LUXEMBOURG: AN ATTRACTIVE LEGAL GROUND FOR REAL ESTATE INSTITUTIONAL INVESTORS

IN 2013 THE LUXEMBOURG REAL ESTATE INVESTMENT MARKET STRONGLY REASSERTED ITS ATTRACTIVENESS BY REACHING THE HIGHEST INVESTMENT VOLUME FOR THE FIRST TIME SINCE THE BEGINNING OF THE FINANCIAL CRISIS.

According to official records, the overall yearly investment volume amounted to EUR 685 m, representing a 20% increase compared to 2012. A 5.1% vacancy rate and prime yields ranging between 5.75% and 6.5% further highlighted the positive yearly results. The largest foreign investors were Belgian, whereas the market was underpinned by the return of French investors with an investment volume of 20%. Luxembourg's longstanding stability, flexible legal framework, and economic and fiscal policies offer investors the possibility to structure tax efficient, safe and highly profitable real estate investments. Acquiring real estate assets in Luxembourg could be tentatively compared to saving gold in a sound bank safe.

In Luxembourg the acquisition of real estate assets can be structured in several ways depending on whether a sole investor or several investors enter into an asset or share deal. From a tax point of view, investors should carefully weigh opting for an asset deal as it shall imply the payment of registration fees that can amount to 10% in the city of Luxembourg. However, to compensate such economic impasse, a building acquisition can be structured by means of a Specialised Investment Fund regime (SIF), which shall directly acquire the targeted building (subject to some diversification rules). In case a targeted building generates profit (rents), an asset deal could be deemed more suitable and profitable than a share deal as the SIF is exempt from corporate income tax and net worth tax, if obviously the SIF has other assets in its portfolio.

Generally, in share deals no registration fees are due. Such economic advantage might be outweighed by the fact that investors, by acquiring the target company that owns a building, shall be taking over the assets and liabilities of both the target company and the building. Such risk factor could be reduced by consulting legal, tax, and real estate advisors during the preliminary due diligence.

Real estate collective investments may also be structured by using a hands-off solution such as a family structure as advised by "Family Offices" (those professionals that fall under this category as defined by the Luxembourg Law of 21 December 2012). The latter envisages a structure, whereby a SIF is interposed between the family and SPVs that owns building. Last but not least, a co-ownership (copropriété) structure could be envisaged in case investors solely acquire some building floors or if a joint venture is set up to operate a mixed user building (office & retail or office & residential).

Martine Gerber

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> *Martine Gerber*

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