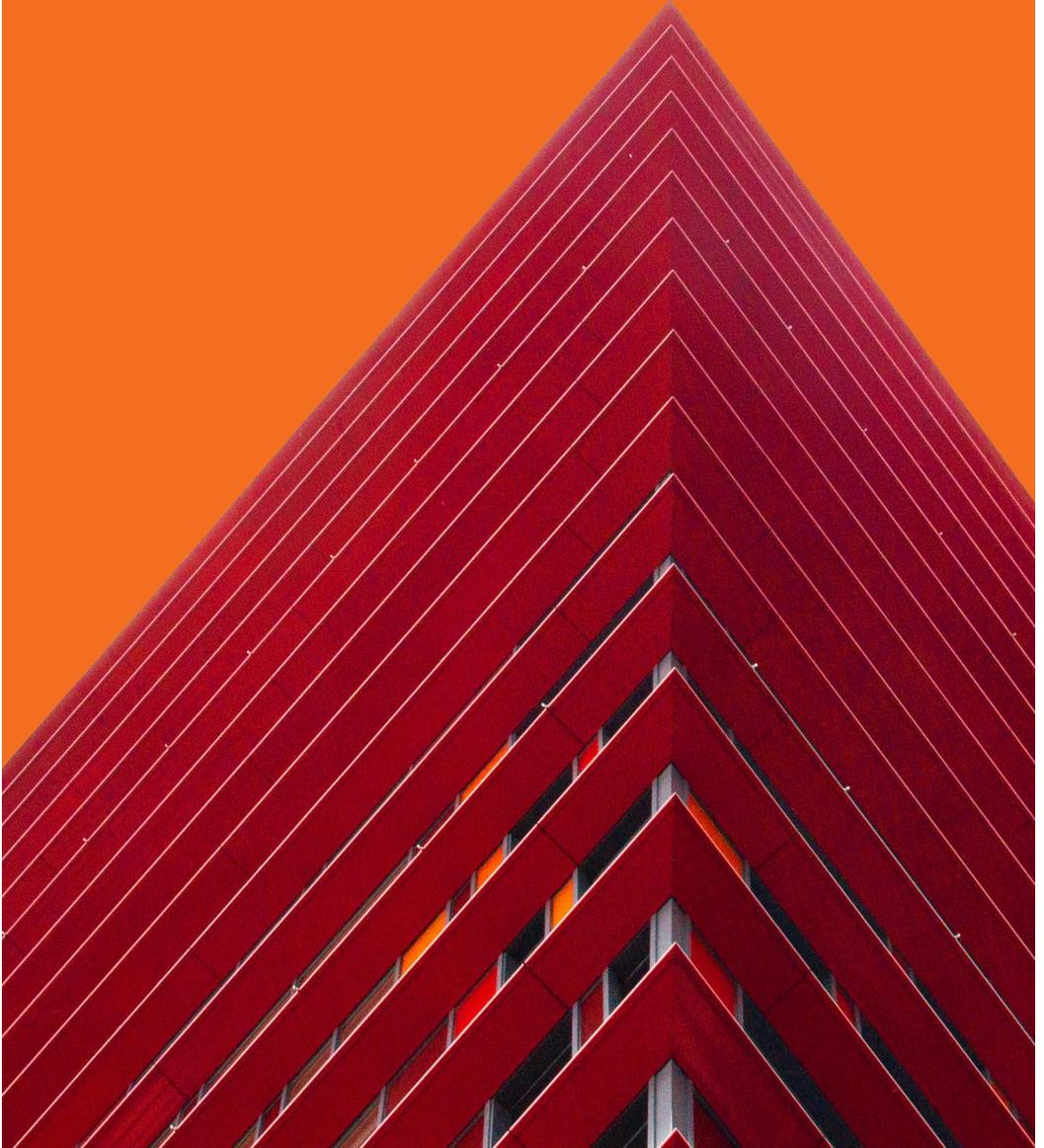
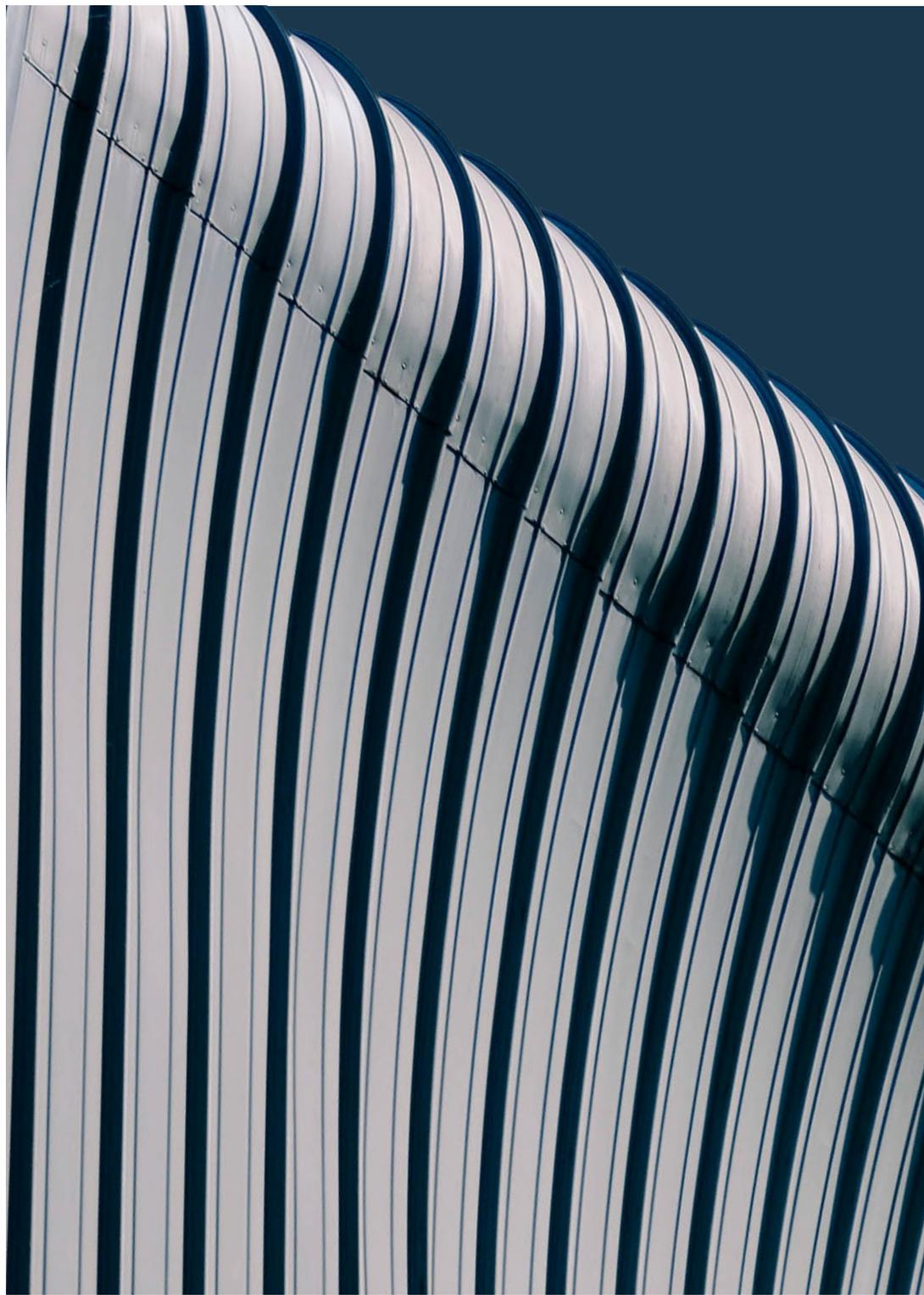


TaylorWessing

# Property Passports The Netherlands







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# Introduction

**Since the late 2000s, many property investments have been made against a backdrop of global economic and political instability. Investing in real estate provides specific risk return allocations and allows for portfolio optimization, is suitable for asset liability management and can generally be used as an inflation hedge.**

In short, various real estate asset classes offers competitive risk-adjusted returns, tangible asset and inflation linked income streams. Investing in real estate makes sense from a portfolio management perspective, in terms of diversification. Adding real estate to your portfolio generally allows for lower (specific) risk and may provide higher returns than can be achieved with a similar risk level in bonds.

The Dutch property market has in recent years grown significantly in terms of the proportion of overseas investment, with many investors attracted by the solid investment and return potential. Typically categorized by a focus on the largest four cities of Amsterdam, Rotterdam, The Hague and Utrecht, the Netherlands has, and continues to offer, solid investment opportunities in comparison to other European markets.

Recent changes on the financial

markets have put significant downward pressure on prices of asset classes. Further, inflation and disrupted supply chains have led to increasing construction costs. Uncertainty about future construction costs is expected to reduce new developments over the next years. Also, envisaged regulation on the housing market is expected to have a significant impact on middle class rent (*middenhuur*). This is expected to lead to fewer developments in this segment and the residential market as a whole, against the background of a continuously growing population in an already stretched market.

The Dutch real estate market is recognized for offering a variety of amenities, good transport links and infrastructure, in addition to a transparent commercial office market amongst other things. The bulk of investment activity has been focused on the office, residential market and logistics market in the last few years,

international investors have also been attracted to the Dutch property market for investment opportunities in retail and hotels sectors.

This property passport is intended to be a concise and practical guide for overseas investors and others who require advice on:

- **Investing in Dutch property** – why the Netherlands is an attractive investment destination – reasons to invest, tips for a profitable investment, selecting the right asset, and structuring the right deal.
- **Managing property efficiently** – understanding the rules which apply to Dutch landlord and tenant law in order to gain value from your property investment, and
- **Structuring property investments to maximise return** – considering the various corporate and tax structures that will enable investors to achieve their

investment potential in the most efficient and cost effective way.

**Taylor Wessing** is highly experienced in all aspects of real estate – it is a core part of what we do as a firm and clients value us for it. From an initial expression of interest in the Dutch market, to the acquisition, management, refinancing, development, and possible disposal of any type of real estate, we understand the needs of our clients. We focus on all legal disciplines relevant to the real estate sector.

We hope that you find this introductory passport useful. We would be delighted to discuss your specific needs and provide you with comprehensive and seamless advice that meets all your commercial needs.

To date we have produced similar passports for the CEE, German and UK markets. If you would like copies of these passports, please let us know.

## Key contacts

We would be delighted to discuss your legal needs in confidence with you. Please contact us for further information.



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# Why invest in real estate in the Netherlands?

**When it comes to investment strategy, global investors have differing aims for the return on their investment. Whilst some will look for short term returns, others will take a long-term view, holding and managing the asset for many years, if not decades, in order to secure their investments for future generations.**

## Market trends

The Netherlands provides an excellent strategic location to serve markets within Europe. The stable political and economic climate of the Netherlands, in combination with an outstanding geographical position, seaports, airports and great infrastructure, are just some of the reasons why global companies establish premises here.

Since it has become a key investment market in Europe, the Netherlands is increasingly popular for real estate investors. A significant percentage of Dutch real estate acquisitions are

made by foreign investors, with office and logistics assets comprising a large proportion of the purchases made to date. This illustrates how Dutch real estate is now being traded in a global marketplace by international players and we see this as a growing trend. Additionally, metropolitan areas benefit from the increasing demand for office space as well as residential property. Analysts still predict quite some demand for high class sustainable offices located at A locations.

## Transparent legal system

The Dutch legal system is based on civil law and it is characterized by legal certainty. The legal and tax systems are transparent and efficient and together attract investment into the Netherlands from all around the world, and in particular from other parts of Europe. The Dutch legal practice allows attorneys to operate together with notaries in the same firm. This is a huge advantage for investors in real estate since it enables efficiency and integrated procedures.

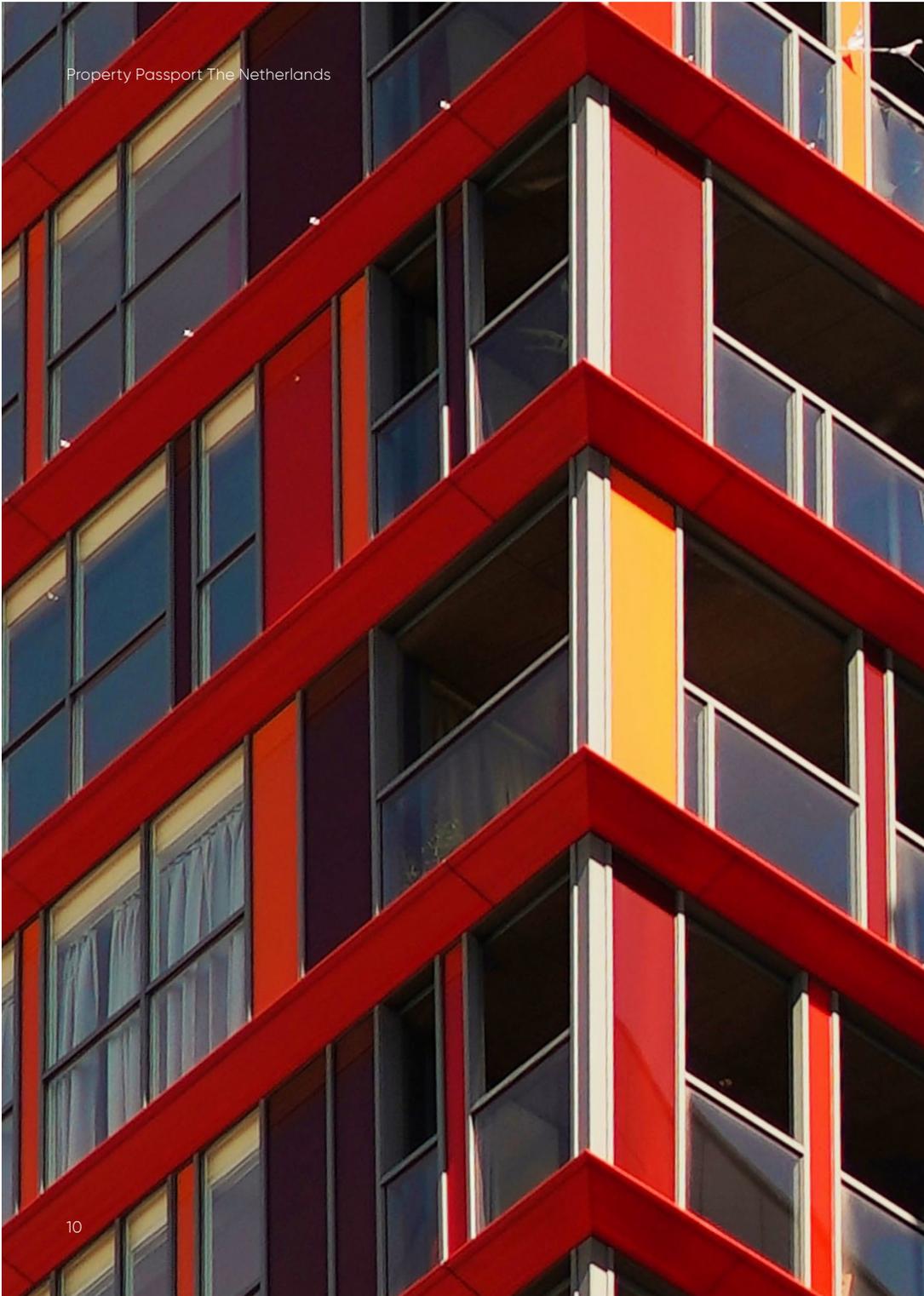
For international investors looking to acquire commercial and residential property in the Netherlands, the legal system is relatively 'user friendly'. Pursuant to the Dutch Civil Code (Burgerlijk Wetboek) an agreement between parties is concluded upon the offer and subsequent acceptance made by one party to another. Agreements are not required to contain mandatory provisions (except in the case of the sale of residential property to a

nonprofessional). Although in general not required by law, it is common practice that a purchase agreement regarding commercial real estate is set out in writing.

The drafting and signing of a contract is commonly preceded by a negotiation phase, the so-called pre-contractual phase. During this pre-contractual phase, parties must observe the principles of reasonableness and fairness, which implies that the parties' actions should be determined by their legitimate interests. The parties may therefore not break off negotiations and walk away at any time, especially when the negotiations have reached an advanced stage. A party that walks away from negotiations can be held liable for the losses suffered by the other party, ranging from costs incurred, to lost revenue (in the event the negotiations have reached their most advanced stage, close to signing the agreement).



**Ranked by The Lawyer magazine  
as having the second largest Real  
Estate partner team in Europe in  
their 'Global Real Estate 50' survey.**



# Selecting the right asset

**The Dutch property market has been cyclical for the last few decades. In light of this, investors need advice on asset classes in which to invest, asset location, covenant strength of tenants and overall timing. At the bottom of the market, yield compression can look attractive, but at the top of the market, purchases can look expensive. Our network allows us to bring investors up to speed on market trends before such trends are reflected in the always lagging and sometimes 'smoothed' overviews.**

The growing Dutch economy, which is in relatively good state compared to other developed countries post Covid-19, the international character of the Netherlands makes it an attractive hub for companies to invest in. In light of this, existing companies are expanding their businesses. As a result, a shortage of high class, sustainable offices and housing is likely. In the office sector, it is expected that the demand for high class sustainable spaces will continue to grow. This seems to focus on central locations in major cities such as Amsterdam, Rotterdam, Utrecht (the area known as the

'Randstad') and Eindhoven. However, no hybrid working strategy has yet emerged, which provides some uncertainty on demands of the end users.

At Taylor Wessing we work closely with international firms of surveyors and other intermediaries seeking to facilitate international investment. Together we support our clients in selecting the right asset. We are always focused on delivering the deal efficiently and with a strong commercial approach.

We guide our clients through the entire transaction, offering advice and assistance in all relevant areas. Our team has decades of experience advising on large and small acquisitions of both commercial and residential real estate.

From trophy assets to dry investment purchases, to the refurbishment and redevelopment of complex development sites, we have a wealth of experience which we can draw upon. We appreciate the issues that particularly concern overseas investors and will work with them to manage and mitigate potential risk.

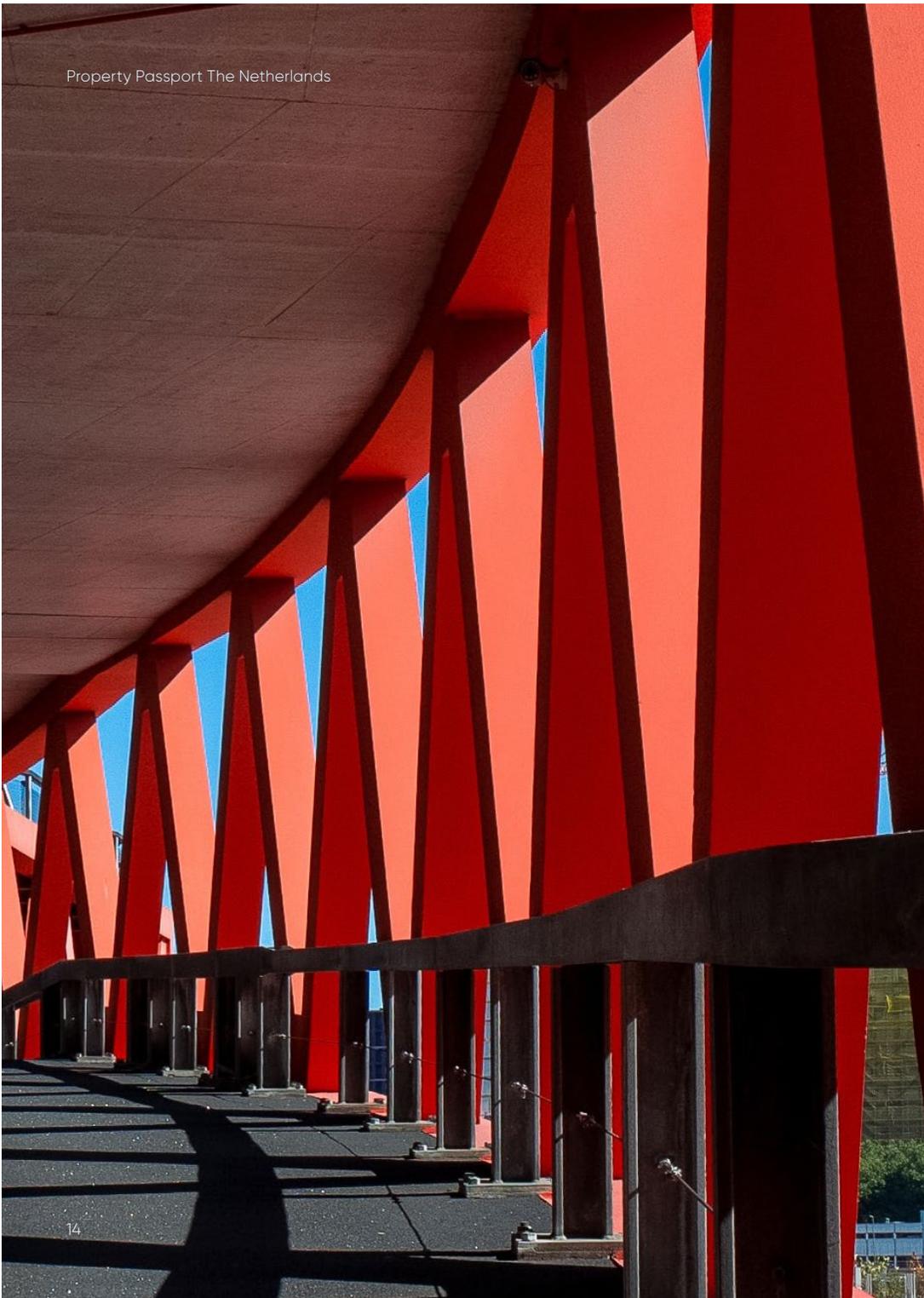
Depending on the needs of the client, the services that we can provide are varied and extensive. Typical stages during a due diligence exercise include:

- Checking the title to the property (for example, to verify ownership; checking it has all the rights it needs, or whether there are any third party rights which restrict the use of the property).
- Replying to or reviewing pre-contractual enquiries from the purchaser or seller (depending on whether you are wanting to acquire or sell).
- Reviewing and reporting on environmental and zoning issues, and any requirements/restrictions for (re)development or refurbishment of the property.
- Reviewing and reporting on any existing leases in place, and
- Liaising with your surveyors on all issues that may occur.

Our team is adept at advising on all of the above and more, and guiding international investors through the nuances of the Dutch legal system.



**Recognised by Property EU magazine as one of only 10 firms to have acted on two or more of the top 25 largest real estate deals in Europe in 2018.**



# Acquiring and financing the asset

**A foreign investor has various options when it comes to financing the acquisition of a real estate asset. Typically, they will want to consider whether to acquire the property via an asset transaction or a share transaction. To finance the acquisition and/or develop a project, an investor may also wish to borrow from a bank or non-bank lender.**

Acquiring property in the Netherlands may have certain tax benefits. Below, we set out the more common procedures and regulations for acquiring property in the Netherlands.

## **Acquisition/acquisition structures**

The acquisition of real estate located in the Netherlands by foreign investors is not restricted by law, and the entity concerned does not need to have its seat in the Netherlands. A purchaser can acquire real estate directly by acquiring a title to the property concerned, but it is also possible to acquire a property by acquiring the shares of an entity that owns the property. Investors often create a special purpose vehicle (SPV) to acquire a specific property.

Once a purchaser has settled on the asset it wants to acquire, the negotiations between seller and purchaser may commence. It is customary that parties first agree on a letter of intent (LOI). The LOI outlines the conditions that will apply to the sale and purchase. Once the LOI is agreed, the purchaser (and/or his advisors) may perform a due diligence review. The seller can set up an online data room in which relevant information and Q&A forms can be shared between the seller, purchaser and their advisors.

The sale and purchase agreement (SPA) will be negotiated and signed before execution of the actual deed of transfer. Completion can take place on the same day as the transfer or with a gap before completion. The transfer is then executed through a notarial deed of transfer, which is registered in the land registry. The purchase agreement and all the terms applying to it can instead be included in the deed of transfer, but that is not common.

At Taylor Wessing, the team is able to assist on all aspects of the acquisition from incorporation of an SPV through to completion and registration of the transfer.

## Mortgage

The most common way of financing real estate in the Netherlands is through a loan, in exchange for which the owner (mortgagor) grants security over the property to the lender through a right of mortgage (*hypothek*). The deed of mortgage is a notarial deed which needs to be registered in the mortgage register (*register hypotheek 3*) of the Dutch land registry (*Kadaster*).

The mortgagor has to appear in person before the civil-law notary to sign the deed of mortgage. If this is not possible, for example, because the mortgagor does not reside in the Netherlands, he or she will need to grant a notarial power of attorney. It is common practice to create a pledge on items such as fixtures and fittings, insurance payments and lease income amongst other items for the benefit of the mortgagee.

In the Netherlands, there are no restrictions for foreign investors to invest in real estate. An asset may be encumbered with several mortgages. In a foreclosure, the second-ranking creditor will only be paid if the proceeds of the mortgaged asset exceed the claim of the first ranking creditor. Priority will be determined on the basis of the time the mortgage deed is registered in the land register.

## Tax aspects

Several taxes apply to real estate and real estate transactions in the Netherlands. The most important taxes are:

- VAT (*Omzetbelasting, BTW*), and
- RETT, Real Estate Transfer Tax (*Overdrachtsbelasting*).

Generally, the transfer of a completed building is exempt from VAT. This is different if the building was constructed and put to use within the two years prior to the deed of transfer. In that case, the transfer will be subject to VAT. It is also possible for both a seller and a purchaser to opt for a transfer of a building that was put to use over two years but not more than ten years ago to be subject to VAT. Opting for a transfer subject to VAT may have tax benefits in some cases. The current VAT rate in the Netherlands is 21%.

The transfer of real estate is subject to transfer tax. The transfer tax rate is 2% on residential real estate acquired for personal and primary residence and 10,4% on all other real estate. Transfer tax can also be due if an economic interest is acquired or if an interest exceeding one third is acquired in an entity whose business assets consist largely of real estate located in the Netherlands.

There are however several exemptions for transfer tax that can be applicable to an international investor, the most important one being that if by operation of law VAT is due, an exemption for transfer tax can apply. However, in some

situations, there can be an accumulation of VAT and RETT. Timing and planning the agreement and execution of the envisaged transaction in this regard is essential.

Local taxes may also be applicable (sewerage charges and real estate taxes are two common examples). The amount of local taxes varies per municipality.

At Taylor Wessing, we have extensive experience advising investors and financial institutions on cross-border real estate financings including where the finance documents are not under Dutch law. We understand the requirements of both lenders and borrowers, which enables us to provide highly professional advice with real insight into what will resonate with both parties. In addition, we are highly specialised in negotiating and structuring acquisitions and development projects in order to ensure that they are suitable for financing.



# Property law in the Netherlands

**Under Dutch law, ownership is the most comprehensive right when investing in property. Ownership can comprise full ownership or it can be restricted by limited rights. The rights a natural person or legal entity can have on a registered property can be subdivided into 'real rights' and 'personal rights'.**

Real rights are inextricably linked with the registered property itself and are therefore binding on the owner of the property. Real rights are usually vested by notarial deed of establishment.

## Leasehold

Leasehold (*erfpacht*) is a right granted to a leaseholder to use a landowner's (the 'bare owner') land and/or property based on that land. It is common in large cities such as Amsterdam, The Hague, Rotterdam, and Utrecht. Any leasehold conditions applied to a leasehold contract that violate the mandatory

law are void. The leaseholder usually pays a fee to the bare owner, a ground rent (*erfpachtcanon*), in order to acquire the right of leasehold for a limited time or perpetually.

## Right of superficies

The right of superficies (*opstalrecht*) is similar to the right of leasehold in many respects. The main difference is that a right of superficies entitles the owner of the right to own or acquire immovable property in, on or above the property of a third party (the 'bare owner'), and to use and hold that specific property.

The owner of the right of superficies usually pays a periodic fee or a lump sum to the bare owner (the 'user fee') upon the establishment of the right of superficies. A right of superficies may be created if a third party realises real estate on property belonging to a different party.

### Apartment rights

Division of property into apartment rights (*appartementsrechten*) is a very common concept for both residential as well as commercial real estate in the Netherlands. An apartment right is an ownership right of part of a building that is divided into apartment rights. Apartment rights are inherently linked to the entitlement of the exclusive right to use a particular part of the building. If the bare owner gives his permission, a right of leasehold or a right of superficies can also be divided into apartment rights. Apartment rights can be encumbered with the right of a mortgage.

### Easements

An easement (*erfdienstbaarheid*) is a charge on ownership obliging the owner to allow certain actions on, above or underneath his or her property. The content of an easement and how it is implemented could also be determined by local custom. An easement must always be exercised in the least obtrusive manner. The notarial deed of establishment can establish an easement whereby the owner can require the beneficiary of the easement to pay a sum of money in return for the easement.

When investing in commercial or residential property, it is fundamentally important for an overseas investor to be clear on what type of ownership structure they desire, and for this to be determined at the outset of any transaction. The type of ownership which is most beneficial will depend on the buyer's long term holding and investment strategy. We have extensive experience in advising overseas investors on which structure will best meet their needs and will happily discuss this with you.



**Taylor Wessing's real estate finance group is noted for being 'capable of lateral thinking and problem solving, and all are very approachable, with a good dollop of common sense.**

Legal 500 UK – Real Estate, Property Finance



# Managing the asset

**Real estate assets have a natural life cycle and the assets need to be nurtured throughout that cycle to maximize return for investors. There are a number of aspects which are important to managing any building.**

## **Attracting the right tenants**

When it comes to effectively managing the assets, whether it is a shopping mall or an office complex in the financial center, the key point is always to secure the rental income and to attract the right tenant. Different sectors of the market will have different requirements, but for many landlords, a critical factor will be the covenant strength of the proposed tenant. For some other landlords where the strategy is much more focused on short term lets, occupancy rates and the ability to

take back possession if a tenant fails to pay the rent will be the overriding factors. Attracting the right tenant will provide efficiency and maximize the profit of any asset without compromising the overall investment. We work closely with investors and market agents to ensure the overriding objectives are met. We regularly advise on landlord and tenant liabilities, disputes, and overall management matters to ensure that investors are protected from the outset.

## Lease agreement

Under the Dutch Civil Code, three regimes can be divided and applied to lease agreements. These are: :

- Lease of residential accommodation as referenced under article 7:233 of the Dutch Civil Code (residential real estate).
- Lease of retail accommodation and other commercial accommodation as referenced under article 7:290 of the Dutch Civil Code (commercial real estate), and
- Lease of office accommodation and other commercial accommodation as referenced under article 7:230A of the Dutch Civil Code (another commercial real estate).

The Dutch Real Estate Council has drafted precedent agreements with corresponding general terms and conditions for each of the above agreements. These precedents are commonly used and are in principle landlord-friendly but generally need

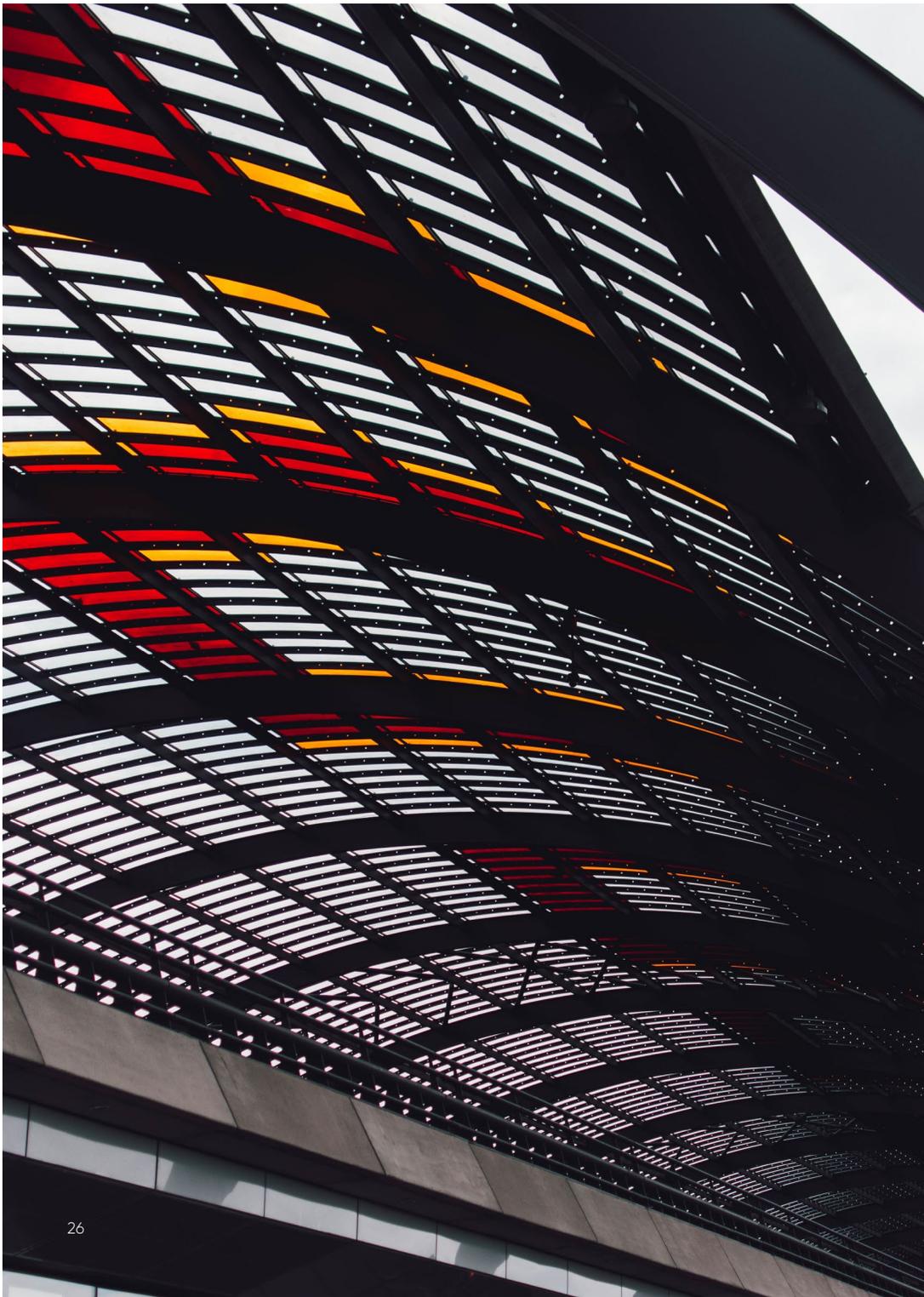
to be tailored for the specific case. Issues such as liabilities, repair costs, structural modification and subleases are determined within the precedent documents, all of which provide a useful starting point when entering into the Dutch property market for the first time. The use of these precedents is common practice, but the parties are not obliged to conclude an agreement on the basis of these model documents and are free to negotiate any other kind of lease agreement.

At Taylor Wessing, we provide bespoke legal advice in order to minimize risks and liabilities and create a water-tight lease agreement. Our attorneys incorporate the applicable regime and tailor the model agreement to our clients overriding objectives.

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**I think they are fantastic. They are thorough, give clear advice and they're very diligent. All the individuals I meet are of high calibre, deliver on time and most importantly give considered advice.**

Chambers and Partners – Real Estate: Big Ticket



# Building or refurbishing the asset

**Under Dutch law, there are several standard building agreements which can be used when undertaking a refurbishment or (re)development project. The choice of the type of agreement depends on different aspects, such as the investor's desired involvement in the development, risk allocation, design responsibility, or type of process.**

In addition, different sets of terms and conditions can be declared applicable to the agreements depending on the type of agreements you opt to enter into.

## **Permissions and approvals that may be required**

If you decide to carry out development works in the Netherlands, this will often require an environmental permit from the municipality. When requesting such a permit, the owner must submit a formal request which sets out comprehensive details about the proposed works. In addition to the environmental permit, there are various Dutch standards and

regulations that the proposed works need to comply with:

- The work needs to comply with the zoning plan.
- The work needs to meet the reasonable building aesthetics requirements.
- The work needs to comply with the technical construction and fire safety requirements imposed by the Building Code (*Bouwbesluit*), and
- The work needs to comply with the local municipal building regulations.

Following completion of the development project, certain other regulations will need to be complied with, such as technical requirements regarding the ongoing maintenance of the works carried out.

At Taylor Wessing, we have the knowledge and expertise, to not only advise you on the form of agreement to enter into, but in addition, we can draft the required agreement and negotiate the applicable terms and conditions as well as any additional documents required such as

coordination agreements, design transfers and guarantees. We can assist you with disputes that may arise during the building process as well as after completion, both in court and together with potential arbitration proceedings.



**Very strong partnership which has the ability to bring other specialists into play. They're proactive around client support, taking a commercial and pragmatic approach. They're also efficient in the execution of transactions, and partner management always features.**

Chambers and Partners UK – Real Estate Finance

# About Taylor Wessing

**Taylor Wessing is a global law firm that serves the world's most innovative people and businesses. Deeply embedded within our sectors, we work closely together with our clients to crack complex problems, enabling ideas and aspirations to thrive. Together we challenge expectation and create extraordinary results.**

By shaping the conversation in our sectors, we enable our clients to unlock growth, protect innovation and accelerate ambition.



**Technology, Media & Communications**



**Private Wealth**



**Real Estate, Infrastructure & Energy**



**Life Sciences & Healthcare**

- Aerospace & Defence
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- Hotels, Hospitality & Leisure
- Manufacturing & Industrials
- Automotive & Mobility
- Chemicals
- Financial Institutions & Insurance
- Logistics & Transport
- Public Services & Education



**2000+ people**  
**1100+ lawyers**  
**300+ partners**  
**29 offices**  
**17 jurisdictions**

### **Challenge expectation, together**

With our team based across Europe, the Middle East, US and Asia, we work with clients wherever they want to do business. We blend the best of local commercial, industry and cultural knowledge with international experience to provide proactive, integrated solutions across the full range of service areas.

**2000+ people**  
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|                            |  |
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| <b>Belgium</b>             | Brussels   |
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| <b>Czech Republic</b>      | Brno   Prague                                      |
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