

INTRODUCTORY GUIDE TO PURCHASING AND SELLING COMMERCIAL PROPERTY IN BELGIUM

This Guide is intended as a basic guide to the legal steps in purchasing and selling commercial property in Belgium. Further detail and information can be obtained by contacting Daniël Van der Mosen, Beius Lawfirm, Brussels, Belgium, the Belgian Law Europe member firm as detailed on this website.

(A) Purchasing commercial property in Belgium structured as a share transaction

For tax reasons, the purchase of commercial real estate is often structured as a share deal ; the property will be contributed to a Special Purpose Vehicle and the shares of this vehicle will be sold and transferred to the buyer.

Operations of this kind are to be considered as M & A-transactions, which are not the scope of this contribution.

(B) Purchasing and selling commercial property in Belgium structured as an asset deal

1. The purchaser identifies property and carries out a commercial survey/valuation report through his Estate Agent.
2. The purchaser instructs his Lawyer to prepare a legal offer. This is then negotiated with the seller and the seller's Lawyer. Once agreed the principal offer letters are exchanged between the Lawyers.
3. The seller's Lawyer exhibits the title deeds, any leases, all searches and reports, building alterations papers and others to the purchaser's Lawyer. The purchaser's Lawyer then reviews these and reports to the purchaser on the content of same.
4. The purchaser's Lawyer raises with the seller's Lawyer all enquiries in relation to the title deeds, leases, searches and others. Once satisfied with these the Lawyers draw up a Contract of Purchase. The Contract is signed by the Parties. In most cases a down payment of about 10 to 15 % of the purchase price will be paid at this stage. The Contract may contain a number of conditions precedent : environmental and other permits, the obtainment of necessary funding etc.
5. In some cases (depending on the kind of property) local authority may have a priority right of acquisition of the real estate : the local authority will be entitled to purchase the real estate for the same conditions which have been agreed upon between the parties.
6. Upon the Contract of Purchase becoming effective, the whole file will be passed to a notary public in order to prepare a formal deed. The notary public prepares

all loan and charge documents together with the lenders and reports to the lenders if the purchaser is borrowing money to finance the purchase.

7. The notary public will also check the seller's tax situation : if any taxes remain unpaid, tax authorities are entitled to receive (part of) the purchase price.
8. On the Completion Date (day of execution of the deed before a notary public) the balance of the purchase price is paid by the purchaser. The notary public will eventually distribute the purchase price between creditors (tax administration, banks) and will pay the balance, if any, to the seller.
9. The notary public then submits the deed to have it registered with the tax authorities ; a transfer tax of 10 to 12.5 % on the purchase price will be due Afterwards, the deed will be registered at the local mortgage registry.
10. The notary public will issue the title deed in favour of the purchaser.