



REAL ESTATE CAPABILITY STATEMENT

MNKS has a dedicated real estate team which offers and provides a wide range of services especially tailor made to meet the requirements of both domestic and international clients.

Close coordination between our lawyers and financial experts, notaries as well as local and governmental authorities enable us to optimize real estate projects and to find the most beneficial solutions for our clients from both legal and tax perspectives.

General Real Estate Asset Management

Our real estate practice offers advice and assistance on many types of real estate transactions. We also advise, in conjunction with our corporate and investment fund teams, on the structuring of real estate investment funds as well as the implementation of other real estate type products.

Leasing Activities, Asset Acquisitions, Disposals and Joint Ventures

We regularly intervene in favor of our clients in the drafting, reviewing and/or negotiation of lease and sub-lease agreements including complex profit anticipation leases. Our expertise covers all aspects of landlord-tenant relationship with regard to companies' day to day needs.

We are active in both the direct acquisition of buildings (e.g. offices, retail, and hotels, residential) and the acquisition of companies for the holding of such buildings. In this respect we offer our clients due diligence advice as well as assistance on the negotiation of deals including the financing thereof and related guarantees, leases and the drafting of the underlying documentation such as acquisition contracts (share deals and asset deals).

For these purposes and for all your potential needs, we act in close coordination with our corporate structuring team, tax consultants and our litigation department in order to guarantee an efficient acquisition and a cost effective implementation of the required structures.

Construction/Development Projects

Our real estate team advises clients on many aspects of real estate investment projects with comprehensive legal consulting on construction and building law including planning and environmental issues. In this respect we offer advice pertaining to administrative procedures that shall be complied with such as business and environmental licenses, or commodo/incommode, urban planning, public procurement, as well as energy and regulatory aspects.

General/Ordinary Course Real Estate specific Litigation Needs

Our litigation team is strengthened by specialized teams of our other practice areas to deliver a comprehensive, superior and timely service to our clients' projects. Our multi-disciplinary lawyers work collaboratively to combine their technical and cutting edge knowledge to provide an integrated and complete service, notably in real estate matters.



You will find hereafter a sample of recent projects, which illustrate our expertise in Real Estate operations.

LEASING ACTIVITIES, ASSET ACQUISITIONS, DIVESTITURES AND JOINT VENTURES

M&A and joint ventures

- We assisted a US very-HNWI in the tax and legal structuring, acquisition and disposal of certain of its European (private residency) and African property investments (lodges and camps). In particular, our work consisted in advising on the most efficient structure taking into account the specific needs of the underlying assets. Our role also included a quite significant coordination work with the local advisors, the acquisition of several Luxembourg entities holding directly or indirectly the properties, the disposal of certain foreign investments and the liquidation of those Luxembourg vehicles which were no longer necessary following disposal.
- We assisted a London-based investment company in the legal structuring and financing of a EUR 1 billion retail and residential property in Germany. Our work consisted in the restructuring of the holding structure through Luxembourg and involved very complex legal cross-border issues.
- We assisted a German regulated real estate fund for the acquisition of several properties located in Luxembourg and their letting, including a EUR 300 million building complex and a EUR 120 million office building. In addition to the traditional assistance in the due diligence phase and the negotiation of the SPA, we have also advised, following the acquisition, on all operational issues in connection with the buildings and on the relationships with the sellers of the properties.
- We assisted a German regulated real estate fund in the sale of a multi-tenants office property in Luxembourg. The sale has been made under the form of an asset deal and we have notably assisted the seller in limiting the scope of the representations and warranties granted to the purchaser.
- We advised a German real estate investment manager on the tax, legal and town planning restructuring of a 55,000 sqm. Luxembourg property. The property which is composed of four independent buildings was held by a single Luxembourg company. The purpose of the restructuring was to divide the property between four companies, which notably included the establishment of a vertical cadaster and of comprehensive co-ownership rules.
- We have acted as the legal and tax counsel of two Luxembourg-based Sharia compliant funds with assets under management above EUR 1 billion managed by the European team based in Luxembourg of a New York investment firm for all their operations. The funds assets comprised properties in all continental Europe and the UK as well as properties in Dubai and Turkey. Our role was quite comprehensive as we provided advice to the fund manager on a daily basis and included notably: the structuring of the funds, the structuring of their Luxembourg and foreign real estate investments, and the disposal of their properties in both Luxembourg and abroad.
- We assisted funds managed by a top US insurer with respect to the disposal of a Luxembourg retail park. Our work notably consisted in the preparation of the Data Room, the establishment of a vendor due diligence report, the answer to the Q&A questions, the drafting and the negotiation of the SPA and the release of the Luxembourg security package.
- We assisted funds managed by a US top insurer with respect to the disposal of a 25,000 sqm multi-tenants office building in CBD Luxembourg. Our work notably consisted in the preparation of the Data Room, the answer to the Q&A questions, the drafting and the negotiation of the SPA



and the release of the Luxembourg security package. We have also acted as coordinator on this project so as to be the main point of contact in Luxembourg for our client.

- We assisted a major UK-based manager in the disposal of a Luxembourg hotel. The Luxembourg property was part of an European portfolio and we assisted the European counsel in charge of the disposal in the establishment of the Data Room, the Q&A phase and the negotiation of the SPA. Prior to the disposal, we regularly advised our client on co-ownership and building law matters.
- We assisted an international investment company focused on the creation of deals and investment opportunities in global emerging markets, in the implementation of joint ventures in the field of the development, acquisition and management of real estate projects in Central and Eastern Europe (Poland, Czech Republic, Slovakia, Ukraine, Russia and others). We advised our client on all relevant legal aspects of joint ventures implemented by agreements submitted to Luxembourg law, in particular regarding the corporate governance rules and legal structuring (corporate bodies, shareholding, investment in real estate projects, distribution of benefits, etc), the extent of contractual provisions to be inserted in the articles of association of the Luxembourg joint venture companies to reflect the joint venture agreements and the incorporation of joint venture Luxembourg holding companies.
- We assisted a leading pan-European, property fund and asset management company in the acquisition of real estate in Poland through a Luxembourg entity being the indirect shareholder of landowners, leaseholders and perpetual usufructuaries of the real properties located in Warsaw. The acquisition amounted to Euros 71,6 million. One of the distinctive features of this acquisition has been the involvement of the Capital City of Warsaw which had to give its prior consent as regards the leases of the Poland plots of land.
- We assisted one of the most active real estate development and investment firms in New York in relation to a number of different real estate projects in Europe facilitated by Luxembourg vehicles. The deal consisted in structuring work needed in order to allow different investors to efficiently participate in a Luxembourg joint venture vehicle to invest in huge real estate projects in Eastern Europe. The investors had different tax profiles and in this respect several factors were relevant and needed to be considered in order to achieve a tax efficient structure for all of them. Moreover, the financing of the investments with view to a potential exit (full or partial) also needed to be taken into consideration when designing the investments. In this respect, designing the instruments was crucial. The deal was important notably due to the amounts involved and the sophisticated nature of the investors which required binding confirmation from the Luxembourg tax authorities. This work was supported by solid corporate and accounting understanding which complemented the tax advice.
- We assisted one of the principal shareholders and the management company of a group that operates cinemas in the Benelux in relation to the acquisition of a majority participation in the top company of the group which was owned by our client at 40.8% and by a financial partner at 54.9% who wished to exit from the structure. Our client found a new co-investor, a leader in the worldwide transportation of industrial products, to acquire the majority participation and we represented our client in this transaction. We assisted with the drafting of the share purchase agreement and its negotiation with the seller as well as the shareholders agreement to be entered into by our client and the new co-investor.
- We assisted a private wealth individual in relation to the acquisition of a Luxembourg company owning an administrative building located in Switzerland and notably assisting in relation to the corporate due diligence of the Luxembourg Company.



- We assisted a specialist management company for retail property funds for Continental Europe in the framework of the incorporation of a new private limited liability company in Luxembourg which will act as an investment vehicle for the acquisition of assets consisting mainly in real estate properties.
- We assisted a world leader in pharmaceutical and healthcare, to indirectly acquire an industrial property through the use of its Luxco and a foreign vehicle.
- We assisted one of the leading real estate companies in Austria in the acquisition of a piece of commercial real estate in Austria.
- We assisted an American online sales company having operational companies in Luxembourg, also having to manage nearby warehouses and with whom we have been working with on a day-to-day basis since 2003.

Financing/Refinancing transactions

- We assisted two Luxembourg-based Sharia compliant funds with assets under management across Europe, the Middle-East and Turkey above EUR 1 billion managed by the European team based in Luxembourg of a New York investment firm with respect to the initial financing and subsequent refinancing of their entire portfolio on a cross-collateral basis.
- We assisted a privately held commercial real estate services firm in the context of the refinancing of the group entities through a term loan and revolving credit facility agreement.
- We assisted specialists in investing in distressed and undervalued or underperforming businesses and other special situations through debt and equity as well as a value-oriented investment partnership that focuses on special situation securities across the capital structure. We acted as counsel to bondholders in the framework of a debt restructuring (five tranches of bonds listed in various stock exchanges of the European Union) of a listed Luxembourg real estate company via a debt-to-equity swap transaction.
- We assisted a homebuilding company in relation to legal advice on the Luxembourg aspects of the renegotiation of the clients' debts with their lenders, including advice on the Luxembourg security aspects as well as drafting related documentation.

Sustainability

- We assisted a global leader in business and tax consultancy, in relation to the acquisition of a target which is an innovative Luxembourg operational company and specialists in sustainable energy and engineering consultancy, on the specific issues in relation to the obtaining of a business license, as well as the certification given by the Luxembourg Ministry of Sustainable Development and Infrastructure allowing the company to complete specific activities in the environmental sector.

Terms & Conditions of Leases

- We assisted a top US insurer with respect to the negotiation and conclusion of several office lease agreements for properties located in Luxembourg CBD.
- We have assisted a German real estate investment manager on a daily basis in the drafting and negotiation of the rental agreements with the tenants and of the agreements with the various service providers for a 55,000 sqm multi-tenants office property in Luxembourg.



- We have assisted a German real estate investment manager on the drafting and negotiation of the rental agreement and of the agreements with the various service providers for a 25,000 sqm property (single tenant) in CBD Luxembourg.
- We assisted an American multinational company in the framework of their set-up in Luxembourg. This project involved assisting our client with the negotiations of several lease agreements in order to comply with their requests and to find the most adequate premises at an optimized price. Our review of the lease agreement was therefore focused on the client's needs in compliance with Luxembourg law. We were also involved in the review of residential lease agreements for our client's executive officers' establishing in Luxembourg for a determined period. Indeed the Luxembourg market seems very hostile for a foreign citizen as the rental conditions are very strict compared to the US property market.
- We assisted an asset management company in the framework of its property management. Our mission mainly consisted in giving advice in a number of different issues including the interpretation of the lease agreement on the specific issue relative to major repairs incumbent to the landlord according to the law and the Luxembourg case law (draft of memos relative to this issue), the interpretation of the concept of technical installations under the law and case law and the drafting of a notice to the tenant demanding to maintain the building and perform maintenance facilities.
- We assisted an internet based communications software application provider in all issues relating to the negotiation and the review of the provisions of a lease agreement for its new premises in Luxembourg including advising on (i) annexes describing the works under the responsibility of the lessee and lessor, (ii) technical description of the premises, (iii) tenant association bylaws and (iv) internal regulations. We were also responsible for the effective coordination of the project.
- We assisted a private equity fund specializing in buyouts, public equity investments, early stage and expansion capital investments in relation to a lease that it purported to enter into reviewing and advising on the terms as well as a guarantee related thereto.
- We assisted one of the world's largest global providers of flexible workspace operating in over 1000 business centers across 450 cities in 75 countries in the framework of its business' growth in Luxembourg, which involved the opening of several new business centers. We negotiated the lease agreements on behalf of our client, dealt with issues concerning the calculation of rental consideration and also reviewed the side letters to the lease Agreements. In this context, we also reviewed profit participation leases, to the best of our knowledge the first of that kind in Luxembourg.
- We assisted a Luxembourg parent company of an American multinational financial services corporation which is one of the largest bank holding companies in the United States, in the review and amendment of a draft sub-lease agreement provided by the sub-lessor, including an annex concerning a draft of the house rules of the building.
- We assisted a global leader in e-commerce with legal advice on questions arising from their commercial activity (including decisions on holding activities), involving actions to be taken as shareholders of foreign entities with respect to lease agreements entered into by subsidiaries of the Luxembourg companies.
- We assisted a boutique fund services provider focusing on providing services to the private equity, venture capital and real estate sectors in the context of the negotiation of a lease agreement for the use of premises in Luxembourg.



CONSTRUCTION / DEVELOPMENT PROJECTS

- We assisted a leader of discount supermarket chains in the framework of inherent defects further to the construction of a new storehouse in Luxembourg. Our role mainly consists in representing the company before a Luxembourg court and trying to bring the parties together.
- We assisted a general construction company in Luxembourg, in the overhaul of the contractual architecture of the company, in particular as regards subcontractors. This involved the drafting of a general subcontract with new terms and conditions, general conditions for rental of construction equipment, intellectual services agreement (architect, engineering) and purchase terms.
- We assisted and represented a very important Luxembourg company active in the field of building construction and public works, awarded as a successful public offer or for a considerable number of public procurement procedures (open procedures) during 2012. We successfully represented our client, won all the summary proceedings initiated, and thereby avoided considerable loss and damage to the client. Following the rejection of the suspension requests, all the public contracts were signed by the parties and our client won the public works it was awarded.

REAL ESTATE SPECIFIC LITIGATION NEEDS

- We assisted an asset manager having its head office in Luxembourg and managing a portfolio of investments in the framework of its property management. Our mission mainly consisted in giving advice in a number of different issues including the interpretation of the lease agreement for a single tenant building on the specific issue relative to major repairs incumbent to the landlord according to the law and the Luxembourg case law. The next step was the drafting of a notice to the tenant demanding to maintain the building and perform maintenance facilities prior to engaging judicial proceedings.
- We advised an independent consultancy company specialised in strategic advice and project management in real estate, in relation to a dispute with one of their clients in relation to fees. In this regard, we reviewed the general terms and conditions of the agreement as well as the services provided to advise them on the merits of their case and alternative solutions.
- We advised a real estate company set up as a result of a joint venture between Polish and Russian parties in relation to an anticipated shareholders conflict and advising on reactive steps to take in the already strained relationship of the board of directors. We have also advised our client on various legal and contractual obligations of domiciliation and other administrative services further to the anticipated exit of one of the shareholders and share transfer to majority shareholder.
- We advised one of the leading property developer and worldwide investment company on the set-off of receivables mainly born in connection with the bonds issued by a Luxco and we have acted as the legal counsel of the receiver during the main insolvency proceedings opened against the Luxco before the Court of Prague in connection with the rights of bondholders to claim their reimbursements during such proceedings.
- We assisted one of the world's largest commercial real estate services firms in the framework of its collection of unpaid debts further to its intervention, which involves on the one hand the conclusion of lease agreements and on the other hand negotiation and renewal of existing lease agreements. These quite complex cases require in depth research to be conducted under Luxembourg law in order to analyse the application of many contradictory regulation in this specific field of the fees for the real estate agents.