

LIFE-CYCLE

A legal guide to developing, investing in and managing buildings sustainably



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INTRODUCTION

THE NEED FOR SUSTAINABILITY IN REAL ESTATE

Real estate is a major consumer of resources. Everyone needs a place to live and work and we use real estate for that purpose. Modern life means that energy and other resources will be consumed in the development and occupation of real estate. We all have a responsibility, both environmental and financial, to ensure that our consumption is as efficient and sustainable as possible.

Real estate has a life cycle from site identification, through planning, development funding and construction, to occupation, use and eventual sale. Proper sustainability depends on the correct approach being taken at every stage of this cycle. This guide aims to illustrate the legal issues faced and the approaches taken when a building's life-cycle is to be managed sustainably. Each chapter deals with a different stage in this cycle.

Certification and other accolades

Sustainability in real estate needs not just to be implemented, it must be seen to be implemented. This is essential in all aspects of a building's life-cycle. Recognition by a reputable awarding body is a key element in demonstrating to the outside world that a building or development meets the highest standards in sustainability. There are a number of bodies operating internationally which make awards. Understanding the criteria they use and their slightly differing priorities is essential in achieving and maintaining a sustainability status for a building which will attract occupiers and users and encourage investment.

Development and design

The speed of technological development means that property managers need to be constantly aware of what must be changed just to stay still in terms of sustainability. A brand new building can swiftly become outdated. New buildings must be designed to ensure that flexibility is possible, that buildings can remain fit for purpose throughout their lifespan and that technology can be adopted and used to the greatest advantage. Green certification depends largely on the quality of a building's design at the outset and on whether it allows for sustainability standards to be maintained and enhanced during the building's life.

Occupation and use

Occupiers of green buildings are attracted by the product they are being offered, but both incentives and potential penalties need to apply to ensure that sustainability standards are maintained when a building is in use. The actions of the property manager must be aligned with the policies of tenants and other occupiers. All stakeholders need to have confidence that everyone involved is working towards the same goal. The legal framework of lease agreements and agreements between building owners and their property managers helps to impose the necessary level of discipline which is in everyone's long-term interests.

Finance and investment

The development of a specialist market for investment in sustainable real estate is in its infancy, but it is an area which can be fully expected to grow. With it will come a focus on sustainability in real estate financing. This guide outlines the most significant legal issues that must be considered by anyone seeking to participate in this new market.

Participants need to understand how sustainable development and use interact with the certification schemes. The schemes which deal with individual buildings are covered in detail in this guide but investors also need to be aware of other innovations in the market. For instance, the Global Real Estate Sustainability Benchmark (GRESB) is anticipated to be a catalyst for individual sustainable developments since it provides investors with a method by which to judge the sustainability performance of property funds against each other. This will inevitably feed down and incentivize a green approach to more and more assets.

Green buildings internationally

Principles of sustainability are the same the world over, but the extent to which governments intervene to impose sustainability requirements and the level to which the market for green buildings has developed varies from country to country. Using DLA Piper's unique international reach, we have assembled commentary on the key questions about how green issues are tackled in different parts of the globe.

Changes are coming. Use this guide to prepare for a green future.

CERTIFYING SUSTAINABILITY

POPULAR CERTIFICATION SCHEMES

Best practice in sustainable building design, construction and operation and the measurement of a building's environmental performance is facilitated and encouraged by certification by a recognized authority. Certification encourages designers, clients and others to consider low carbon and low impact design, and to minimize the energy demands created by a building before considering energy efficiency and low carbon technologies. There are two leading international certification schemes: Leadership in Energy and Environmental Design (LEED) and the Building Research Establishment Environmental Assessment Method (BREEAM). Locally, national schemes exist, particularly in Germany and in France (DGNB and HQE respectively), although these schemes can operate outside their home jurisdictions. The table below summarizes the key features of LEED, BREEAM and DGNB.

System	LEED (Leadership in Energy and Environmental Design)	BREEAM (Building Research Establishment Environmental Assessment Method)	DGNB (German Green Building Council)
Organization	U.S. Green Building Council (USGBC), based in Washington, D.C.	BRE Global Ltd. (the Building Research Establishment) based in the UK in Watford	German Green Building Council (DGNB – Deutsche Gesellschaft für Nachhaltiges Bauen e.V.) based in Stuttgart
User profiles of schemes	<p>Various rating systems for all types of buildings and types of use:</p> <ul style="list-style-type: none"> ■ New construction ■ Existing buildings ■ Commercial interiors ■ Shell and core (allows for the basic building (including areas of non-specific use) and lessee fit-outs to be assessed independently of one another) ■ Homes ■ Neighbourhood development 	<p>New construction/ retrofit:</p> <p>All types of use of commercial and residential property are covered.</p> <p>Existing buildings:</p> <p>All types of use of commercial and residential properties are covered.</p> <p>“Bespoke” system:</p> <p>If the existing systems are not appropriate for a building, the BREEAM scheme allows for certification by means of specifically tailored or “bespoke” systems.</p>	<p>New construction/ retrofit:</p> <ul style="list-style-type: none"> ■ Residential property ■ Offices ■ Retail, hotels, industrial and healthcare property <p>New construction in specified districts:</p> <ul style="list-style-type: none"> ■ Urban districts (Stadtquartiere) ■ Industrial sites and commercial districts
	<p>Multiple buildings:</p> <p>The LEED Multiple Buildings and On-Campus Building vProjects Program refers to a Master Site which collectively represents certain common aspects of numerous individually registered projects.</p>	<p>Multiple buildings:</p> <p>A system for certification of entire portfolios is available in relation to existing buildings.</p>	<p>Existing buildings:</p> <ul style="list-style-type: none"> ■ Offices ■ Administrative properties <p>Multiple buildings:</p> <p>Certification for a group of buildings all of the same construction in one location and multi-asset certification (for buildings of the same construction in different locations) are available. These entail one master certificate and individual certificates for each building.</p>

System	LEED (Leadership in Energy and Environmental Design)	BREEAM (Building Research Establishment Environmental Assessment Method)	DGNB (German Green Building Council)
Other awards for sustainability	None	A “Badge of Recognition” may be obtained by all stakeholders who provide services (ie property and/or facility managers) or otherwise fulfil the requirements of the BREEAM scheme (ie lessors, lessees, users).	None
Pre-certification	Pre-certificates may be obtained for some projects (ie Neighbourhood Development Plans).	Design Stage Certificates may be obtained in the planning phase of new construction projects. If the building fulfils the BREEAM requirements after completion a Post Design Certificate can be awarded.	There is an option for pre-certification, not only for new buildings (the planning phase) but also for existing buildings. Pre-certifications are based on declarations submitted by the applicant.
Online tools for registration and submission of documents	Online tool for registration by an Accredited Professional is available at: www.leadonline.com	Online tools for assessors and resources related to assessment are available at: www.breeam.org	An online tool for registration and associated software is available for auditors at: www.dgnb-system.de
International applicability	Yes	Yes	Yes

System	LEED (Leadership in Energy and Environmental Design)	BREEAM (Building Research Establishment Environmental Assessment Method)	DGNB (German Green Building Council)
Criteria	<ul style="list-style-type: none"> ■ Sustainable sites ■ Water ■ Energy and atmosphere ■ Health and wellbeing (indoor environmental quality) ■ Material ■ Innovation in design ■ Regional priority (considers green building strategies which are of special ecological relevance in the relevant region) 	<ul style="list-style-type: none"> ■ Energy management ■ Health and wellbeing ■ Water ■ Materials ■ Waste ■ Transport ■ Environment ■ Land use ■ Ecology ■ Innovation 	<ul style="list-style-type: none"> ■ Environmental quality ■ Economic quality ■ Sociocultural and functional aspects ■ Technical quality ■ Process quality ■ Site quality (location)
Award levels	Platinum, Gold, Silver and Certified – the rating indicates the degree to which the standards have been achieved based on a points system (maximum 110 points)	Stars – depending on the quality level achieved, new construction/retrofits are assessed on a scale from 1 to 5 stars; while existing buildings are awarded 1 to 6 stars	Gold, Silver and Bronze – the rating indicates the degree to which the standards have been achieved: 50% justifies Bronze certification, 65% Silver and for Gold 80% needs to be achieved

System	LEED (Leadership in Energy and Environmental Design)	BREEAM (Building Research Establishment Environmental Assessment Method)	DGNB (German Green Building Council)
Contractual relationships	<p>The owner of the project or a properly designated agent of the owner registers the project with the "LEED-Online" online platform. The owner or its agent must then enter into a LEED Certification Agreement before its application will be reviewed.</p> <p>The USGBC recommends consulting an accredited LEED AP (Accredited Professional) and awards an additional point in the certification process where this is done.</p> <p>Apart from the agreement for the accreditation of the auditor, there is no further agreement between USGBC and the auditor in relation to specific certification projects.</p>	<p>While the certification process in relation to new buildings is dealt with by BRE Global Ltd, National Scheme Operators are responsible for certifications in relation to existing buildings in particular countries.</p> <p>The certification process is carried out by a qualified assessor (for new buildings) or an auditor (for existing buildings). The assessor/ auditor conducts the audit and submits the results to BRE or the National Scheme Operator.</p> <p>The applicant enters into a contract with the assessor/auditor only, not with BRE or the National Scheme Operator. The assessor/auditor is bound by a licensing agreement with BRE or the National Scheme Operator.</p>	<p>The applicant enters into (i) a contract with the approved auditor and (ii) a certification contract with DGNB.</p> <p>The auditor supports the applicant and supervises the process from registration through the certification up to the conclusion.</p> <p>Apart from the agreement for accreditation of the auditor, there is no further agreement between DGNB and the auditor in relation to specific certification projects.</p>
Certification process	<ul style="list-style-type: none"> ■ Registration of project by property owner or an Accredited Professional (AP) ■ Audit ■ Submission of complete documentation to the certifying authority ■ Conformity check by the certifying authority ■ Award of certificate if requirements are met 	<ul style="list-style-type: none"> ■ Registration of project by Licensed Assessor/ Auditor (LA) ■ Audit by LA ■ Submission of complete documentation to BRE/ the National Scheme Operator ■ Conformity check by BRE/the National Scheme Operator ■ Award of certificate if requirements are met 	<ul style="list-style-type: none"> ■ Registration of project by DGNB-approved auditor ■ Audit by DGNB auditor ■ Submission of complete documentation to the DGNB ■ Conformity check by the DGNB ■ Award of certificate if requirements are met

System	LEED (Leadership in Energy and Environmental Design)	BREEAM (Building Research Establishment Environmental Assessment Method)	DGNB (German Green Building Council)
Calculation of fees	<p>The certification fee is based on the rating system, size and number and extent of the intended reviews for the project.</p> <p>Further fees are incurred in the event of an appeal against the final decision of the certifying authority.</p> <p>Discounts are granted to members of the USGBC.</p> <p>A flat fee is payable up front at the time of registration.</p> <p>In addition fees for the Accredited Professional are payable.</p>	<p>Fees are not calculated on the basis of the size of the property. Fees are charged for registration (ie €500 for existing buildings) and then for the scope of the certificate (ie €1,000 for each part in the three-part scheme for existing buildings).</p> <p>The costs for annual renewals depend on the scope of the applicable re-evaluation process.</p> <p>Assessor/auditor fees will also be payable.</p>	<p>Fees are calculated on the basis of the gross floor space, types of use and whether a pre-certificate is also required.</p> <p>Additional fees can be charged in complex cases (eg those which require several evaluations by the certification organization).</p> <p>Discounts are granted to members of the DGNB (currently 20%).</p> <p>A significant part of the fees is due before commencement of the conformity assessment.</p> <p>In addition, auditor fees are payable.</p>
Term including renewal and/or withdrawal options	<p>Apart from certificates for existing buildings and neighbourhood developments, LEED certificates are awarded for an unlimited duration.</p> <p>In relation to LEED 2009 for Existing Buildings: Operations and Maintenance and LEED for Neighbourhood Development rating systems, an expiration policy applies. For example, applications for recertification must be filed at least once every 5 years to maintain LEED for Existing Buildings: Operations and Maintenance certification status.</p>	<p>All certificates and badges are only awarded for 1 year. Therefore, annual re-evaluations are necessary.</p> <p>Design Stage Certificates that relate to plans for new construction are valid until completion.</p> <p>If the completed building fulfils the requirements, a Post Design Certificate is awarded.</p>	<p>Certificates for new construction are awarded indefinitely as they only certify that the requirements applicable at the time of certification have been fulfilled.</p> <p>Certificates for existing buildings are valid for 3 years.</p> <p>Pre-certificates for new constructions are limited to the planning and construction phase. They become invalid with completion. Pre-certificates for existing buildings are only valid for 14 months.</p>



CERTIFICATION AGREEMENT – THE AGREEMENT BETWEEN THE CERTIFICATION ORGANIZATION AND THE PROPERTY OWNER

Typical scope of certification agreements:

If no specific local statutory regime for building certificates is in place, the scope of the certificate is governed by the contractual arrangements between the applicant (ie the property owner or its delegate) and the certification organizations.

As a minimum, the following aspects should be covered in a certification agreement:

- a description of the building project and estimated construction period in the case of new construction/ retrofits;
- a specification of the intended user profile of the certification scheme, ie new office or administration building (this is necessary in order to determine what requirements need to be fulfilled for the receipt of the certificate as later changes might entail further costs for the applicant);
- the target level for the certificate (eg the DGNB Silver grade) and consequences if requirements for a lower or a higher level are achieved;
- the scope of the evaluation that is carried out by the certification organization or clarification that the certification organization will not assess the actual condition of the building but will assume that the building is actually constructed in accordance with the documents submitted;
- involvement of auditors who are approved by the certification organization;
- definition of the relevant criteria which must be fulfilled for the intended certificate (many criteria are subject to interpretation, therefore the developer should maintain a constant dialogue with the certification organization on potential ambiguities); **NB Green Leases can be the decisive factor for the issue of a certificate.**

Stakeholders in the certification process:

The following parties are usually involved in the certification process:

- the property owner or its delegate;
- certification organization;
- auditor/assessor/accredited professional and/or other consultants.

In the case of new construction and retrofits, the following parties are often also involved:

- building contractor;
 - architect and specialist designers.
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- description of the certification process up to award of the certificate or final refusal, including options for the applicant to remedy failures;
 - beneficiaries (including legal successors) under the agreement and transferral rights (the certification agreement is not automatically transferred to an acquirer of the certified property in the same way as a building permit – transferral rights may be included in the certification agreement or require the further consent of the certification organization);
 - liability and indemnification (the liability of the certification organization is normally excluded to a large extent);
 - validity period of the certificate;
 - withdrawal rights of the certification organization (eg if the applicant has made an incorrect declaration at the outset or if the certification requirements cease to be met at a later time, the certification organization may be entitled to withdraw the certificate);
 - certification fees.

PARTICULAR CHARACTERISTICS OF THE CERTIFICATION SCHEMES

BREEAM

- The BREEAM scheme for existing buildings is divided into three categories that relate to building condition, property management and use. This scheme provides for individual certificates to be obtained for each of these categories.
- If the target level for the certificate originally agreed upon in the certification agreement is not achieved but the certification requirements are met to some extent, the certificate will generally be awarded in a lower category. In the unlikely event that a project fulfils the requirements of a higher level, the higher level certificate will be awarded. However, in this case the applicant is normally obliged to pay the higher fees for the certificate.
- Pre-certifications require separate agreements with the certification organization. The award of a pre-certificate does not influence any later certification process.
- Since there is no contractual relationship between the property owner or its agent and BRE Global Ltd. or the relevant National Scheme Operator, any disputes are governed by the agreement with the assessor/auditor. Usually the laws of the country in which the building is located will apply.

LEED

- The project is to be registered at the website “LEED online”. On registration, the applicant must accept the terms and conditions of the relevant certifying organization which, among other things, are contained in the LEED Project Certification Agreement (Version 4 – released 11 January 2011).
- The LEED Project Certification Agreement can only be entered into by the property owner or its properly designated agent. The owner is entitled to assign its rights and obligations to another owner of the property. If an acquirer of the property does not want to enter into the certification agreement, only the former owner can terminate the certification agreement. In such cases, it is not entitled to reclaim any fees paid by it to the relevant certifying organization.
- The applicant is responsible for ensuring that the application documents are complete and accurate. If this is not the case, the relevant certifying organization cannot be required to award the certificate.
- The relevant certifying organization only starts its review process after receiving the agreed certification fees. These fees will not be refunded if the relevant certifying organization fails to meet review timelines.
- The relevant certifying organization is entitled to terminate the certification agreement on grounds which include where the applicant fails to pay fees on time, the project is sold or destroyed or if, after review, the project is denied certification.
- The certification may be revoked on grounds including where the relevant certifying organization is denied an audit or site visit, or it is prevented from examining documentation related to the design of the project, construction and/or operations pertaining to LEED certification. In addition, the relevant certifying organization retains the right, in its reasonable discretion, to revoke the LEED certification of any project for which it is not provided with energy and water use data on an ongoing basis after the certification is conferred.
- It is not possible to register a project for a fresh certification after the relevant certifying organization has awarded, denied or revoked a certificate for it.
- The LEED Project Certification Agreement is governed by the laws of the District of Columbia, US. The courts of the District of Columbia have jurisdiction. The relevant certifying organization can request that a non-binding mediation procedure that can last up to 90 days is held prior to court proceedings.

DGNB

- The following specific services are usually required from designers in relation to the DGNB certification process:
 - “assurance of creativity and quality in urban development during the tender process” (sociocultural and social quality);
 - “success in architectural competitions in relation to sustainability standards” (process quality).
- The certification agreement with DGNB is governed by the laws of the Federal Republic of Germany and the place of jurisdiction is Stuttgart.



ONGOING MANAGEMENT TASKS IN RELATION TO CERTIFICATES

Asset managers

Asset management usually involves strategic and risk orientated planning and management tasks undertaken during the holding period until the disposal of a building in order to optimize the risk/return profile of a single property or portfolio.

The asset manager is usually responsible for the development of portfolio strategies, the management of lessee relationships, cost optimization, modernizations and refurbishments as well as revitalization measures. In addition, the asset manager is generally obliged to implement these strategies at the operational level with service providers (ie property and facility managers).

This scope of work should be complemented by further tasks in relation to green buildings in the case of certifications which have been awarded or are proposed. In particular, the following responsibilities could be agreed in the asset management agreement:

- services in relation to future certificates and/or the future achievement of higher award levels:
 - a definition of objectives (ie which type of certificate issued through which certification scheme is to be obtained in what timeframe);
 - drafting and implementing strategic plans;
 - consultant services in relation to construction and modernization measures necessary for the certificate;
 - ongoing review of services and documents provided by third parties in relation to the certification process;
 - management and supervision of third parties that are also involved in the certification process;
 - continuous documentation of evaluation and supervision services;
 - identification and assessment of the potential for optimization during the certification process;
 - provision of assistance to and supervision of auditors (ie registration of project with certification organization, collection, review and submission of necessary documentation and consultant services during conformity check);
 - request for proof of sufficient insurance cover for auditors and other consultants involved in the certification process as the standard professional liability insurance for architects and planners does not usually cover auditor and consultant services in relation to certificates;
- services in relation to certificates already awarded:
 - constant evaluation of the certificates in place (ie assessment as to whether a certificate needs to be renewed due to limited validity (eg BREEAM certificates last one year) or because the certificate has lost value due to new legal requirements (eg, this might happen to DGNB certificates for new construction which only certify that the requirements at the time of certification were fulfilled);
 - continuous documentation of evaluation and supervision services;

- documentation and assessment of new defects or derogations from the certification requirements;
- identification and implementation of corrective measures in relation to defects and derogations in coordination with the principal (ie property owner), including relevant documentation;
- advance planning in relation to property/facility management and users involving, among other things, the evaluation of the extent to which the appointment of property managers who provide sustainable property management services or the conclusion of green lease agreements can assist in obtaining building certificates for existing buildings in the future;
- proposing and implementing business plans and budgets that provide for capital expenditure on certifications, including renewals;
- accepting power of attorney authorizing the asset manager to act in the certification process as the properly designated agent of the property owner.

Remuneration of asset managers for green building services

The asset manager can be remunerated for the services provided by a fixed fee or on a performance basis (where the certificate applied for is awarded or projected savings in operating and/or energy costs are achieved) or a combination of both. If remuneration based on performance is agreed, the targets and/or savings (ie initial and target values) should be clearly defined in order to avoid disputes.

AUDITOR AGREEMENTS (OR AGREEMENTS WITH OTHER CONSULTANTS IN RELATION TO CERTIFICATIONS)

Types of auditors/consultants required by the various certification schemes

BREEAM and the DGNB require the involvement of a consultant who is approved by the relevant certification organizations. The USGBC does not require this but recommends the involvement of a consultant in the LEED certification process.

The following designations are used in relation to these consultants:

- BREEAM – “Licensed Assessor” in relation to new building projects and “Licensed Auditor” in relation to existing building projects (LA);
- DGNB – “Auditors” (Auditor);
- LEED – “Accredited Professional” (AP).

Scope of services usually provided by an auditor/consultant

The auditor has a crucial role in the certification process. In relation to pre-certificates, the auditor must:

- register the property with the competent certification organization;
- carry out a pre-assessment;
- coordinate meetings with the planning team;
- prepare and submit application documentation; and
- file the declarations by the applicant (ie the property owner) in relation to the certificate applied for.

In relation to certificates, the auditor is usually obliged to provide the following:

- undertaking a pre-assessment in order to determine the necessary measures involved and costs of the certification applied for;
- developing and implementing a management system that integrates the certification process into the planning and construction process and, in particular, considers interfaces, responsibilities, timelines, applicable procedures and provides for quality assurance;
- developing and implementing a commissioning plan that, in particular, covers technical design;
- registering the project with the certification organization;
- carrying out randomized checks for quality control of the building project during the construction process;
- collecting, preparing and submitting complete and accurate documentation to the certification organization;
- providing a guarantee that the building has indeed been constructed in accordance with declarations made by the applicant in the certification process.

Characteristics of auditor agreements

The auditor may be employed by the building contractor. In such cases, the auditor's services are often expressly covered by the construction contract and no separate agreement with the auditor needs to be concluded by the property owner.

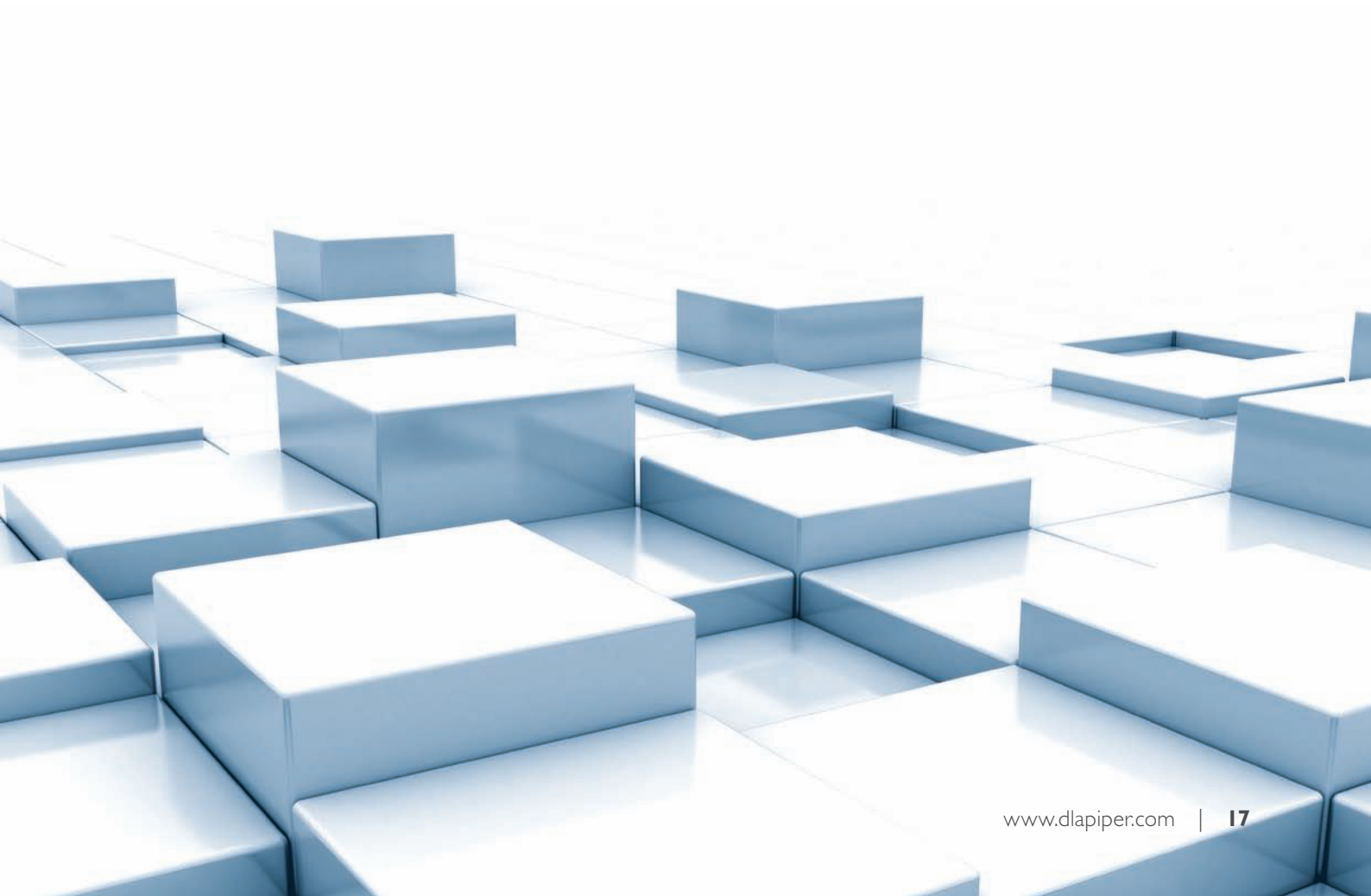
Liability of auditors/consultants

Most auditor agreements restrict the liability of the auditor in relation to the certificate as follows: the auditor is only liable if a certificate is not granted due to his or her negligent or intentional misconduct (for example, in the case of incomplete or incorrect application documents).

Some auditor agreements do go on to provide that the auditor is to be liable if the estimated costs for the certification process are exceeded by more than 10%.

Overview of related insurance cover

Auditor services are provided by architects or engineers who have been accredited by the certification organization. Such services go beyond the activities that are usually undertaken by architects and engineers and so the standard professional liability insurance maintained by architects and planners may not cover auditor/consultant services in relation to certificates. In such cases, these services should be covered by a separate arrangement with the insurance company.



GREEN CONSTRUCTION AND DESIGN

GREEN DESIGN CONTRACTS

Characteristics of a green design contract

To establish a green building, a client usually instructs architects to carry out the general design, engineers for the specialist design and, in addition, either an “Accredited Professional” (rewarded with an extra credit point in the LEED certification scheme) or a “Licensed Assessor” (BREEAM) or a certified auditor (required for the award of a DGNB certificate). Certified auditors, accredited professionals and licensed assessors can be collectively described as auditors. Auditors advise the client and cooperate closely with the client’s architects and engineers and prepare and coordinate the certification process.

If the auditor’s services are not fully contained in the standard specification of services in the agreement for the provision of design services in use in the relevant country, these must be agreed expressly.

Documentation and measurements required as proof that services have been provided appropriately

DGNB, LEED and BREEAM certificates are awarded on the basis of the relevant design documentation. The documents to be examined are generally the application documents, including:

- building specifications, including the building services equipment description, energy use plan; and
- floor plans, views and site plans.

In addition, the following documents are usually also subject to assessment:

- health and safety plan;
- ecological balance sheet;
- water management strategy;
- daylight optimization strategy;
- waste strategy;
- acoustic comfort calculations;
- measurement and monitoring strategy;
- strategy for the support of alterations and demolition works; and
- strategy for cleaning and maintenance.

Liability of designers

As with auditor agreements, the liability of the designer in relation to the certificate is restricted so that the designer is only liable if a certificate is not granted due to negligent or intentional misconduct.



GREEN CONSTRUCTION CONTRACTS

Characteristics of a green construction contract

A green construction contract is quite similar to an ordinary construction contract. The differences are mainly set out in the building specifications. Usually a green construction contract contains very detailed specifications in which the materials to be used are explicitly laid down. This means that the contractor has only very limited discretion as to how the building is built.

Documentation and measurements required as proof that the services have been provided appropriately

Once the building process is completed, the auditor checks that the building has been constructed in accordance with the plans and strategies and submits its final report to the relevant certification organization.

Liability of contractors

A contractor is not generally responsible for achieving the award of the certificate except where and to the extent that contractual obligations have been breached. If a contractor fails to comply with the agreed specifications and the desired award is not granted due to this breach of obligation, the contractor is in principle liable for the damage.

GREEN PROPERTY MANAGEMENT

Definition of “green property management agreement”

Where no statutory or other legal regime governs green property management, a “green property management agreement” is generally a standard contract which has been expanded by the inclusion of individual provisions (known as “green” provisions) to achieve sustainable property management.

Like a standard property management agreement, a green property management agreement consists of (i) contract provisions and (ii) a service specification in which the property management services are set out. Both parts are supplemented by green provisions and service descriptions.

Characteristics and examples of provisions usually contained in green property management agreements

The agreement will consist of a set of contractual provisions setting out the framework within which an attached specification of services will apply. The following aspects may be covered:

- definition of “Sustainable Property Management”: in the absence of statutory definitions, it is advisable to include an introductory clause in order to define the overall understanding by the parties of the term “sustainable property management”;
- if the property management company has had its services recognized in accordance with building certification schemes (eg obtained a Badge of Recognition for its services in accordance with part 2 of the BREEAM certification scheme for existing buildings), this should be reflected in the green property management agreement so that the recognized services and the resultant rights and duties (ie in relation to the use of associated logos, brands and protected titles) of the parties are properly incorporated;
- obligations of principal and property manager in relation to the provision, processing and deletion of data: the property management company is the central point for the collection and analysis of all information and for the development of strategies for sustainable property management based on it. Even if such duties to cooperate on the part of the owner usually exist even without explicit contractual clauses, the incorporation of such a provision is useful for the purposes of clarification;
- sustainable use by lessees: since lessees have a decisive influence on the performance of buildings in terms of sustainability, leases should also involve the lessees in the process of sustainable property management and encourage them to use the property in a sustainable manner. This can be achieved by entering into leases which, in addition to the usual standard clauses, contain clauses which are intended to achieve a sustainable fit-out, management and use of the property (“green leases”). Even if the lessees’ duties with respect to sustainability are to be set out in the relevant leases, a provision dealing with how green leases are to be entered into with any lessees can be included in the green property management agreement;
- since a sustainability manual to promote sustainable property management on the part of the property management company ensures that lessees also benefit directly from these advantages, the property management company will undertake to draw up these manuals in cooperation with lessees and to implement and improve these regularly;

- the setting up of a sustainability committee: only through regular communication between owner, property management company, providers of facility management services and ideally, the lessees, can the entire potential of a property be exploited to achieve a sustainability standard. A provision providing for sustainability committee meetings at regular intervals may be expedient, particularly in the case of larger properties with several lessees;
- indemnities and penalties: the damage arising from a breach of a duty in a contractual provision which is aimed at sustainable property management is frequently difficult to quantify. Therefore, it may be advisable to supplement the damage claim existing by virtue of the law by a clause which defines in advance the payment to be made in the event of a breach;
- alignment of the agreement with future certification systems (ie the future certification of property management services and/or lease agreements).

GREEN LEASING

Definition of a “green” lease agreement

Although not legally defined in most countries, a “green” lease agreement is generally understood to be a standard lease agreement to which “green” provisions have been added. “Green” provisions are aimed at ensuring that the relevant premises are (i) built and equipped and/or (ii) operated sustainably.

Characteristics and examples of provisions usually contained in green lease agreements

“Green” provisions range from simple guidelines for action to complex requirements and prohibitions applying to both contractual parties:

- in countries with a legal system based on civil law (most countries in continental Europe), an introductory provision frequently contains a definition of sustainability and sets out the intent of the parties to act accordingly. In countries with a common law system, a definition of “Sustainability” is commonly included and used in the context of various obligations on each party throughout the lease;
- binding regulations are often made aimed at reaching a certain certification standard. These are partially anchored in the building specifications or agreed as a separate contractual term by which the lessor is obliged to adhere to the certification standards in relation to the building. In return, the lessee undertakes to refrain from any actions that could be detrimental to the certification. This particularly involves stipulations for interior fixtures, eg in relation to materials used, as well as the use of motion detectors, and codes of conduct, such as complying with the smoking ban and instructions relating to regular airing. In relation to building certification standards, flexibility is becoming more and more important – the lessor and/or the lessee want to have the right to achieve a higher or a new certification standard not only at the start of the tenancy but also at a later point in time during the term of long-term leases;
- transparency and efficiency take on a greater significance when it comes to operating costs. Therefore, a regular exchange of information between the lessor and the lessee is envisaged in order to recognize and optimize potential. Additionally, regulations for property management are introduced in order to guarantee cost-efficient and environmentally friendly management. This can mean that the lessor has to lay down the reporting process for the property manager, the building services equipment or the cleaning products to be used;
- it is agreed in many contracts that renewable energy sources are to be used predominantly or exclusively in a cost-efficient way. With this in mind, both parties are often permitted to carry out renovations aimed at improving energy efficiency or to implement other environmentally friendly measures such as establishing photovoltaic installations on the roof. The lessor may reserve the right to allocate at least some of the cost to the lessee through mechanisms involving the level of rent or the payment of a capital sum. This is compensated for by operating cost savings and higher user-friendliness;
- lease agreements for “green” prime properties may also provide for the formation of sustainability committees made up of representatives from the lessor, lessee(s) and property management provider as well as experts, although this is not common practice in all but those countries where the development of sustainability principles in building management is most advanced. These committees aim to adapt and modify the contractual relationship regularly to reflect current developments and to optimize this by taking technical advances into consideration. New targets may then be included in a binding addendum to or variation to the lease agreement;

- user interests are increasingly promoted – there are often provisions relating to internal air and light conditions to protect the health of users of the building. Employee and customer satisfaction should be promoted and thus the productivity of the lessee's employees should be increased;
- in some cases – again mainly prime properties – lessees abide by lengthy codes of conduct (often stipulated in a sustainability manual provided by the property manager) ranging from provisions stipulating the regular airing of the rented space to the use of organic food in the canteen. Again, this is uncommon in all but the most advanced countries;
- some green leases include incentives that reward environmentally friendly conduct by the lessee, such as energy and water savings, with rent reductions. In particular, sophisticated technical monitoring systems allow the recording of the actual utility consumption and observation of compliance with contractual arrangements. Penalty clauses are uncommon and, in most common law jurisdictions (eg England), illegal;
- green provisions affecting office space often also promote flexibility in the workplace providing that the switch between individual and open plan offices should be possible at short notice and should be able to be managed without incurring significant costs. Access to social spaces within the building is usually ensured by the lessor for the duration of the lease. In addition, these agreements might contain provisions covering “green” furnishing of the building, including the outside spaces (eg courtyards and roof terraces), with plants and trees;
- comprehensive provisions regarding the management of the building during the term of the lease are increasingly to be found, in particular, conditions regarding continuous energy monitoring and optimization are popular. In line with this, the lessee is obliged to comply with detailed regulations regarding ventilation, heating and limits on the amount of energy and water actually consumed during specified periods.

Recommendations for drafting green lease agreements

- incentives should apply to both parties. Risks and benefits should be shared equally so that both parties have a stake in what they are initially investing in and are incentivized to achieve a certain level of sustainability.
- measurability and reporting to enable both parties to measure success against agreed goals or to achieve new targets is required.
- flexibility which allows for long-term leases to be adjusted to meet new sustainability standards (eg aiming at higher and/or different certification standards, green retrofitting and renovations with a view to improving energy efficiency) is desirable.
- non-binding green statements of intent and/or practically unenforceable green obligations included only to give the appearance of “greenness” without the substance (“greenwashing”) should be avoided. Greenwashing may harm the reputation of both parties to the agreement. A green lease should include a general commitment to sustainability and at least two binding and enforceable green obligations as between the parties (for example, clauses dealing with current and/or future certification standards and environmental monitoring).

BUYING AND SELLING GREEN BUILDINGS

Scope of legal review when acquiring a green building

The following points should be covered in due diligence.

- A general overview of all building certificates or other sustainability awards (eg a Badge of Recognition under the BREEAM scheme) that already have been awarded or are intended in relation to the property.
- A review of whether rights in relation to building certificates/awards can be assigned to the acquirer – rights under certification agreements are not automatically transferred to an acquirer of the building but must be expressly assigned. This means that either the certification agreement must include a provision for this or a separate approval of the certification organization must be obtained.
- A review of the terms of certificates/awards and potential for fulfilment of future renewal requirements (eg in relation to the annual renewal requirements for BREEAM certificates).
- Assessment of risks that certificates/awards may be withdrawn by the certification organization (ie are the lease agreements in accordance with and reflect the certification requirements? Are there any indications that there has been an incomplete or incorrect declaration made)?
- Special attention should be paid to certificates/awards that only just reach the award level (small inconsistencies can lead to a withdrawal of the higher award level so that only a lower-level certificate is granted).
- Review of whether energy performance certificates are available and fulfil legal requirements and/or market standards.
- Review of whether all key documentation in relation to certificates awards has been made available and is appropriate (due to certification processes, substantial documentation will be available in contrast to many other properties).

Provisions in sale and purchase agreements (SPAs) in relation to green buildings

SPAs in relation to green buildings should cover the following:

- the liability of the seller in relation to energy performance certificates;
- the liability of the seller in relation to compliance with current statutory energy efficiency standards;
- the transfer to the buyer of the seller's rights in relation to certificates/awards against third parties (ie the certification organization, auditor, designers, building contractors and developers);
- the liability of the seller in relation to building certificates/awards: during the certification process the certification organization does not assess the actual building condition and assumes that the building has actually been constructed in accordance with the documents submitted. If the buyer wants to have some certainty that the building does in fact fulfil the certification requirements, it can ask for a guarantee from the seller; however in most cases the parties will agree on a transfer of the seller's rights under the certification agreement and its agreements with auditors/assessors, building contractors and designers, including construction supervisors;
- an obligation on the seller to hand over all documentation in relation to building certificates/awards and data that is available as a result of green property management agreements (ie the sustainability manual, documentation in relation to surveys and assessments of lessees' use of the building and complaint management systems, energy monitoring results and evaluations and/or green lease agreements).

FINANCING GREEN BUILDINGS

Certification as a “green building” as a key issue in negotiation

The label “green building” can attract financiers and sponsors at the same time as it increases expectations regarding cash flow and rate of return leading to better financing terms, such as lower interest margin rates or equity cover ratio. As green building certificates move from being a bonus to being standard in terms of financing requirements, tailor-made provisions dealing with such certificates in the financing documentation agreements will be seen more often and will create a market standard.

In addition to general provisions already covered in financing documentation such as covenants for complying with environmental protection requirements or maintaining the property’s value and keeping it in good condition, the following issues should be covered either in the facility agreement and/or in the agreement creating security over the property, if the owner is not the borrower:

These representations should also be included when defining default scenarios. In terms of risk allocation, the borrower will need to bear the risk connected with the certification or construction of the building, such as where misleading information has been submitted or where there are building or design defects. The borrower would be well advised to pass on such risks in the project contracts to those responsible for the design or construction or assisting with the certification process. The covenants by the borrower should also contain provisions dealing with any necessary renewal or extension of the certificate and change in the standards for certification as well as an obligation to provide security over the project contracts (certification contract, design contract or building contract).

Implementation can improve the attractiveness of complex structured finance deals in cases where the borrower wishes to finance a green modernization of a building on “green finance” terms where the building has previously been financed conventionally: a lower interest rate and a lower requirement for equity participation from the borrower. We anticipate that specialized funders will enter the market who are able to provide an attractive interest margin and cost-efficient financing. Such funders might not have been attracted to financing the original purchase of the property but will focus on financing the green modernization. As the green certificate will increase the value of the property, the green financier will want to rank senior to the existing lender in terms of the waterfall and security package.

If the building loses its green certification or there is any other material breach of the green certification related covenants, this must be classified as an event of default. However, increasing the interest margin and other commercial conditions (such as the equity ratio) could be an alternative way forward where the building no longer qualifies for the green certification.

In addition to the conventional security interests affecting the property, security over the certification contract and other project documents by way of assignment will be taken by the lender. Any ban on such assignments must be identified in the course of the due diligence process. Assignability or transferability of a green certificate is definitely a key requirement, in particular as it eases enforcement by way of selling the property. NB the DGNB scheme does not contain bans on assignment which makes it even more attractive to achieve such a certificate as the basis for a financing.


A reliance letter issued by the certification authority for the benefit of the lender granting the lender a direct claim against such authority would also be helpful. While there is no apparent reason why the certification authority could not issue such a reliance letter (if its costs are met), it remains to be seen whether in practice it will be willing to do so.




GREEN BUILDINGS INTERNATIONALLY


Key questions as to how sustainability in buildings works locally	France 
Do any of the international certification schemes operate through a local certifying authority?	BREEAM and LEED operate in France but are not represented through a specific local certifying authority. The French certification High Environmental Quality Standard (HQE) is represented in France by the <i>Association pour la Haute Qualité Environnementale</i> (ASSOHQE) which is a recognized public service organization. CERTIVEA is the body in charge of delivering certification in France for non-residential buildings and CERQUAL delivers certification for residential buildings.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	No, there is no statutory regime governing how the sustainability of a building is certified in France.
What potential liabilities does the certifying organization have?	No specific liability regime for certifying organizations. As a consequence, the liability of a certification organization is fairly limited.
What statutory or other legal regime governs sustainability auditor agreements?	There is no statutory regime covering auditor agreements. Such auditor agreements can be freely negotiated but are usually in the form of the standard agreement provided by the auditors.
What statutory or other legal regime governs green design contracts?	There is no statutory or legal regime governing green design contracts. As a consequence, green design contracts are fairly similar to ordinary construction contracts except for the building specifications provisions which reflect the certification objectives of the owner.
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	There is no specific legal regime governing green property management agreements in France, as they are uncommon, however property managers have developed a wide range of services, including collection and analysis of information on the sustainability of buildings, establishment of a sustainability manual for tenants and budgeting for specific works in relation to the sustainability of buildings, etc.


Key questions as to how sustainability in buildings works locally	France 
<p>Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?</p>	<p>Any contractual penalty payments must be justified in connection with a failure by the property manager in its contractual obligations. As a consequence, the contractual obligations of the property manager must be very precisely defined. Any such penalties must be reasonable and adequate in relation to the breach in question, failing which they can be reduced by a court if considered excessive. Contractual penalties are not often used in practice in France.</p>
<p>Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?</p>	<p>All leases entered into which affect space for commercial or office use exceeding 2,000 sq m must include a mandatory environmental annexure (<i>annexe environnementale</i>), but there is no sanction if this obligation is not complied with.</p>
<p>How are green leases structured contractually?</p>	<p>The “green” clauses of a lease are included in the environmental annexure, which must include:</p> <ul style="list-style-type: none"> ■ Information to be provided by both the landlord and the tenant: a description of the building and its equipment and facilities, including a specification covering treatment of waste, heating, cooling, energy and the annual water consumption of the plant and equipment managed by the landlord and the tenant, as well as the annual volume of waste generated by the building and how it is to be treated. ■ An obligation on the tenant and the landlord to organize an ongoing scheme for developing the sustainability of the building (eg a sustainability committee) and to agree on actions to improve the building’s sustainability. <p>The lease itself rarely includes green provisions.</p>
<p>How popular are green lease agreements currently?</p>	<p>In France, most lease agreements do not include any specific “green provisions” or only very limited ones, however for new construction or fully new renovated buildings, the lease or a schedule may include more green provisions which only impose best efforts obligations on the tenants to act in a sustainable way.</p> <p>In addition, all lease agreements for office or commercial use affecting more than 2,000 sq m must include an environmental annexure (see above).</p>
<p>Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?</p>	<p>All lease agreements must include an energy performance diagnosis (DPE).</p> <p>Environmental laws known as “Grenelle Laws I and II” have laid down general principles of energy efficiency and sustainability standards, etc, however such laws only provide for principal guidelines that will only be binding after the related decree is enacted. For instance, under the Grenelle II law, all buildings must have their energy consumption reduced by more than 38% before 2020. A decree is to be enacted containing specific obligations in order to meet these objectives.</p>

Key questions as to how sustainability in buildings works locally	France 
Are any public subsidies available for green buildings?	<p>There are no specific subsidies for green buildings except for the incentive measures implemented by the government for the benefit of individuals in residential buildings (subsidies for works improving the sustainability of residential buildings).</p> <p>Under article L. 128-1 of the French Town Planning Code, a municipality may pass a resolution authorizing an increase of up to 30% in the construction rights (<i>coefficient d'occupation des sols – COS</i>) for green buildings which meet certain sustainability criteria.</p>
Are any tax concessions or other benefits available for green buildings?	<p>Existing tax benefits or allowances in relation to green buildings mainly apply to residential buildings and benefit individuals (interest-free loans for individuals, land tax allowance, reduction in tax on revenue, etc).</p>





Key questions as to how sustainability in buildings works locally	Germany 
Do any of the international certification schemes operate through a local certifying authority?	For BREEAM, the national representative (National Scheme Operator) in Germany is DIFNI (<i>Deutsches Institut für nachhaltige Immobilien GmbH & Co. KG</i>) based in Frankfurt. For LEED, The Green Building Certification Institute (GBCI) is responsible for certifying projects in Germany.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	No.
What potential liabilities does the certifying organization have?	The liability of the certification organization is extremely limited. The applicant is also obliged to indemnify the GBCI and the USGBC against any third party claims in relation to the certification process unless the GBCI and/or the USGBC have caused the claim intentionally or the claim has arisen against them as a result of their gross negligence.
What statutory or other legal regime governs sustainability auditor agreements?	<p>There is no statutory regime covering auditor agreements. The legal classification of these agreements depends on the services to be provided by the auditor and whether the auditors are to be liable for the fulfilment of certain requirements (ie certification requirements).</p> <p>If the auditor only owes the provision of services irrespective of any results, the agreement can be regarded as a personal service contract (<i>Dienstvertrag</i>) in accordance with Section 611 of the German Civil Code (<i>Bürgerliches Gesetzbuch</i>). If the auditor is held liable for the fulfilment of specified requirements, the agreement constitutes a contract for work and services (<i>Werkvertrag</i>) in accordance with Section 631 of the German Civil Code. In most cases, a combination of both will be agreed. According to the prevailing legal opinion, the issue of whether the law governing personal service contracts or that governing work and service contracts is applicable is to be determined for every provision of the agreement individually.</p>
What statutory or other legal regime governs green design contracts?	There is no special regime in place
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	In accordance with the 3rd edition of the sustainability guidelines published by the German Property Federation (<i>Zentraler Immobilien Ausschuss e.V.</i>) in March 2013, "sustainability" or a "green" approach is generally understood as consisting of environmental friendliness, economic efficiency and social compatibility. Although this code is not legally binding, it has become the market standard.

Key questions as to how sustainability in buildings works locally	Germany 
<p>Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?</p>	<p>Contractual provisions may take the form of a contractual penalty clause. It is up to the parties to decide for which breaches of contractual duty and following what degree of fault (eg limited to cases of wilful intent or gross negligence) a contractual penalty is to be paid.</p>
<p>Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?</p>	<p>In Germany, the understanding of “green” and sustainability was unclear for some time. This changed with the publication by the German Property Federation (<i>Zentraler Immobilien Ausschuss e.V.</i>) of the sustainability code. Although this code is not legally binding, it has become the market standard. It defines sustainability as (i) environmental friendliness, (ii) economic efficiency and (iii) taking into account sociocultural factors which in the context of leases particularly involve considering the interests of the users of the premises.</p> <p>In Germany, there is no legal requirement to include “green” provisions in lease agreements. Accordingly, the form which green leases take in Germany is a result of market practice and the German legal system. For instance, the allocation of costs for heating and warm water is required to be largely in accordance with actual consumption.</p>
<p>How are green leases structured contractually?</p>	<p>“Green” clauses are generally included in one single lease document (including annexes) and/or amendments formally put into effect. Due to German law’s statutory written form requirement and the corresponding risk that lease agreements can be terminated prior the end of the fixed term if the written form requirement is not satisfied, parties to long-term leases are very careful when it comes to supplementary agreements made after the lease agreement has been signed as all major agreements must be made in proper written form. This makes the later inclusion of “green” rules into existing leases more difficult.</p>
<p>How popular are green lease agreements currently?</p>	<p>In Germany, the following types of green leases can be found: (i) lease agreements with only a few tailored green provisions – “light green leases” and (ii) “dark green leases” with very detailed binding “green” content and scope. Whereas light green leases are becoming more and more popular in all segments of the real estate market, dark green leases are confined to the core segment of high quality properties in prime locations.</p>


Key questions as to how sustainability in buildings works locally	Germany 
Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?	<p>“Green” side letters (eg memoranda of understanding, letters of intent, etc.) attached to lease agreements in which the parties agree on non-binding declarations of intent to act in a sustainable way are not widely used.</p> <ul style="list-style-type: none"> ■ An energy performance certificate (<i>Energieausweis</i>) must be provided by lessors upon conclusion of a lease agreement; ■ waste requires separation/recycling; ■ environmentally friendly products must be used in snow and ice removal; ■ a smoking ban applies; ■ work places need to be in receipt of certain levels of daylight.
Are any public subsidies available for green buildings?	<p>KfW (the Bank for Reconstruction), a non-profit group 80% owned by the German government and 20% owned by the German federal states, as part of an energy efficiency scheme (<i>KfW-Energieeffizienzprogramm</i>) promotes the financing of up to 100% of total investment costs (capped at €25m per project) for the construction or the modernization of real estate which meets or exceeds the requirements of the German Energy Saving Regulation 2009 (EnEV).</p> <p>KfW raises funds from the commercial market and advances the capital to the borrower via a fronting bank (usually the borrower’s own bank). The borrower must apply to become part of the energy efficiency scheme. If the applicant meets the criteria of the scheme, the KfW financing consists of long-term loans with a fixed lower interest rate (1% actual annual interest rate (<i>effektiver Jahreszins</i>)) and delayed amortization for the first 5 years.</p>
Are any tax concessions or other benefits available for green buildings?	<p>Generally, there are no specific German tax allowances or other tax benefits in relation to green buildings. In 2012, the German government tried to amend the German income tax act by a variety of provisions which were meant to foster green buildings. However, this legislative initiative was rejected by Germany’s second chamber. Now, after the 2013 elections, it is expected that the said initiative will be relaunched.</p> <p>Apart from the expected changes, even under the tax rules which currently apply expenditure incurred in relation to green buildings may either be treated as acquisition costs (subject to ordinary depreciation) or expenses deductible immediately.</p>


Key questions as to how sustainability in buildings works locally	Italy 
Do any of the international certification schemes operate through a local certifying authority?	<p>There is no institutional local certifying authority for BREEAM. Green Building Certification Italia (GBC Italia) is responsible for certifying projects in Italy for LEED.</p> <p>With specific reference to energy performance certification, each Italian Region may enact its own rules and empower specific regional authorities to operate an energy certification system.</p>
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	<p>There is no specific local statutory regime in place with reference to LEED or BREEAM certification.</p> <p>The regulation of energy performance certification is contained in Legislative Decree 192/2005, which implements EU Directives 2002/91/CE and 2010/31/CE.</p>
What potential liabilities does the certifying organization have?	<p>Under the standard contract between GBC Italia and the owner of the building to be certified, GBC Italia and its technicians are only liable for any damage caused by wilful misconduct, gross negligence or negligence.</p> <p>In relation to energy performance certifications, usually the entities in charge of training technicians indicate in the agreements to be signed by the technicians participating in the courses that the entity has no liability with respect to the course and the future certifications issued by the technicians. Technicians' engagement letters relating to the assessment of energy performance may provide for specific rules regarding the professional liability of the technician who has been engaged.</p>
What statutory or other legal regime governs sustainability auditor agreements?	<p>There is no statutory or special regime in place. The main international operators either appoint on-site auditors expressly recognized by International LEED or BREEAM authorities or liaise directly with the LEED organization in the US or BREAM organization in the UK.</p> <p>As far as the existing Italian protocols (ITACA and CasaClima) are concerned, operators directly liaise with the relevant entities. In any case, "green buildings" in Italy are chiefly of interest to foreign operators and, consequently, reference is mostly made to the international protocols.</p>
What statutory or other legal regime governs green design contracts?	<p>There is no statutory/special regime in place.</p>
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	<p>There is no statutory or special regime in place.</p> <p>The current market practice in relation to property management agreements in Italy does not provide for special clauses addressing green or sustainability matters.</p>

Key questions as to how sustainability in buildings works locally	Italy 
<p>Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?</p>	<p>Yes, under Italian law the parties to any agreement (including property management agreements) are free to agree on penalties which apply in the event of a breach of a contractual obligation.</p> <p>The quantification of the penalty is usually determined by the parties on the basis of criteria related to fairness and equity. Indeed, if the amount of the penalty is excessively burdensome, the party which is obliged to pay the penalty may ask a court to reduce it to reflect a standard of fairness and equity.</p>
<p>Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?</p>	<p>There is no statutory or special regime in place. Notwithstanding this, in terms of market practice, international companies (both landlords and tenants) operating in the Italian real estate market frequently ask, pursuant to their internal policies, that buildings are certified in accordance with the international sustainability standards (LEED and BREEAM). For this reason, obtaining a sustainability certification is becoming more and more an essential requirement for the successful leasing of a building.</p>
<p>How are green leases structured contractually?</p>	<p>Market practice in Italy has not developed any specific clauses addressing green or sustainability issues under lease agreements.</p>
<p>How popular are green lease agreements currently?</p>	<p>Awareness of green or sustainability issues in the Italian market is increasing quickly. In particular new developments or refurbishments are often required to be designed to comply with green requirements and sustainability certifications. Nevertheless, green lease agreements are not popular in the Italian market. Interest in green leases is currently relevant during the pre-negotiation phase, when potential tenants (in particular international tenants) ask for evidence (such as LEED/BREEAM certifications) that the leased premises are “green”, but no specific provision requiring compliance with green standards are inserted in lease agreements.</p>
<p>Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?</p>	<p>An energy performance certificate (APE) must be provided by lessors on the conclusion of a lease agreement.</p> <p>In addition, certain additional installations may be necessary depending on the intended use of the buildings. For example, production facilities must comply with certain specific laws regarding waste disposal in order to ensure the separation of recyclable wastes. Those provisions are implemented at a local level, ie by the relevant municipality.</p>
<p>Are any public subsidies available for green buildings?</p>	<p>The owner of a building may receive public incentives if it installs plant that produces energy from renewable sources in the building.</p> <p>In addition, the Regional Governments may provide for financial incentives in relation to buildings which comply with green standards and/or obtain green certifications.</p>


Key questions as to how sustainability in buildings works locally	Italy 
Are any tax concessions or other benefits available for green buildings?	<p>Specific tax incentives are provided for individuals and corporate entities carrying out works that increase the energy efficiency of existing buildings.</p> <p>In particular, works that can benefit from incentives include:</p> <ol style="list-style-type: none"> 1. those aimed at reducing the energy needed for heating (up to €100,000); 2. the thermal improvement of buildings (floors, fixtures, insulation, etc. – up to €60,000); 3. the installation of solar panels (up to €60,000); and 4. the replacement of heating systems (up to €30,000). <p>The benefit consists of a right to deduct from taxable income an amount equal to 65% of the expenses incurred relating to work carried out on individual real estate units prior to 31 December 2014 and 50% for work carried out during 2015. If the work is related to entire buildings, the maximum deduction applies at 65% until 30 June 2015 and then at 50% until 30 June 2016. The total amount of the deduction will be split over 10 years (eg €55,000 spent on the installation of solar panels during 2014 will give rise to deductions of €3,575 for 10 years). Specific documentation must be obtained and filed with the tax authorities to benefit from the deduction.</p>


Key questions as to how sustainability in buildings works locally	Netherlands 
Do any of the international certification schemes operate through a local certifying authority?	For BREEAM, the national representative (National Scheme Operator) in the Netherlands is the DGBC (Dutch Green Building Council) based in Rotterdam.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	There is no local statutory regime.
What potential liabilities does the certifying organization have?	The liability of the certification organization is extremely limited. The applicant is also obliged to indemnify the DGBC against any third party claims in relation to the certification process unless the DGBC has caused the claim intentionally or the claim has arisen against it as a result of its gross negligence.
What statutory or other legal regime governs sustainability auditor agreements?	There is no statutory regime covering auditor agreements. The legal classification of these agreements depends on the services to be provided by the auditor and whether the auditors are to be liable for meeting certain requirements (ie certification requirements).
What statutory or other legal regime governs green design contracts?	There is no statutory or other legal regime governing green design contracts, however certain multinationals have prepared green building contract agreements.
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	There is no special statutory or legal regime governing green property management agreements. The guidelines for green leases issued by the Dutch Government (the Dutch Ministry of the Interior and Kingdom Relations) lay down some standards for green leases and agreements governing the use of a property. Those standards must also be incorporated into the property management agreement for a green building or any green lease agreement.


Key questions as to how sustainability in buildings works locally	Netherlands 
<p>Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?</p>	<p>Contractual provisions may take the form of a contractual penalty clause. It is up to the parties to define the breaches of contractual duty and the degree of fault that will give rise to such penalties (perhaps limited to cases of wilful intent or gross negligence).</p>
<p>Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?</p>	<p>The Dutch Ministry of the Interior and Kingdom Relations published a “Guideline for Green Leases” in 2011, based on a survey conducted by Jones Lang LaSalle. This guideline contains the following elements:</p> <ul style="list-style-type: none"> ■ an agreement regarding sustainable use of the property; ■ clauses regarding mutual responsibility for energy efficiency and environmentally friendly requirements; ■ clauses to allocate the cost, income and risk inherent in sustainable investment, occupation and use; ■ clauses which make a green lease beneficial to both parties, lessor and lessee. <p>In the Dutch Civil Code's tenancy law there is no legal requirement to include green clauses in lease agreements. Accordingly, the form which green leases take in the Netherlands is a result of market practice and the Dutch legal system. For instance, the allocation of costs for heating and warm water is required to be largely in accordance with actual consumption. EPG (<i>Energieprestatienorm gebouwen</i>) is a method for determining the sustainability of existing and new buildings. In the last six years, 600,000 more buildings have been awarded a green energy label (label a, b or c) and 700,000 fewer buildings have received a non-green label (label e, f or g).</p> <p>The Energy Performance Building Directive states that new buildings must have an “energy” certificate and existing buildings must obtain one if involved in a transaction.</p> <p>The BREEAM-NL standard applies only to newly constructed buildings. Certification has been possible since April 2010. In April 2011, 1 million sq m of floor area was registered for certification.</p>
<p>How are green leases structured contractually?</p>	<p>A green lease is an agreement in which lessor and lessee agree on sustainable operation and use of the property. The green clauses are generally included in a single tenant lease agreement.</p>


Key questions as to how sustainability in buildings works locally	Netherlands 
<p>How popular are green lease agreements currently?</p>	<p>In the Netherlands, green leases are becoming more and more popular. The main reasons for this are the financial benefits and environmental factors.</p> <p>For example, a survey by Jones Lang LaSalle in 2011 showed that in 2008 only 38% of Dutch multinationals were engaged in sustainability, but by 2010 73% of Dutch multinationals believed that sustainability is of high importance and had implemented green measures and 90% of employees believed that sustainability is important and an important issue for the government.</p> <p>In the future, green lease agreements will be the standard form in which agreements are made between the parties covering sustainability in a building and the measures that must be taken to improve the sustainability.</p>
<p>Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?</p>	<p>In most cases there will be additional cost involved in converting a property into a green building. The construction cost for a new property will be higher due to the financial benefits of green building status and for environmental reasons those extra costs could benefit investors.</p> <p>Some investment funds, such as APG and PGGM, have some specific green requirements for their real estate investment funds. They require that any real estate assets participate in the Global Real Estate Sustainability Benchmark, an initiative by APG, PGGM, USS and the University of Maastricht to measure the sustainability of real estate assets. One of the main reasons for this is that a green building normally requires a lower amount of additional capex when the government imposes higher environmental requirements. A green building will normally have a higher residual value and a longer economic life.</p>
<p>Are any public subsidies available for green buildings?</p>	<p>The <i>MIA/VAMIL milieulijst 2013</i> describes the subsidies that are available for green buildings and sustainable investments. Buildings that are BREEAM-NL certified are placed in the highest category. The <i>MIA (Milieu Investeringsaftrek)</i> and <i>VAMIL (willekeurige afschrijving milieu-investeringen)</i> are two separate regulations.</p>
<p>Are any tax concessions or other benefits available for green buildings?</p>	<p>Generally, there are no specific Dutch tax allowances or other tax benefits in relation to green buildings, however investments in green buildings may qualify for accelerated depreciation under the Dutch VAMIL scheme, which aims to encourage corporate investment in environmentally friendly assets. Accelerated depreciation of up to 75% of the cost of the qualifying asset is permitted, with a maximum of €10 million applied to investments in real estate. In addition, green buildings may either be treated as capital investments (subject to ordinary depreciation) or expenses deductible immediately.</p>

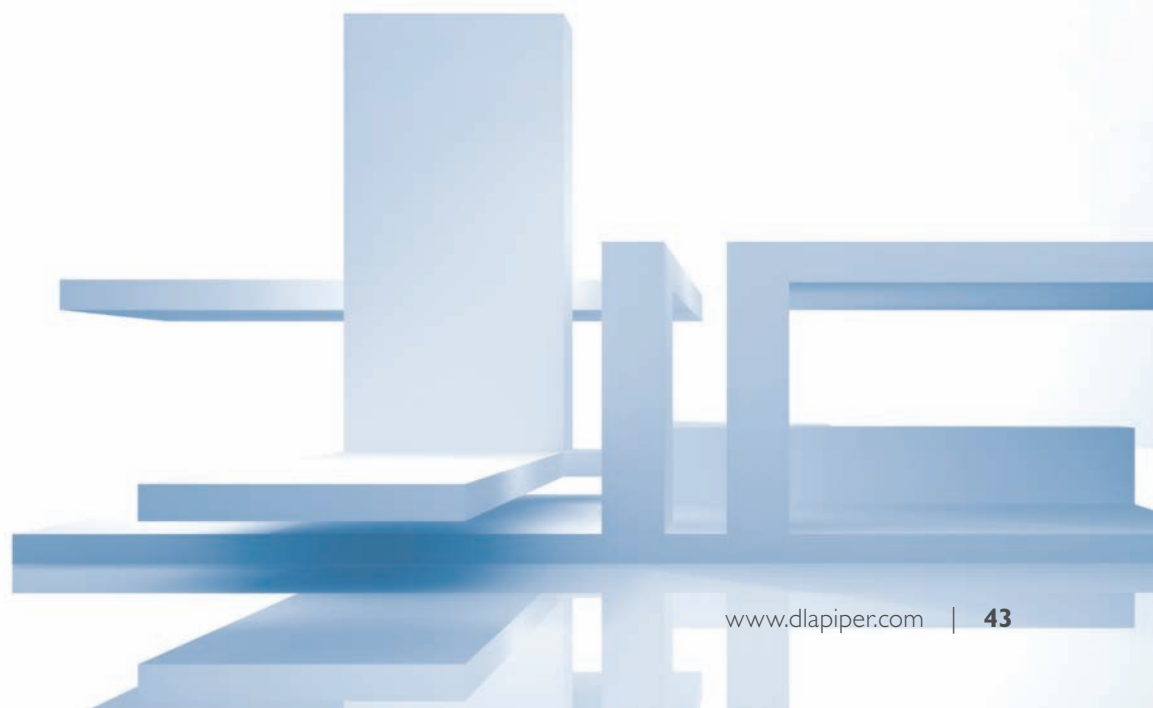
Key questions as to how sustainability in buildings works locally	Norway 
Do any of the international certification schemes operate through a local certifying authority?	<p>For BREEAM, the national representative (National Scheme Operator) in Norway is the Norwegian Green Building Council based in Oslo.</p> <p>LEED has no local organization/representative in Norway and the LEED standard has not been adapted for the Norwegian market, however there have been some LEED certifications (as an alternative to BREEAM).</p>
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	<p>No, but there are regulatory requirements as to “energy labelling” as well as general building requirements.</p> <p>The Norwegian Government has announced that in 2015 the technical building regulations will be amended to include provisions dealing with achieving the “passive house” standard.</p>
What potential liabilities does the certifying organization have?	<p>The liability of the certification organization Norwegian Green Building Council will be very limited. It is not certifying the buildings as such but is merely authorizing the personnel who conduct the certifications.</p>
What statutory or other legal regime governs sustainability auditor agreements?	<p>There is no statutory regime covering auditor agreements as such. However, Norwegian law and, in particular, the Contract Act of 1918 will apply to any agreements in this respect.</p>
What statutory or other legal regime governs green design contracts?	<p>There is no special regime in place. Green design contracts and green lease agreements can be on terms agreed between the parties.</p>
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	<p>No. There is no statutory regime covering these agreements as such. However, Norwegian law and, in particular, the Contract Act of 1918 will apply to any agreements in this respect.</p>
Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?	<p>Contracts may include penalty clauses. The parties can decide on the breaches of contractual duty which will trigger such a penalty. However, the Norwegian law including the Contract Act of 1918 will apply to any agreements/clauses in this respect.</p>

Key questions as to how sustainability in buildings works locally	Norway 
Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?	<p>In Norway, there is no legal requirement to include “green” provisions in lease agreements, however standard lease agreements in the market now contain optional “green wording” to be included if the parties require.</p> <p>Some landlords and tenants, particularly with regard to new commercial buildings where both parties have an express focus on sustainability, decide to adopt the BREEAM or LEED standards in the building process, focusing jointly on obtaining a satisfactory certification.</p>
How are green leases structured contractually?	<p>“Green” clauses are generally included in one of the annexes to the lease agreement and/or to some extent in the contract itself.</p>
How popular are green lease agreements currently?	<p>In Norway the following types of green leases can be found: (i) lease agreements with only a few tailored green provisions in an annex to the agreement or in the agreement itself – “light green leases” and (ii) “dark green leases” with very detailed binding “green” content and scope. Whereas light green leases are becoming more and more popular in all segments of the real estate market, dark green leases are confined to a core segment of high quality properties in prime locations.</p>
Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?	<p>There are no particular additional costs but it should be noted that:</p> <ul style="list-style-type: none"> ■ an energy performance certificate (<i>Energiattest</i>) must be provided by landlords when a lease agreement is entered into; and ■ waste requires separation/recycling.
Are any public subsidies available for green buildings?	<p>The Norwegian State Housing Bank, Enova SF, and Innovation Norway as well as municipalities and other agencies provide funding/subsidies in various forms for various green initiatives or buildings.</p>
Are any tax concessions or other benefits available for green buildings?	<p>Generally, there are no specific Norwegian tax allowances or other tax benefits in relation to green buildings.</p>


Key questions as to how sustainability in buildings works locally	Poland 
Do any of the international certification schemes operate through a local certifying authority?	The leading rating systems in Poland are LEED and BREEAM. There is a national organization whose overarching goal is to promote sustainability in buildings, the Polish Green Building Council, but it is not a local certifying authority.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	There is no special regime in place.
What potential liabilities does the certifying organization have?	As there is no special regime for certification, the issue of potential liabilities of the certifying organizations is also undefined.
What statutory or other legal regime governs sustainability auditor agreements?	There is no local legal regime referring to sustainability auditor agreements, and so the legal classification of such agreements depends on what the parties agree.
What statutory or other legal regime governs green design contracts?	There is no special regime in place.
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	There is no special regime nor any commonly used standards in place, so green properties are managed in accordance with the same standards or guidelines as other buildings.
Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?	Yes.


Key questions as to how sustainability in buildings works locally	Poland 
<p>Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?</p>	<p>In Poland, there is no specific legal regime governing green leases. While there are certain basic elements in green leases to be found in legislation, there is no formal legal requirement to include “green” provisions in lease agreements.</p> <p>The Energy Efficiency Law requires public bodies to implement at least two of the energy efficiency improvement measures which are listed in the legislation. Thus, public bodies may acquire or rent space in an energy-efficient building, as well as carry out appropriate alterations or renovation at existing buildings that they use. It is important to impose the appropriate obligations on a tenant which is a public body regarding its operation in the building. In this sense, the Energy Efficiency Law may be considered the start of green lease legislation in Poland.</p> <p>In commercial leases, parties are free to decide whether they include green provisions in a lease contract or not. Parties may agree on obligations which will ensure the continuing maintenance of the energy efficiency of a building.</p> <p>Poland has opted to implement Directive 2010/31/UE of the European Parliament and Council of 19 May 2010 on the energy performance on buildings (“the Directive”). This requires member countries to ensure that by the end of 2020 all new buildings are to be nearly zero-energy and that new buildings occupied and owned by public authorities achieve this as from 31 December 2018. The deadline for implementing the Directive into domestic law expired on 9 July 2012 and the crucial provision which imposes the above-mentioned obligation has not been implemented yet.</p>
<p>How are green leases structured contractually?</p>	<p>As green leases are not yet common in Poland, no standards yet exist and thus a green lease contract structure will always be created by the agreement between the parties.</p> <p>In Poland, it may be helpful to refer to standard terms that have been generated in countries where “sustainable” provisions are commonly applied. According to model green contract terms, published by the Better Building Partnership, there are two different types of such terms, ie binding and non-binding (such as a Memorandum of Understanding). Two subtypes of binding clause may be identified – “light green clauses” (more flexible) and “dark green clauses” (with a much more detailed effect) – depending on the needs of the parties.</p>


Key questions as to how sustainability in buildings works locally	Poland 
How popular are green lease agreements currently?	<p>Interest in green leases is still growing in Poland, but it would not be right to say that an identifiable market for green leases exists. New lease agreements which include green provisions are still rare.</p> <p>Market practice shows that even very general provisions, such as mere declarations of intent to implement the measures aimed at environmental protection, are unattractive to tenants who suspect that additional costs will be passed on to them.</p> <p>The full implementation of the Directive would certainly increase the interest in green leases.</p>
Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?	<p>There is an obligation to provide an energy performance certificate (<i>wiadectwo charakterystyki energetycznej</i>) when leasing or selling a building, apartment or unit designed for separate use in a block. However, failure to comply with this obligation does not attract any sanctions, however a failure to provide a relevant certificate may be deemed to be a physical defect and may make the seller or landlord liable under warranty.</p>
Are any public subsidies available for green buildings?	<p>The National Fund for Environmental Protection and Water Management has initiated a state-run subsidy programme for the purchase of passive houses and low-energy houses or flats, as well as for building such housing. Private individuals meeting the requirements may receive subsidies of up to PLN 50,000.00 (circa €12,500.00). The programme will run until the end of 2018.</p>
Are any tax concessions or other benefits available for green buildings?	<p>There are no specific tax benefits related to green buildings under Polish law.</p>





Key questions as to how sustainability in buildings works locally	Portugal 
Do any of the international certification schemes operate through a local certifying authority?	Both LEED and BREEAM certifications can be obtained for projects in Portugal. For LEED the National Energy Agency (ADENE) has specific training available for technicians who must ultimately apply to The Green Building Certification Institute (GBCI). There is no national representative for BREEAM and thus BREEAM International need to be involved.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	Yes. Portugal has adopted mandatory rules regarding the need to issue energy performance certificates for both housing and office buildings. The issue of such certificates is pivotal in every transaction involving buildings, including the sale and purchase or the leasing of a whole building or a unit within it.
What potential liabilities does the certifying organization have?	The potential liability is limited.
What statutory or other legal regime governs sustainability auditor agreements?	There is no statutory regime covering auditor agreements and thus general rules of the Portuguese Civil Code (PCC) apply. Note that only an accredited entity registered with ADENE may issue an energy performance certificate.
What statutory or other legal regime governs green design contracts?	There is no special regime in place.
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	Although the “green” certification is not common, the existence of an energy performance certificate is mandatory for the sale and purchase or leasing of properties in Portugal.
Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?	Applying the general principle of the PCC, parties are free to agree the terms and conditions of an agreement, including on penalties to apply in the event of breach.

Key questions as to how sustainability in buildings works locally	Portugal 
Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?	Green leases are governed by the PCC, as amended by the Lease Law. Depending on the purpose of the lease (eg commercial or housing), parties have a greater or lesser degree of freedom to establish the terms of such contracts.
How are green leases structured contractually?	Green leases are structured as regular leases, with relevant provisions either detailed in an appendix or included in the contract. In general, parties' chief concern is that the energy performance certificate is issued and remains in force throughout the term of the lease agreement. The absence of a certificate can lead to penalties being imposed but also (in the case of offices and other commercial premises) closure of the building.
How popular are green lease agreements currently?	There are several concerns regarding the energy performance of buildings, but these are mainly from the owner's standpoint and relate to compliance with the statutory requirement to maintain an energy performance certificate. They have not led to green lease agreements becoming common.
Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?	We do not envisage any costs other than the need to have an energy performance certificate in place prior to entering into a lease or sale and purchase agreement.
Are any public subsidies available for green buildings?	Although not entirely in effect as yet, an incentive for thermal insulation and for the carrying out of energy auditing, as well as the installation of equipment for managing and monitoring energy consumption, will be granted. Aside from this, we are not aware of any public subsidies.
Are any tax concessions or other benefits available for green buildings?	The grant of tax benefits is related to the energy performance certificate and the rating obtained by the building. Such benefits impact on municipal property tax (which in Lisbon can entail a 50% discount on the municipal property tax due, if the building obtains the highest energy efficiency rating).

Key questions as to how sustainability in buildings works locally	Spain 
Do any of the international certification schemes operate through a local certifying authority?	Since 2010, it has been possible to obtain BREEAM or LEED Certification. Various local organizations operate schemes on behalf of BREEAM. The Green Building Council España (GBCE) is the only association authorized to collaborate with the LEED International programme in Spain.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	Yes, Royal Decree 235/2013, of 5 April, which introduced Energy Performance Certificates, established that as from 1 June 2013 buyers and/or tenants of housing, retail and office buildings must be provided with an Energy Performance Certificate, allowing them to compare and evaluate the energy efficiency of buildings, or individual units within them. In addition, Royal Decree 235/2013 aims to provide information regarding CO2 emissions in order to put in place measures for reducing them.
What potential liabilities does the certifying organization have?	Since green provisions are a very recent arrival in Spain, certifying organizations can only be said to have the same liability as any other certifying organization as they may have to pay damages in the event of failure to perform their work according to relevant regulations.
What statutory or other legal regime governs sustainability auditor agreements?	There is no specific legislation regarding sustainability auditor agreements other than the Spanish Civil Code and the Commercial Code.
What statutory or other legal regime governs green design contracts?	In Spain, green design contracts must comply with environmental regulations contained in technical regulations such as the <i>Código Técnico de la Edificación</i> (Construction Technical Code) and the <i>Ley Orgánica de la Edificación</i> (Construction Law), which impose an obligation to comply with environmental regulations regarding the design and construction of buildings. However, these types of contracts, aside from the environmental provisions contained in the technical regulations, are governed by the Commercial Code and the Spanish Civil Code.
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	No.
Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?	Yes, in Spain, parties may agree additional penalties in the event of breach.


Key questions as to how sustainability in buildings works locally	Spain 
Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?	No, as stated before, the relevant legislation, the 1994 Urban Lease Act, does not contain any provisions regarding green leases, thus parties are free to agree to include any kind of green clause in their leases.
How are green leases structured contractually?	Green clauses are agreed by the parties and included in standard lease agreements; there is no standard structure. The usual clause is one by which the lessor states that it has obtained the necessary energy performance certificate and has delivered a copy to the lessee.
How popular are green lease agreements currently?	Green lease agreements are still not very popular, however over the last few years, driven by regulatory changes, companies operating in Spain have become more aware of the importance of making leased spaces environmentally friendly and therefore have begun to insert specific green clauses in their lease agreements, aimed at improving the environmental sustainability of leased premises.
Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?	No.
Are any public subsidies available for green buildings?	In 2013, a new Housing Plan for the period 2013-2016 came into force. This plan envisages public subsidies for refurbishing buildings. The regional governments will be responsible for supervising such refurbishment works. In addition, the <i>Instituto de Crédito Oficial</i> (ICO) and the <i>Instituto para la Diversificación y el Ahorro de la Energía</i> (IDAE) have opened credit lines for energy efficiency. For example, the Madrid City Council grants subsidies for refurbishing buildings and undertaking works to make buildings greener. In Andalucía, the Regional Government grants subsidies for the installation of solar panels on buildings.
Are any tax concessions or other benefits available for green buildings?	No tax concessions are available, but each Regional Government has the power to provide benefits for green buildings.

Key questions as to how sustainability in buildings works locally	Sweden 
Do any of the international certification schemes operate through a local certifying authority?	For BREEAM the national representative ("National Scheme Operator") in Sweden is Sweden Green Building Council (www.sgbc.se). For LEED, The US Green Building Council (USGBC) is responsible for certifying projects locally.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	No.
What potential liabilities does the certifying organization have?	The liability of the certification organization is extremely limited. Sweden Green Building Council operates in accordance with the rules and intentions stated by the World Green Building Council (WorldGBC). The applicant is also obliged to indemnify the USGBC against any third party claims in relation to the certification process unless the USGBC has caused the claim intentionally or the claim has arisen against it as a result of its gross negligence.
What statutory or other legal regime governs sustainability auditor agreements?	There is no statutory regime covering auditor agreements. There is a requirement that all Swedish state companies have to report their sustainability performance according to the Global Reporting Initiative, GRI.
What statutory or other legal regime governs green design contracts?	There is no special regime in place.
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	In Sweden, there is a standard for property management agreements, AFF (<i>Avtal för fastighetsförvaltning</i>); however, this does not include any specific rules for green buildings.
Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?	There are no standard form green property management agreements in Sweden. Parties are free to negotiate any contractual penalties in the event of a breach of contract. The only limit is that the penalty must be reasonable.

Key questions as to how sustainability in buildings works locally	Sweden 
Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?	<p>There are no statutory provisions and no other legal regime which requires green leases or green provisions in lease agreements.</p> <p>Green leases are used in the Swedish real estate market; these are however reliant on voluntary commitments between the landlord and the tenant. In order to achieve a clear definition for a “green lease”, the Swedish Property Federation (<i>Fastighetsägarna</i>) (SPF) has presented standard terms in the form of a green lease agreement appendix. By attaching the appendix to a lease agreement, a green lease is created. The parties may however agree on more extensive commitments. The SPF introduced the green lease appendix in June 2012 and a version in English was introduced in December 2013. Since the standard form for a green lease has only been published recently, it cannot yet be considered customary in the Swedish real estate market.</p>
How are green leases structured contractually?	<p>Green leases or green provisions are generally stated in a supplementary agreement or an appendix to the lease agreement. Standard agreements are common in the Swedish commercial real estate market and the SPF has developed a standard lease agreement regarding commercial premises which can be considered customary. The green appendix introduced by the SPF, which is not yet considered customary, contains a number of minimum requirements which cannot be waived. The parties may however agree on more extensive commitments.</p>
How popular are green lease agreements currently?	<p>Green leases are not standard in the market, however the real estate market has seen great changes in attitude regarding the environment and the number of green leases has increased in recent years. They have in particular become more popular in big cities, primarily for larger commercial premises. Most landlords use their own green leases or green provisions which means that there is a lot of variation in market practice. Since the SPF published its standard form of green lease, landlords have shown a greater interest in using this.</p>
Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?	<p>The landlord must obtain an energy declaration. The landlord must observe regulations regarding the working environment and the indoor environment. This includes requirements for sufficient ventilation, cooling and heating in the building.</p> <p>Waste requires separation.</p> <p>If entering a green lease, supplementary standards may apply, such as requirements for the exchange of information, purchase of renewable energy, making environmentally sound decisions when choosing materials and considering the environmental impact when carrying out maintenance, etc.</p>
Are any public subsidies available for green buildings?	<p>In Sweden, there are no public subsidies available for green buildings.</p>
Are any tax concessions or other benefits available for green buildings?	<p>There are no tax benefits in relation to green buildings.</p>

Key questions as to how sustainability in buildings works locally	United Kingdom 
Do any of the international certification schemes operate through a local certifying authority?	The UK is the home of BREEAM certification and does not utilise a separate local certifying authority. LEED continues to operate via the Green Building Certification Institute in Washington.
Is a specific local statutory regime which governs how the sustainability of buildings is certified in place?	No. Certification is a voluntary process and administered by non-governmental bodies. Energy Performance Certificates (EPCs) deal specifically with energy efficiency and are required prior to the sale or letting of commercial property.
What potential liabilities does the certifying organization have?	There are no statutory liabilities placed upon the certifying organizations.
What statutory or other legal regime governs sustainability auditor agreements?	There is no statutory or other special legal regime applicable to such agreements.
What statutory or other legal regime governs green design contracts?	There is no statutory or other special legal regime applicable to such contracts.
Does a special statutory or other legal regime govern green property management agreements or are there any standards or guidelines commonly used in the market?	There is no specific regime and these agreements are not frequently used in the UK market.
Are the parties to a green property management agreement free to agree on contractual penalty payments in the event of a breach?	No, these agreements are governed by general contract law. It is a principle of general contract law that a party in breach can only be required to pay the other party the financial loss that that other party has suffered. A term of the contract that attempts to require a party in breach to pay more than the other party's loss is invalid.

Key questions as to how sustainability in buildings works locally	United Kingdom 
Does a special statutory or other legal regime govern green leases or are there any standards or guidelines commonly used in the market?	There is no statutory framework governing green leases. There have been several attempts by industry bodies to provide standard provisions, but these have met with limited success.
How are green leases structured contractually?	There is no prescribed form. Provisions relating to sustainability are included within the lease itself. There are difficulties in enforcing green provisions. Courts are unlikely to allow a landlord to evict a tenant on the grounds that the tenant has breached such a provision and it is not possible to impose a financial penalty for such breaches in excess of the financial loss suffered by the landlord.
How popular are green lease agreements currently?	Certain green lease provisions have become close to standard, particularly those relating to sharing of Carbon Reduction Commitment (CRC) costs.
Do any sustainability standards entailing additional cost or management need to be considered by foreign investors when entering into lease agreements?	<p>Foreign investors should consider whether CRC will apply (although this is unlikely if the investor has no other business interests in the UK).</p> <p>The EPC certification process is mandatory and investors should be aware that there are likely to be restrictions on letting low rated buildings with effect from 2018.</p>
Are any public subsidies available for green buildings?	There are no central government subsidies available. Some local government grants may be available.
Are any tax concessions or other benefits available for green buildings?	Enhanced capital allowances (the ability to depreciate capital expenditure for tax purposes) for energy efficient assets have been available since 2001 but have not been a success.



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