

# Real Estate

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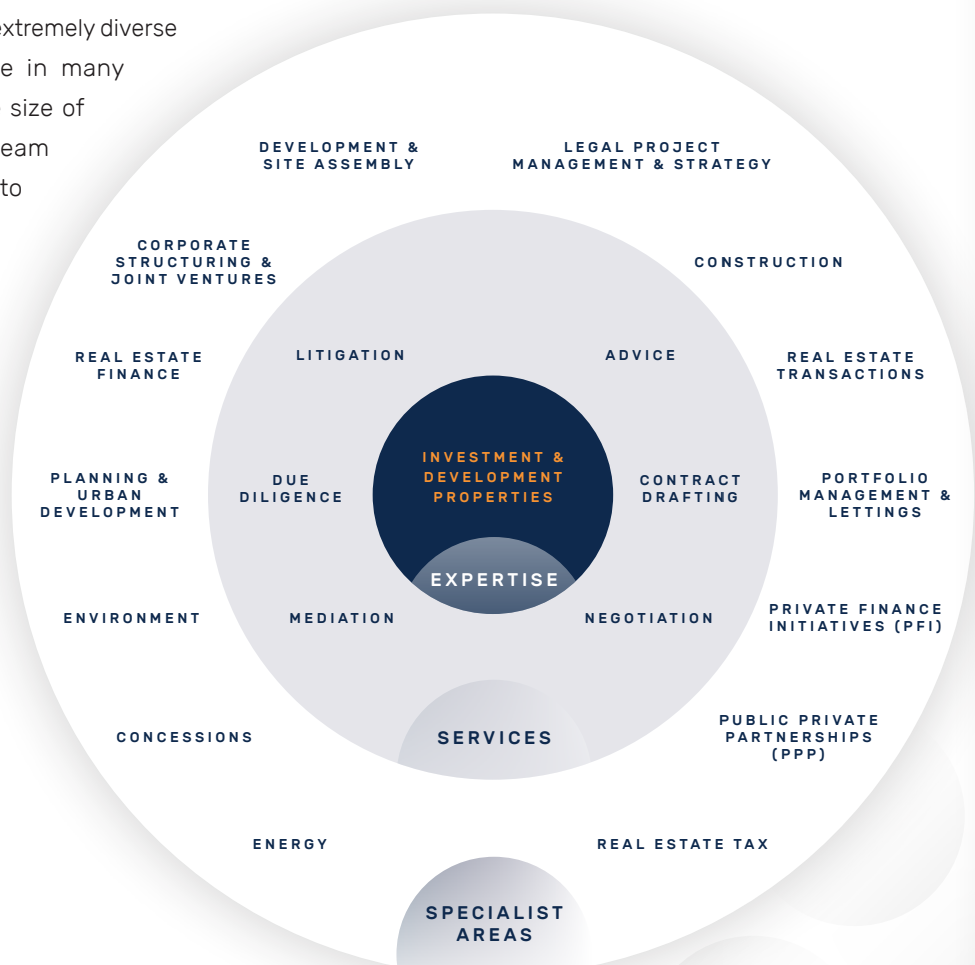


"Lydian is praised for being very knowledgeable, great value for money, as it gives useful, straight-to-the-point advice, without too many caveats."

LEGAL 500

## A comprehensive, efficient approach

Real estate issues are extremely diverse and require expertise in many areas of practice. The size of Lydian's real estate team not only enables us to offer you a full range of services and support, but also makes sure that your question is being handled by a specialist dedicated to the specific practice area you need.





IN-DEPTH EXPERTISE

## The full scope of Lydian's services

- Real Estate Transactions
- Real Estate Development Projects
- Complex Construction Contracts
- Environmental Law
- Planning and Urban Development
- Portfolio Management and Lettings
- Real Estate Disputes
- PPP / PFI
- Real Estate Tax

## Real Estate Transactions

In an ever-changing and very competitive property market, we stand by our clients to support them in their real estate transactions. We assist our clients with our pragmatic and in-depth knowledge gained in major transactions on the Belgian market and provide them with tailor-made service on all aspects of such transactions.

We provide our clients with clear guidance on every step of their transactions including:

- Defining the most suitable transaction structure to our client's best interest and providing a clear analysis of the inherent risks as well as the potential financial impact of each identified risk;
- Assisting our client in setting up their vehicles for their transactions (joint-ventures, SPV, ProjectCo);
- Drafting and negotiating all necessary documentation, such as the confidentiality agreement (NDA) and the letter of intent (LOI);
- Organizing the due diligence process and drafting all the related documentation;
- Taking an active part in negotiations in close relation with our clients;
- Drafting the appropriate documents, including share purchase agreements or asset purchase agreements and their ancillary documents;
- Drafting investment agreements, shareholder agreements, security documentation, management agreements or temporary services agreements (TSA);
- Financing arrangements and tax implications;
- Providing an ad hoc assistance following the closing of the transaction and the follow-up for any subsequent litigation.

The acquisition of investment property by non-resident clients requires careful attention being paid to the ownership structure. In conjunction with our tax team, we are accustomed to advising clients on the most beneficial arrangements appropriate to their country of residence.

## Real Estate Development Projects

We have particular expertise in a wide variety of real estate development projects, either commercial, including offices, retail, logistics, energy related facilities, hotels and leisure, either residential. In this latter regard, we have proven experience in the construction of premium residentials, student accommodations and facilities, such as care homes.

We assist our clients in every step of their development projects from the first feasibility and permit stage until the finalization of the construction phase.

Our experience spans to development, development finance, drafting and negotiating contractual arrangements, PFI and PPP projects, and urban regeneration and gentrification. We can therefore provide our clients with services covering all aspects of their real estate development projects.



## Complex Construction Contracts

We advise diverse companies in the construction, engineering, energy and infrastructure industries and have extensive experience of handling very complex Engineering, Procurement & Construction (“EPC”) contracts.

Our key strength is our ability to blend our legal expertise in identifying and addressing the issues and risks which arise in such contracts, together with industry-focused knowledge. Our knowledge includes a detailed understanding of the underlying nature of complex EPC contracts in the context of very technically challenging projects.

We have significant EPC experience covering all types of construction, engineering and energy projects, developed in the context of civil building projects, energy projects, transport and water.

We are also covering a large array of complex collaboration agreements, such as early contractor involvement (construction team or “bouwteam”).

## Environmental Law

Our environmental lawyers have extensive expertise in handling complex environmental and energy regulatory issues, including matters related to:

- Permits;
- The regulation of products;
- Waste;
- Contaminated properties – soil pollution;
- Environmental risk allocation mechanisms in corporate, lending and property documentation;
- Property transactions and PFI/PPP projects in the water, waste and waste water fields;
- Appointing and dealing with environmental consultants;
- Regulatory intervention and enforcement.

Our environmental law clients include several of the largest companies in the private sector in Belgium, including those involved in real estate, construction, waste, water and energy as well as several major public sector organisations.

## Planning and Urban Development

We provide clear planning advice to clients active in the real estate sector, such as project developers, landowners, constructors, public authorities, and occupiers.

Typical schemes include the promotion and implementation of major sustainable urban extensions and regeneration of brownfield development sites.

With a strong pedigree in working with local authorities and their development partners, our team also provides assistance in the execution of town and city centre regeneration schemes.

We also have considerable experience in defending our clients' interests in planning and urban development before the administrative authorities (Deputation and local governments) as well as before the administrative (Council of State and Council for Permit Disputes) and judicial courts.

## Portfolio Management and Lettings

We have a justifiably strong reputation for acting for landlords, tenants and other occupiers for all types of property. Our reputation is based on ensuring that we have a real understanding of our clients' reasons for wanting the relevant property and the use they intend to make of it.

We are able to provide our clients with advice with regard to the optimal use of their real estate assets. We also assist our clients defining the most efficient structuring of both specific projects and their real estate portfolio ensuring an efficient management thereof. We pay particular attention to the structuring of projects around both rights in rem (superficy, long lease, usufruct) and leasing.

We advise clients on all aspects of their corporate real estate strategy. In particular, we can help clients with:

- Conducting a real estate audit to review their real estate holdings;
- Developing a strategic real estate plan which will free up management time and deliver real value to the shareholders;
- Implementing that plan, whether it involves disposals, sale and leasebacks, securitisation or outsourcing.



## Real Estate Disputes

Our real estate dispute resolution team comprises highly experienced litigators with the expertise to deal with the most technical and complex real estate disputes. We also endorse the development of alternative dispute resolution mechanisms and have an extensive experience in mediation and arbitration.

We act for a wide domestic and international client base including developers, investors, landlords, banks and joint venture partners. We have a proven experience in all types of court procedures in Belgium, including judicial expertise, construction or lease disputes.

In addition to dealing with the most complex court cases, we provide strategic and tactical advice to avoid litigation or settle it on the best possible terms for our clients through arbitration (both with local or international recognised organisations) or various forms of alternative dispute resolution including mediation.

## PPP / PFI

The use of Private Finance Initiatives (PFI) or Public-Private Partnerships (PPP) on the Belgian market is a well-established practice, which we have been involved in since its early days. Ranging from classic PPP/PFI sectors, such as transport infrastructure, urban regeneration and residential to newer fields such as schools, sports infrastructure, energy, brownfields and blackpoints, health care or student accommodation, an important PPP/PFI culture has developed in Belgium.

For years, we have been assisting both governmental and private clients (sponsors, financiers, (sub) contractors, advisors) on several of the largest PPP/PFI deals. Through a combination of expertise in real estate and environmental matters and in public (procurement) law as well as in insurance, project finance and private equity matters, we are able to offer our clients comprehensive legal services in support of their participation in PPP/PFI projects.

We are experienced in setting up project structures, performing legal feasibility studies and risk allocation exercises (TRAM), advising on fiscal, financial, corporate, procurement or real estate optimizations, supporting legal project management, assisting in negotiations with partners, share- and stakeholders, drafting tender or bid documentation, etc.

We have in-depth knowledge of those legal structures which are key to any PPP/PFI project, for example, concessions (BOO, BOT, DBFM(O), public domain), joint ventures (SPV, ProjectCo), public procurement procedures, subsidies, loans and guarantees, service level (maintenance and facility services, EPC) and interface agreements, budget and ESA95 regulations, etc.

## Real Estate Tax

Our team works on all aspects of taxation and property from simple transactions to complex structures optimising clients' income, capital gains, VAT, stamp duty and tax positions.

Committed to getting buildings up and acquired while keeping tax bills down, and immersed in the real estate market, we fully appreciate the commercial needs of a deal. We are also well positioned to create and implement tax-efficient practical solutions.

Being "bilingual" in real estate and tax, and benefiting from an intimate familiarity with the way in which real estate deals are done in Belgium, our tax team provides the 'missing link' that enables Lydian's real estate lawyers to integrate seamlessly with clients' in-house tax teams and external advisers.





# A team with experience

We have a team with the experience to predict and manage problems and respond to change in an appropriate way. Our team works in Dutch, English and French to support all our clients' projects. We are also part of an international network of prestigious law firms which allows us to handle cross-border transactions.

All the lawyers in our team have particular areas of expertise, such as real estate development projects, complex contracts such as EPC or construction team, environmental law, planning and urban development, portfolio management and lettings, PPP/PFI, real estate disputes, real estate and PPP/PFI finance, real estate transactions and real estate tax. Together, they have experience of handling every legal aspect of real estate law. They are true experts in their field and have excellent contacts with the relevant authorities at national and regional level. This expertise leads our lawyers to give numerous lectures, to be active in the academic field and to regularly publish articles in leading law journals.



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Lydian is particularly **active in development, redevelopment and construction mandates.**

The team additionally represents clients in **contentious matters**, including liability claims and contractual disputes. The practice advises clients on **real estate transactions** involving retail portfolios, hotels and office buildings.

It also assists with **lease agreement negotiations and portfolio management matters.**

CHAMBERS - 2022





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**Anne-Victoire Vandekerckhove is a counsel in our Real Estate, Environment & Regulatory practice.**

Anne-Victoire's practice focuses on real estate law. She advises clients on a broad array of real estate matters (purchase agreements, options, long lease, superficies, easement,...), legal aspects of property management, lease agreements (mostly commercial lease, office lease and VAT-leasing) and construction law (project management, expertise, liability, provisional and final acceptance, subcontracting).

Anne-Victoire studied at the University of Ghent, where she obtained her law degree. Anne-Victoire also obtained a Master degree in International Law from the Catholic University of Louvain (UCL) in French in 2012 and a Master in General Management from Vlerick Business School in 2013.

Anne-Victoire is recommended in the legal directory of Legal 500.

Anne-Victoire was admitted to the Brussels Bar in 2013.





## Bruno Stroobants

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**Bruno Stroobants is a counsel in the Real Estate, Environment & Regulatory practice.**

Bruno has broad experience in commercial real estate transactions concerning the purchase and sale of real estate properties (asset deal) and real estate companies (share deal) and all legal aspects of project development. He assists clients with the contracting of different types of real estate contracts such as purchase, rent (commercial lease, office lease and VAT-leasing), leasing, contracting, etc. and advises them on strategic commercial matters and construction law. In addition, he has solid experience in the field of real estate litigation and construction.

Bruno studied at the University of Leuven, where he obtained his law degree in 2007, Bruno also obtained a graduate degree in Real Estate Law for the Real Estate Practice from the Brussels University in 2008 and a Master in Real Estate Management (MRE) from the Antwerp Management School in 2014.

Bruno is recommended as a Rising Star in the legal directory of Legal 500.

Bruno is also board member of the Real Estate Society (RES), the alumni organization of the Antwerp Management School.

Bruno was admitted to the Brussels Bar in 2008.





## Dario Petosa

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**Dario Petosa is a counsel in our Real Estate, Environment & Regulatory practice.**

Dario's expertise encompasses all aspects of real estate and construction law, covering the various stages of a property's life cycle.

In particular Dario specialises in commercial real estate transactions (asset deals, share deals and split sales) and commercial real estate projects in various industries (healthcare, logistics, offices, public, residential and retail). He has extensive experience in all sorts of construction-related agreements (e.g. promotor and contractor agreements, architecture and engineering agreements) and has developed a unique expertise in early contractor involvement. He has also assisted clients in EPC and DB(F)(M) projects, which makes him an all-round construction law specialist.

Dario regularly acts in these matters before the Belgian courts and tribunals and also has experience in arbitration.

Dario studied at the Free University of Brussels (VUB) where he obtained a Master of Law in 2013 and an Advanced Master in Notary Law in 2014.

Dario is affiliated as an academic staff member to the Private and Economic Law Department, Section Private Law and Notary Law of the Free University of Brussels (VUB) where he conducts scientific research and is charged with teaching assignments. Further he is a member of the program committee of the Young Professionals Program Vastgoedkunde of the University of Leuven (KU Leuven) and acts as a coach as part of the Postgraduaat in de Vastgoedkunde of the University of Leuven (KU Leuven).

Dario is an editorial board member of the legal journal Nieuwsbrief Notariaat (Kluwer).

Dario regularly acts as a speaker and has written several articles in legal and professional journals.

Dario is recommended as 'Excellent' in the legal directory of Leaders League.

Dario was admitted to the Brussels Bar in 2014."



## Iris Hemelaer

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**Iris Hemelaer is a member of our Real Estate practice and Real Estate Developers & Investors industry department.**

Iris assists clients in real estate transactions (asset and share deals), real estate developments (development of office, residential and retail projects), construction and EPC contracts (including PPP), rights in rem (property, long lease, building rights and usufruct) and personal rights (all types of leases and real estate leasing), as well as construction issues.

Iris studied at the University of Antwerp where she obtained her law degree in 1998. In 1999, she graduated at the University of Brussels as Master in economic and financial law. She was admitted to the Brussels bar in 2003 and in 2007, she transferred to the Antwerp Bar.

Iris regularly speaks at client seminars and often writes for various publications, including “Bestendig Handboek Privaatrechtelijk Bouwrecht” (Wolters-Kluwer, last edition 2020) and “Handleiding voor de projectontwikkelaar” (Kluwer, last edition 2020). Iris is also a member of the Board of Directors of the public law NV BAM (Beheersmaatschappij Antwerpen Mobiel) as well as of the Audit Committee.



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**Kyoto Van Herreweghe is a counsel in our Real Estate, Environment & Regulatory practice.**

Kyoto has considerable experience in environmental law in the broad sense, covering urban planning, permitting, soil legislation, waste legislation and energy law, as well as in general administrative law (administrative proceedings, proceedings before the Council for Permit Disputes/Council of State). She also regularly assists clients in real estate transactions (due diligence, real estate contracts etc.).

Kyoto started her career at the Antwerp Bar. In 2015 she transferred to the Brussels Bar. She has been working as a lawyer for over 10 years.

She is a member of the Real Estate Society (RES).





## Jan Maertens

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**Jan Maertens is senior associate lawyer in our Real Estate team.**

Jan's expertise is focused on real estate law in the broad sense (purchase agreements, option agreements, long lease rights, building rights, easements and private-public collaboration), lease law (mainly commercial- and office lease) as well as contracting law (building expertise, liability law, provisional and final acceptance, subcontracting).

Jan also handles real estate transactions (share deals, asset deals, due diligence related work), advising the various actors in the real estate sector (building promoters, project developers, contractors, public authorities), the drafting and negotiation of various agreements (SPA's, lease agreements, contracting agreements).

Jan has a special interest in handling litigation within the real estate sector.

Furthermore, Jan also works as a teaching assistant at the Catholic University of Leuven and teaches first-year law students the course History of Public Law.

As of November 2018, Jan is a registered lawyer at the Dutch speaking section of the Brussels bar.





## Karlien Meert

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**Karlien Meert is a senior associate of our Real Estate practice and of our Real Estate Developers & Investors industry.**

Karlien's practice focuses on real estate law in the broadest sense (purchase agreements, options, long lease rights, building rights, easements, apartment co-ownerships), lease law (mainly commercial lease and office lease) and construction law (building expertise, liability, provisional and final acceptance, subcontracting).

Karlien provides advice and assistance on the realisation of logistic, commercial and residential real estate projects to the various actors in the real estate sector (building promoters, (sub)contractors, architects, engineers,...), focusing on the drafting of different types of agreements (lease agreements, building contracts, building team agreements,...) as well as dispute resolution.

Karlien also has extensive expertise in real estate transactions (asset and share deals) and assists clients during the negotiations and the due diligence process until the drafting of the agreements.

Karlien is a member of the Dutch Bar Association at the Brussels Bar.





## Sean Fagnoul

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**Sean Fagnoul is a senior associate of our Real Estate practice.**

Sean advises clients in every field of real estate law. He has a particular experience in construction, urban planning and environmental law, with a special focus on Wallonia and Brussels. He has a special interest in handling litigation within the real estate sector. Over the course of his career, Sean has represented numerous clients before the jurisdictions of the judicial order and before the Council of State.

Sean studied at the University of Liege where he obtained his Master of laws in 2015. During the years 2019 and 2020, he followed an Advanced Master program in Environmental Law and Public Real Estate Law at Saint-Louis University in Brussels. He currently follows an Executive Master program in Future-Proof Real Estate at Solvay Brussels School of Economics and Management.

Sean currently teaches at the Institute for Work-study Training and Self-employed and SMEs (IFAPME) of Liege for the training of real estate experts.

Sean was admitted to the Liege bar in 2015 and is currently member of the French speaking section of the Brussels bar.

# Highlights of our recent experience

## A real estate branch from a Belgian maritime company

We have advised the real estate branch of a renowned Belgian maritime company on the realization of an innovative real estate project aiming to gather a variety of actors in the maritime sector, including start-up's, companies, researchers and authorities.

Firstly, we have helped structuring the design and construction phase by drafting a global construction team agreement with all of the partners involved (contractor, architect, engineer, master planner, user experience manager, ...) as well as an individual agreement with each partner separately. Further our assistance included advising on a wide range of aspects concerning urban planning and environmental law (soil remediation, single permit application, ...).

## A Belgian pension fund

We have assisted a Belgian pension fund in the sale of its real estate portfolio in the form of asset or share purchase transactions. The portfolio includes office buildings, a residential care center as well as industrial logistic buildings located at different locations in Belgium. We advised our client in every step of the sale process, including the drafting and negotiation of non-disclosure agreement, indicative bid, analysis of the bid, explanation to the board of directors to enable them to choose the appropriate party, letter of intent, buyer due diligence (Q&A procedure) and share purchase agreement (SPA).

## Cities and municipalities

We have assisted several cities and municipalities with their PPP projects and with various environmental matters in Flanders. We advised on planning and zoning issues and acted in legal proceedings in relation to permit issues.

## An international insurance company

We have assisted several branches of an international insurance company in negotiating and concluding a purchase agreement by which they acquired 100% shares of a Belgian company. The Belgian company in question is the owner of a large scale office building in the North of Brussels, which is serving as the headquarters for the Flemish administration in Brussels. As part of this transaction, we conducted for our client a large-scale due diligence, negotiated a share purchase agreement and drafted the necessary documentation and contracts.

We also have helped our client in every phase of its development project from the acceptance procedure related to permits, including soil-related issues, urban charges as well as the acquisition of the freehold of the land.

We still ensure day-to-day ad hoc assistance in this project regarding potential nuisance for the nearby buildings.

## New headquarters of a benelux-based bank

We are assisting a Benelux-based bank in the construction of new headquarters in the centre of Brussels, which is one of the major ongoing construction projects in the region. Our client is currently dispersed between different buildings in the capital. The new way of working implemented within the bank includes desk sharing and teleworking, which results in less office space per employee. Our client wants to bring together all Brussels employees in one cluster of buildings. The keynote of the building will be given by the futuristic façade, built from a grid of vertical columns in white prefabricated concrete with specific green granules. This self-supporting concrete 'skeleton' forms the outer façade, in front of an inner glass façade. Many kinds of actors are involved in this challenging deal: an international architect and contractor, the Brussels Capital Region, Brussels Mobility, local authorities, etc. The construction project is being carried out according to a unique building team formula.

We provided our client with several strategic legal opinions with regard to the position of different actors involved in the project, such as the project design team, the general contractor, the Brussels Capital Region, etc.

We also drafted several contracts and conducted negotiations on a number of issues ranging from the demolition contract for the existing headquarters to structuring the construction phase by drafting a construction team agreement concluded with the client, the project design team and contractors. In addition we also drafted the remaining construction contracts. All agreements had to be adjusted to limit the risks for the client to a minimum.

Finally, we provided the client with ongoing assistance during the construction phase.

## An international hotel operator

We are assisting in collaboration with a foreign law firm a renowned international hotel operator in a hotel project located in Belgium.

In this respect, we have reviewed the legal framework of the hotel project, including the usufruct agreement, the general hotel agreement, the pledge agreement and the general assessment of contractors' obligations.

## A listed Belgian real estate company

We are assisting a major real estate developer listed on the Belgian stock market in its real estate development projects.

We have more specifically supported an asset deal regarding an office building with a presence of asbestos. In this respect, our team focused on the potential liability issues, mandatory sanitization, inventories of asbestos, etc.



## An international insurance company

We are assisting a major international insurance company in the management of its business parks located in Belgium.

We have been involved in the drafting, negotiation and closing of lease agreements (and addenda) with several national and international companies, as well as with solving several problems and discussions during the lease agreements. We have been assisting in a wide range of matters and issues arising in the daily management of the business parks, including drafting and negotiation of construction agreements, parking agreements, restaurant exploitation agreements, and so on, but also conflict management in general and in case of damages at the end of leases. We have also been the trusted legal advisor for renegotiation of lease conditions, change of control of the lessee, the execution of deeds regarding lease agreements concluded for more than 9 years, check and release of guarantees, bankruptcy of the lessee or of the mother company of the lessee, overdue payments of leases, early termination by the lessee, execution of works by the tenant, etc.

## A real estate development company

We are helping a leading Belgian real estate development company in its different development projects which include several retail and residential development projects throughout Belgium.

Our assistance covers various aspects of the development projects, such as environmental permit related matters, soil issues, urban development aspects, land acquisition, the construction of the building(s), drafting and negotiation of the construction and lease contracts, etc. We are also carrying out legal due diligence processes during the acquisition of a building or conducts legal proceedings if necessary within a development project.

## A Benelux-based bank

We are assisting our client as occupier in one of the largest renovation projects in Belgium trying to prevent and/or mitigate current and potential nuisances from the ongoing renovation works on the site. The nuisances include water infiltrations, falling debris, noise nuisance, safety problems, lack of communication about the works, and so on, which are severely impacting the client's daily operations and safety of employees and customers.

We are providing our client with daily assistance and strategic advice, including issuing a series of strategic notices of default and negotiating with all parties involved (investor, developer, contractors, their lawyers, etc.).

## A Belgian insurance company

We assisted a Belgian insurance company in the acquisition with another Belgian insurance company of a real estate project comprising several buildings including offices, student accommodation as well as an hotel.

We are negotiating and drafting a cooperation framework for the co-buyers as well as a shareholder agreement, an option agreement, a management asset agreement in addition to the negotiation of the share purchase agreement.

## A leading international company in sportswear

We are advising a leading international company active in sportswear on its real estate projects in Belgium, including the renovation of its logistic centre into low-carbon footprint and versatile facilities as well as the construction of its new European distribution centre on the same site.

We have assisted our client on all construction and real estate matters regarding construction of a new distribution centre, including the negotiations of the purchase of the land and the contract negotiations with all construction partners.

We have been in charge of drafting all the design and construction agreements for the project; we also provided daily advice to our client's project team, and we have assisted that team even more intensively with weekly, full-day attendances at the construction site, where we provided first-hand advice.

We also have assisted our client since the early phases of the renovation process of its existing logistic facilities aiming to keep them fully operational during the works' phase.

## An international consortium of constructors

We have assisted an international consortium of constructors in several matters relating to the design and construction of a new prison in Belgium.

Our client is a cooperative joint venture appointed to design and build this new prison and was appointed by the Belgian federal government (via the Belgian Buildings Agency) on the basis of a DBFM (Design, Build, Finance & Maintain) contract. We were involved advising on building permits and in the negotiations with the SPV and the authority. We also have assisted our client in its relations with its subcontractors (a.o. with the drafting of all subcontractor agreements).

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Lydian has a **strong record advising developers and investors on commercial property transactions**, alongside complex development and redevelopment projects, combining this expertise with advice on leasing, administrative and environmental law, and construction. While independent from international networks, the firm is regularly instructed by global firms to **assist on Belgian aspects of major cross-border mandates**. [ ... ] Fellow counsel Bruno Stroobants advises on **real estate transactions, environmental, and regulatory issues**. Kyoto Van Herreweghe is unparalleled in her knowledge of **environmental law**. She is responsible and proactive. Anne-Victoire Vandekerckhove is a professional with excellent **in depth knowledge** and is **always available to the client**.'

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