months referred to in the previous sentence will be used for that rent adjustment.

17.3 An indexed rent is due on demand, even if the Tenant has not been given any separate notice of the adjustment.

17.4 If the CBS discontinues publishing the aforementioned consumer price index or if the basis for the calculation is altered, an index figure as similar to this as possible will be used. If there is a difference of opinion in this respect, either party may request a decision from the director of the CBS that will be binding on both parties. Each party will pay half of any associated costs.

18 COSTS OF SUPPLYING GOODS AND SERVICES (SERVICE CHARGES)

18.1 In addition to the rent, the costs incurred for the supply, transport, measurement and consumption of water and energy for the leased space, including the costs of concluding the agreements concerned and for hiring of a meter, as well as any other costs and fines charged by the public utility companies, are payable by the Tenant. The Tenant itself is required to conclude agreements for supplies with the companies involved, unless the leased space does not have a separate connection of its own and/or the Landlord takes care of these matters as part of the agreed supply of goods and services.

18.2 If the parties have not agreed to any additional supply of goods and services, the Tenant must bear the costs and risk for this to the satisfaction of the Landlord. In that event, subject to prior approval by the Landlord, the Tenant will enter into service contracts related to the systems that are part of the leased space.

18.3 If parties have agreed that additional supplies of goods and services are to be provided by or on behalf of the Landlord, the Landlord will determine the sum payable by the Tenant for this purpose on the basis of the costs arising from the supply of goods and services and the accompanying administrative work. Insofar as the leased space forms part of a building or a building complex and the supply of goods and services also relates to other parts thereof, the Landlord will at its discretion determine a reasonable sum for the Tenant’s share of the costs for supply of goods and services payable by the Tenant. The Landlord need not take into account the fact that the Tenant may not use one or more of these supplies of goods or services. If one or more sections of the building or the building complex are not in use, the Landlord in determining the Tenant’s share of the costs must ensure that this share is not larger than would be the case if the entire building or building complex were in use.
18.4 Within 12 months of the end of each service charges year, the Landlord will issue an itemised statement to the Tenant of the costs of supplying goods and services, stating the calculation method of that statement and, insofar as applicable, of the Tenant’s share in the costs such that the Tenant can determine the allocation of the costs independently. The basic principle is that the Landlord must provide the statement within 12 months of the end of the year. If the Landlord is unable to provide the statement in time, it must give the Tenant notice thereof with reasons. The statutory prescription period commences after the end of the year to which the service charges relate.

18.5 After the termination of the lease, a statement will be issued for the period in respect of which no account has yet been given. This last statement will be provided no later than 12 months after the end of the year to which the service charges relate, unless the Landlord is unable to provide this statement. The Landlord must give the Tenant notice thereof with reasons. Neither the Tenant nor the Landlord will make any premature claims for settlement.

18.6 Taking advance payments into account, if the statement for the period concerned shows any shortfall in payments made by the Tenant or any excess in payments received by the Landlord these will be paid or reimbursed within three months of the issue of the statement. Disputes concerning the correctness of the statement do not provide grounds for the suspension of this obligation.

18.7 The Landlord is entitled to change the supply of goods and services, after consultation with the Tenant, in terms of type and size.

18.8 The Landlord is entitled to make interim adjustments to the advance payment payable by the Tenant for the costs of supplying goods and services in accordance with the costs which it expects to incur, for example in the case referred to in Clause 18.7.

18.9 If the supply of gas, electricity, heating and/or hot water is included in the supply of goods and services, the Landlord will be entitled, after consulting with the Tenant, to adjust the method of determining the consumption and thereby to adjust the Tenant’s share of the costs of this consumption, for which purpose individual metering to make the actual consumption of each user visible is permitted in any case.

18.10 If the consumption of gas, electricity, heating and/or hot water is measured by using meters and if a dispute arises regarding the Tenant’s share of the costs of consumption as a result of the failure or malfunctioning of these meters, the Tenant’s share will be determined by a company consulted by the Landlord which specialises in measuring and determining consumption of gas, electricity, heating and/or hot water. This also applies in case of damage, destruction or fraud in relation to the meters, without prejudice to all other rights which the Landlord may have in relation to the Tenant in such a case, such as the right to the repair or replacement of the meters and compensation for damage suffered and/or losses incurred.
18.11 The Landlord is not liable, unless it is in serious attributable breach, for any damage as a result of the non-functioning or inadequate supply of the aforementioned goods and services. The Tenant may likewise not lay claim to a rent reduction in such cases.

19 **TURNOVER TAX**

19.1 If the Tenant does not use, no longer uses or allows the leased space to be used for activities giving entitlement to the deduction of turnover tax and, as a result, the exemption from payment of turnover tax on the rent is terminated, the Tenant will no longer owe the Landlord or its legal successor(s) turnover tax on the rent, but commencing on the date on which the termination takes effect, in addition to the rent, the Tenant must pay such separate compensation to the Landlord or its legal successor(s) instead of turnover tax, that the Landlord or its legal successor(s) are fully compensated for:

(a) the turnover tax that as a result of the termination of the option cannot be or can no longer be deducted from the operational costs of the leased space or investments therein by the Landlord or its legal successor(s);

(b) the turnover tax that the Landlord or its legal successor(s) owe the tax authorities as a result of the termination of the option due to recalculation as referred to in Clause 15(4) of the Turnover Tax Act of 1968 (*Wet op de omzetbelasting 1968*) or adjustment as referred to in Clauses 11 to 13 of the Turnover Tax Implementation Decree of 1968 (*Uitvoeringsbeschikking omzetbelasting 1968*);

(c) all other damage suffered by the Landlord or its legal successor(s) as a result of the termination of the option.

19.2 The Tenant must pay the Landlord or its legal successor(s) the financial loss suffered by the Landlord or its legal successor(s) as a result of termination of the option (as referred to in Clause 19.1), always simultaneously with the periodic rental payments and, with the exception of the damage as referred to in Clause 19.3.a, if possible by means of an annuity, equally divided across the remaining term of the current lease period, but which will become immediately and fully due and payable in one sum by the Tenant if the lease is terminated prematurely for any reason whatsoever.

19.3 The conditions of 19.3.b do not apply if, when this lease was concluded, the adjustment period for the deduction of input tax related to the leased space had expired.

19.4 When a situation as referred to in Clause 19.1 occurs, the Landlord or its legal successor(s) must notify the Tenant of the amounts that the Landlord or its legal successor(s) has had to pay to the tax authorities and provide insight into the other damage as referred to in Clause 19.1.c. The Landlord or its legal successor(s) must cooperate if the Tenant wishes to have the statement of the Landlord or its legal successor(s) audited by an independent chartered accountant. The costs hereof are payable by the Tenant.

19.5 If, in any financial year, the requirement of use or allowing the use of the leased space for purposes as described in Clause 4.3 of the lease is not satisfied, the Tenant must inform the Landlord or its legal successor(s) of this within four weeks of the end of
the relevant financial year by means of a statement signed by the Tenant. Within that same period, the Tenant sends a copy of that statement to the Dutch Tax and Customs Administration.

19.6 If the Tenant fails to comply with its obligation to provide information as referred to in Clause 19.5 and/or fails to comply with its obligation to take occupation as referred to in Clause 19.8, or if it subsequently transpires that the Tenant proceeded from an incorrect premise and the Landlord or its legal successor(s) have wrongly charged turnover tax on the rent, the Tenant will be in default and the Landlord or its legal successor(s) will be entitled to recover the ensuing financial loss from the Tenant. This loss concerns the total turnover tax yet to be paid to the tax authorities by the Landlord or its legal successor(s), plus interest, any fines, and any other costs and damage. The conditions of this paragraph provide for a compensation arrangement if the option has to be terminated retroactively, in addition to the arrangement set out in Clause 19.1. The additional damage that results for the Landlord or its legal successor(s) from that retroactive effect is immediately due and payable in full by the Tenant as a lump sum.

The Landlord or its legal successor(s) will cooperate if the Tenant wishes to have the statement of that additional damage of the Landlord or its legal successor(s) audited by an independent chartered accountant. The costs hereof are payable by the Tenant.

19.7 The conditions of Clause 19.1, 19.4 and 19.6 also apply if the Landlord or its legal successor(s) are faced with damage only after the termination of the lease, prematurely or otherwise, resulting from the termination of the option applicable to the parties, which damage can be immediately claimed in full by the Landlord or its legal successor(s) as a lump sum.

19.8 Notwithstanding the other relevant conditions of this lease, the Tenant must in any event, use or allow the leased space to be used, with application of the option (as referred to in Clause 19.1), prior to the end of the financial year in which the commencement date, as referred to in Clause 3.1 of the lease, occurs.

20 OTHER TAXES, FEES, CHARGES, LEVIES AND CONTRIBUTIONS

20.1 The Tenant must pay the following, even if the Landlord is charged for them:

(a) property tax for the actual use of the leased space and the actual joint use of the service areas, general areas and communal areas on a pro-rata basis;

b. environmental levies, including the pollution levy for surface water, the contribution towards the costs of purifying waste water, and any other contribution for the purpose of environmental protection;

(b) betterment levy, for half the amount of the assessment. The Landlord must give the Tenant due notice of receipt of a betterment levy assessment. If required, the Landlord must contest this assessment and include the Tenant's objections, if possible. The Tenant must reimburse the Landlord for half of the associated costs that have been reasonably incurred;
(c) sewerage charges in relation to the actual use of the leased space and the actual joint use of service areas, general areas and common areas;

(d) other existing or future taxes, including taxes levied for facilities in common areas, such as flag tax and advertising tax, business investment zone levies, municipal tax for encroachments in, on or above public land, charges, other levies and contributions:
   (i) relating to the actual use of the leased space;
   (ii) relating to the Tenant's assets;
   (iii) which would not be levied or imposed at all, or would only be partially levied or imposed, if the leased space had not been provided to the Tenant for use.

20.2 If the charges, fees or taxes to be paid by the Tenant are collected by the Landlord, the Tenant must pay them to the Landlord immediately on demand of the Landlord within two months of this request.

21 INSURANCE PREMIUMS

21.1 If in respect of the leased space or the building or building complex of which the leased space forms part, in connection with the nature or exercise of the profession practised or business conducted by the tenant, the Landlord or other Tenants in the building or the building complex is/are charged a premium which is higher than normal for the fire insurance on the building or the fixtures and fittings and stock, the tenant will reimburse the amount in excess of the normal premium to the Landlord or these other Tenants.

21.2 The Landlord and Tenants are free to choose their insurance company, to determine the value insured and to assess the reasonableness of the premium owed.

21.3 ‘Normal premium’ is understood to mean the premium that the Landlord or Tenant can obtain from a reputable and well-known insurance company for insuring the leased space, its fixtures and fittings and stock against fire on the date immediately preceding the conclusion of this lease, without taking into account the nature of the business to be conducted or profession to be practised by the Tenant, as well as each adjustment of this premium - during the term of the lease - which is not the result of a change in the nature or extent of the risk insured.

22 TERMINATION OF THE LEASE OR USE

22.1 Unless otherwise agreed in writing, the Tenant must return the leased space to the Landlord at the end of the lease or use of the leased space, in the condition as described at the commencement of the lease in the delivery report, subject to normal wear and tear.

22.2 If a delivery report is not drawn up at the commencement of the lease, and unless the Tenant provides evidence to the contrary, the leased space is deemed to have been handed over at the commencement of the lease in a good condition, without defects and free of damage, and the Tenant must return the leased space to the Landlord in that condition at the end of the lease, subject to normal wear and tear.

The conditions of the last sentence of Clause 224(2), Book 7 DCC do not apply.
22.3 In addition to Clause 22.2, the Tenant must return the leased space at the end of the lease, vacant and cleared, free of any use or rights of use, properly cleaned and with all keys and key cards, etc., to the Landlord.

22.4 The Tenant is obliged to remove all items, at its own expense, that it or the previous Tenant or user has installed in, to or on the leased space, unless the Landlord indicates or has indicated otherwise in writing at any time. The Landlord does not owe any compensation for items that are not removed, unless otherwise agreed in writing.

22.5 If the Tenant has terminated the use of the leased space before the end of the lease, the Landlord is entitled to access the leased space at the Tenant’s expense and to take possession of it, without this producing a defect.

22.6 All items that the Tenant has apparently abandoned by leaving them behind in the leased space on its actual departure from such space, may be removed, sold and/or destroyed by the Landlord, at its discretion, without any liability on the part of the Landlord, at the expense of the Tenant.

22.7 The parties are required to jointly inspect the leased space in good time before the termination of the lease or the use of the leased space. The parties must make a report of this inspection in which their findings concerning the condition of the leased space are recorded. It will also be recorded in this inspection report what work in respect of repairs which appeared necessary at the inspection and any outstanding maintenance still has to be carried out at the Tenant’s expense, as well as the period within in which this will occur.

22.8 If the Tenant or Landlord, after being properly given the opportunity to do so by means of a registered letter, do not cooperate in the inspection and/or recording the findings and arrangements in the inspection report, the party insisting on this will be authorised to carry out the inspection in the absence of the negligent party, adopt the report which is binding for both parties, and immediately made a copy of this report available.

22.9 The Tenant is required to carry out or to have a third party carry out the repairs mentioned in the inspection report within the period specified in the report - or as later agreed between the parties - in a proper manner. If the Tenant remains totally or partially in breach of its obligations arising from the report, the Landlord will be entitled to have this work carried out itself and to recover the associated costs from the Tenant, notwithstanding the Landlord’s claim for compensation of further damage and costs.

22.10 For the period required to carry out the repairs calculated from the date of the termination of the lease, the Tenant will owe the Landlord an amount calculated on the basis of the last applicable rent and the payment for the additional supply of goods and services, notwithstanding the Landlord’s claim for compensation for further damage and costs.

23 PAYMENTS

23.1 Payment of the rent and all the additional payments under this lease must be made on or by the due date in legal Dutch tender - without suspension, discount or set off
against a claim which the Tenant has against the Landlord - by means of a deposit or transfer into a bank account indicated by the Landlord. The Tenant may apply set-off only if the Court has validated the claim.

This does not affect the Tenant’s right to remedy defects itself and deduct the reasonable costs thereof from the rent if the Landlord fails to remedy these defects. The Landlord is at liberty, by means of a written statement sent to the Tenant, to change the location or method of payment. The Landlord is entitled to determine which outstanding claim under the lease will be reduced by a payment received from the Tenant.

23.2 If an amount owed by the Tenant under the lease is not paid promptly on the due date, the Tenant will forfeit an immediately due and payable fine by operation of law to the Landlord per calendar month, as from the due date, of 1% of the outstanding amount, subject to a minimum of EUR 300 per month, for which purpose each month commenced counts as a full month. The above fine is not payable if the Tenant has submitted a motivated claim to the Landlord by registered letter before the due date referred to in Clause 23.1, and the Landlord has not responded substantively within four weeks of receipt of this letter.

24 SECURITY

24.1 As security for the due performance of its obligations under the lease, the Tenant must, no later than two weeks before the commencement date as referred to in Clause 3.1 of the lease or on such earlier date as the Landlord requires, provide a bank guarantee in accordance with the model stipulated by the Landlord for the amount stated in the lease or pay a deposit into a bank account as indicated by the Landlord. This bank guarantee or deposit must also apply to extensions of the lease, including amendments thereto, and must remain valid for at least six months after the date on which the leased space is actually vacated and the lease is terminated. This bank guarantee or deposit must also apply to the Landlord’s legal successor(s).

24.2 If the bank guarantee or deposit is claimed against and paid out in whole or in part, the Tenant must arrange immediately on request of the Landlord for a new bank guarantee or deposit that complies with the conditions of Clauses 24.1, 24.3 and 24.4 for the amount that applied immediately before the claim was made against the bank guarantee or deposit.

24.3 The Tenant is obliged, after an upward adjustment of the payment obligation as referred to in Clause 4.8 of the lease of 15% or more in total, to immediately on request of the Landlord provide a new bank guarantee or deposit for an amount adjusted to the new payment obligation.

24.4 If the deposit is not validly claimed against by the Landlord, it must, after termination of the lease, repay the deposit or the remainder of the deposit to a bank account indicated by the Tenant no later than six months after the end of the lease. If the bank guarantee is not validly claimed against by the Landlord, it must, after termination of
the lease, return the bank guarantee to an address indicated by the Tenant no later than six months after the end of the lease.

24.5 Clauses 24.1 - 24.4 apply insofar as relevant to other securities.

25 **JOINT AND SEVERAL LIABILITY**

25.1 If several natural or legal persons have committed themselves as Tenant, these persons are always jointly and severally liable towards the Landlord for all obligations arising from the lease.
Deferred payment or discharge granted by the Landlord to one of the Tenants, or an offer to do so, relates only to that Tenant.

25.2 The obligations arising from the lease are joint and several, also with respect to the heirs or successors in title of the Tenant.

26 **LATE AVAILABILITY**

26.1 If the leased space is not available on the commencement date, as referred to in Clause 3.1 of the lease, due to the fact that the leased space is not ready on time, the previous Tenant has not vacated the leased space on time, or the Landlord has not yet obtained the government permits/licenses that it must arrange, the Tenant will not owe rent or service charges until the date on which the leased space is made available, and its other obligations and the agreed terms will be postponed accordingly.

26.2 The Landlord will not be liable for any damage that the Tenant may suffer due to the delay, unless a breach can be attributed to it.

26.3 An attributable breach for the purpose of Clause 26.2 includes a situation in which the Landlord does not endeavour to make the leased space available to the Tenant as soon as possible.

26.4 The Tenant cannot seek the termination of the lease, unless the late handover is caused by a serious attributable breach of the Landlord and it is unacceptable for the Tenant, on the basis of reasonableness and fairness, for the lease to continue unchanged and for the Landlord not to address the justified interests of the Tenant.

27 **APARTMENT RIGHTS**

27.1 If the building or the building complex of which the leased space forms part is or becomes subdivided into apartment rights, the Tenant will be obliged to observe the rules arising from the deed of division and the regulations on use. The same applies if the building or building complex is or becomes the property of a cooperative association. The obligation to comply with those rules does not produce any defect. The Landlord warrants that the above rules that apply when the lease is concluded are not contrary to the lease.

27.2 Insofar as it is within its power, the Landlord will not assist in the formulation of regulations that are contrary to the lease.

27.3 The Landlord must ensure that the Tenant is provided with the regulations on use referred to in Clause 27.1.
28 **COSTS, DEFAULT**

28.1 In every case in which the Landlord or Tenant has a demand, notice of default or a writ served on the other party, or in case of proceedings against the Landlord or Tenant to compel it to act in accordance with the lease or to evict the Tenant, the Landlord or Tenant will be obliged to reimburse the other party for all costs incurred, both in and out of court, except in the event of a final and binding ruling made by the court compelling the Landlord or Tenant to pay the costs of the legal proceedings to the other party.

The reasonable costs incurred are fixed in advance by the parties at an amount that is calculated as follows: 15% of the principal sum, subject to a maximum of EUR 25,000 in each case, excluding the court registry fees. The costs of experts (lawyers, bailiffs, etc.) in legal proceedings are paid by the losing party.

Clause 96(4) and (6), Book 6 DCC, expressly including the reference to the maximum payable for extrajudicial costs, is thus not applicable between the parties.

28.2 The Landlord or Tenant will be in default through the mere expiry of a fixed term.

29 **PENALTY**

If, after having been properly notified by the Landlord that it is in breach, the Tenant fails to comply with the rules in Clauses 5.1, 8, 12.1 and 24.1, it will forfeit to the Landlord an immediately due and payable penalty of at least EUR 250 per calendar day, to the extent no specific penalty is agreed, for every calendar day that the Tenant is in breach. The above does not affect the Landlord’s right to make use of its other rights, including the right to specific performance and the right to full compensation insofar as the damage suffered exceeds the forfeited penalty.

30 **DATA PROTECTION ACT**

If the Tenant is a natural person, it will grant permission to the Landlord and property manager when it concludes and signs the lease for the recording and processing of its personal data in a database.

31 **ADDRESS FOR SERVICE**

31.1 From the commencement date, as referred to in Clause 3.1 of the lease, all notifications sent by the Landlord to the Tenant relating to the performance of the lease must be sent to the address of the leased space.

31.2 If the Tenant no longer actually conducts its business in the leased space, it is obliged to inform the Landlord thereof in writing immediately and provide a new address for service.

31.3 If the Tenant vacates the leased space without giving its new address for service to the Landlord, the address of the leased space will apply as the Tenant’s address for service.

32 **COMPLAINTS**

The Tenant must submit its complaints and requests in writing. In urgent cases, this may be done orally. In such cases, the Tenant must confirm its complaint or request in writing as soon as possible.
33 **FINAL STIPULATION**

If a part of the lease or these general conditions is void or voidable, the remaining part of the lease and these general conditions will remain in full force. In accordance with the conditions of Clause 42, Book 3 DCC, as agreed, that which the parties would have agreed on if the voidness or void ability were not known will apply instead of the void or voidable part.
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