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Real Estate 2018

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A practical cross-border insight into real estate law

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France

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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.

In France, real estate is governed by several laws and regulations which are codified differently depending on their aims and objectives:

- The "*Code de l'urbanisme*" ("Planning Code") provides rules harmonising the use of French territory which is considered as the common space of the Nation.
- The "*Code de la construction et de l'habitation*" ("Construction and Housing Code") consolidates construction, development and social housing rules.
- The "*Code civil*" (Civil Code) contains rules, among others, relating to the definition of ownership, transfer of ownership for consideration, by gift or by death as well as rules governing the use and lease of real estate properties.
- The "*Code de commerce*" ("Trade Code") and the "*Code rural*" ("Rural Code") include specific rules applying to real estate used for commercial and/or agricultural purposes.

1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

Because France is a civil law country which does not recognise the concept of legal ownership *versus* beneficial ownership and has never ratified the Hague Convention on the recognition of trusts, a trust cannot directly own a real property located in France.

Nevertheless, it does not mean that a trust cannot be used to hold indirectly a French real property.

1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

Strictly speaking, international laws are not relevant in France in matters of real estate law (in particular in matters relating to planning, construction and housing rules).

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

No legal restriction specifically applies to the ownership of real estate by particular classes of persons.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

Several rights over land are recognised in France, some of which are purely contractual between parties.

First of all, the full ownership ("*pleine propriété*") of French real estate can be shared between usufruct ("*usufruit*") and bare-ownership ("*nue-propriété*"). Several joint-owners may hold the usufruct, the bare-ownership and/or the full ownership of the same French real estate ("*indivision*").

On the other hand, mortgages ("*hypothèques*") (legal or contractual), and lender's pledges ("*privilège du prêteur de deniers*") can be registered on a French property.

Real estate rights are also given to the user of the property, whether it is used for free ("*mise à disposition gratuite*") or rented out. Rights are, however, substantially different depending on the leasehold: "*bail d'habitation*" (housing lease); "*bail commercial*" (commercial lease); "*bail professionnel*" (professional lease); "bail rural" (rural lease) "*bail à construction*" (construction lease); "*bail emphytéotique*" (long-term lease); and "*concession*" (concession).

Finally, easements ("*servitudes*") granted by the law or ancestral customs may apply to French real estate.

3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?

There are some cases where the right to a real estate diverges from the right to a building constructed thereon, such as the "*droit de superficie*" (land tenure) and the "*division de la propriété en volume*" (division of the property into several units).

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split?

As explained in the answer to question 1.2 above, there is no split between legal title and beneficial title in France. Consequently, a trust cannot be registered with the "*registre cadastral*" (land register) as the owner of a French property.

4 System of Registration

4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

All lands, as well as all rights relating to French real estate (except lease agreements not exceeding 12 years) should be registered with the "*Cadastre de France*" (land register) in order to be enforceable against third parties.

4.2 Is there a state guarantee of title? What does it guarantee?

Strictly speaking, there is no state guarantee of title.

4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

All rights listed in the answer to question 3.1 above are compulsorily registrable, except lease agreements not exceeding 12 years.

4.4 What rights in land are not required to be registered?

Lease agreements which do not exceed 12 years are not required to be registered.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probationary period.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

Between parties, the ownership is transferred under the terms of the sale agreement. As a general rule, however, it is enforceable against third parties after the registration of the sale with the "*Cadastre de France*" (land register).

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

The first registered buyer prevails over the others. Assuming different purchasers register on the same day, the first signed agreement prevails. The rank of priority relating to liens on the property, such as "*privilege du prêteur de deniers*" (lender's pledges) is also determined depending on the date of completion of the purchase agreement.

5 The Registry / Registries

5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

The "*Cadastre de France*" (land register) is a framework of maps and administrative files registering all real estate properties located in each French town. The register was created at the beginning of the 19th century. For historical reasons, the region of Alsace-Moselle benefits from special treatment.

5.2 Does the land registry issue a physical title document to the owners of registered real estate?

The land registry does not issue a physical title document to real estate owners. The owners receive from the French "*notaire*" an original copy of the purchase agreement bearing a stamp with the registration number of the acquisition with the Cadastre.

5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

The transfer of French real estate should be registered with the register either by a French *notaire* in the case of a private sale or by a French judge in the case of auction.

The information on ownership of registered real estate cannot be accessed electronically.

5.4 Can compensation be claimed from the registry/ registries if it/they make a mistake?

No compensation can be claimed from the registry if a mistake has been made. However, in theory the *notaire* may be held responsible.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

One may obtain information relating to the transfer of French real estate by gift, by death and by sale. The date and price of transfer, as well as the identity of each new owner is provided. All mortgages and liens put on the property are also detailed, including their amounts, dates, beneficiaries and the levees' date.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

Several parties may be involved in a real estate transaction in France. The real estate brokers are the first to appear on the scene.

They allow potential purchasers and sellers to meet. They also provide all information on the property to the buyer. As opposed to the situation in the UK, no general survey on the property is, as a general rule, carried out in France. Is it the responsibility of the buyer to find out information regarding the property. Only a few compulsory survey certificates are issued before the acquisition.

Avocats may be involved in the process of purchasing a property in France, as well as the purchase of shares of a company which owns, directly or indirectly, French real estate properties. They represent their own clients during the negotiation period and the preparation of the legal documentation.

The French *notaires* are "*officiers ministériels*" (ministerial officers) who benefit from a monopoly of executing and registering (with the "*cadastre*") all transfers of French properties. The sale of shares of companies (French or foreign) owning directly or indirectly French real estate having a market value exceeding that of their French movable assets, signed outside France, should also be reiterated with a French *notaire*. Other sales of shares are not in the scope of the *notaires*' monopoly.

Real estate technicians can be appointed by the potential purchaser in order to carry out the non-compulsory survey and due diligence work on the property.

Finally, sales of properties by auction may be executed and registered to the "*cadastre*" by a French judge.

6.2 How and on what basis are these persons remunerated?

Fees of real estate brokers (between 1% and 5% depending on the nature and amount of the sale price) as well as those of *avocats* (depending on their diligence) are negotiable.

Notaires receive compulsory fees determined by the law depending on the market value of the property sold. A degressive rate scale applies with a marginal rate of 0.825%. When two *notaires* are involved in the transaction, one representing the seller, the other representing the purchaser (this is our recommendation in order to avoid a conflict of interest), compulsory fees are shared between both *notaires*. Fees due to the *notaires* upon the reiteration of the sale of shares of a company owning a French real estate property signed abroad should, however, be negotiated.

6.3 Do you feel there is a noticeable increase in the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

A stagnation can be observed in terms of commercial real estate investment volumes in France. Although such investments have been high over the last two years (around €25 billion), an estimated €24 billion has been invested in 2016 (approximately the same volume as in 2015). With a 37% share of investment, insurers are the most active investors, followed by unlisted investment funds (29%).

Approximately four out of five acquisitions are financed by equity capital. This proportion obviously varies depending on the size of the operation. Debt is involved in 25% of the transactions between €30 and €50 million, 15% between €100 and €200 million, and 40% over €200 million.

6.4 What is the appetite for investors and developers in your region to look beyond primary real estate markets and transact business in secondary or even tertiary markets? Please give examples of significant secondary or tertiary real estate transactions, if relevant.

Since the beginning of 2017, 33 transactions over €100 million were recorded in commercial real estate in France. The total amount was €6 billion.

Among the most prominent deals, notably there was the acquisition of 50% of the towers "Duo" in Paris by Natixis Assurances for €600 million, and the acquisition of the building "In/out" by Primonial Reim in Boulogne-Billancourt for €445 million.

Investors are particularly looking for new and restructured office properties in Paris and its western suburbs.

6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

Retail property market declined 47% during the first three quarters of 2017. This can be explained by the scarcity of "prime assets" available in the market and by the sharp decline in the amounts invested in large deals.

As explained in Section 9 below, the Finance Bill for 2018 provides for the abolition of the wealth tax and the implementation of a new tax based on the market value of real estate located in France for non-resident tax payers and located worldwide for French resident tax payers. As a consequence of this fundamental change in the tax treatment of real estate investments, one may expect either a lack of interest of investors in French real estate or a new opportunity for those who are confident that President Macron's challenge will be successful.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

As explained above, the French *notaires'* monopoly means that parties rely on them to execute the minimum formalities for the sale and purchase of real estate.

The *notaire* should verify that:

- the real estate property is duly owned by the seller. For example, the apparent owner of the property could only own the usufruct and the bare-owners may not have been involved in the negotiation process;
- the mortgages registered on the property being sold do not exceed the sale price of the property; and
- all compulsory certificates relating to the absence of legionella, woodworm, lead poisoning and asbestos, as well as the conformity of gas and electrical fittings, etc., have been provided by the seller.

The *notaire* should also exercise all formalities relating to pre-emption rights that might apply as a result of the law to the town or other public authorities (e.g.: "*droit de préemption urbain*", "*droit de préemption de la SAFER*").

It may be appropriate to rely on the notaires for low value transactions relating to French real estate; however we recommend being assisted by a French *avocat* for larger scale transactions.

The *notaire* does not represent either the seller or the buyer, one of his main tasks being to make sure that taxes are paid.

Assuming the shares of the company owning the real estate are sold, due diligence should be performed by parties in order to verify the situation of the French real estate and the financial situation of the company sold. These verifications are performed in practice by French *avocats*.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

The seller has, as a general rule, very few duties of disclosure, and the *notaire* will not necessarily protect the purchaser. As explained before, it is the responsibility of the purchaser to investigate the property to their satisfaction. This is always reiterated in the standard sales agreement proposed by the French *notaires*. This is why it is recommended for both the seller and the buyer to engage their own *avocat* to ensure that everything is carried out to their satisfaction.

7.3 Can the seller be liable to the buyer for misrepresentation?

In France it is rare that a seller is held liable for misrepresentation relating to the acquisition of real estate. The buyer would need to demonstrate that the essential reason he/she was interested in purchasing the property was misrepresented in order to invalidate the acquisition, according to the new article 1112-1 of the Civil Code. Assuming the agreement was valid, it is voidable by application of the new article 1187 of the Civil Code if at least one condition precedent provided in the agreement was not met before the completion date.

It should be noted that in France, as a general rule, a private pre-purchase agreement is signed between parties, providing several conditions precedent which should be met prior to the signing of the purchase agreement before the *notaire*. After the signing of this agreement, it becomes very difficult to challenge the validity of the purchase, except in case of fraud.

However, the seller's liability is easier to challenge in cases of the sale of shares of a company owning French real estate when the share purchase agreement provides representations on the seller which have not been met. The share purchase agreement can either be null and not valid according to article 1112-1 of the Civil Code in case of misrepresentation, or voidable by application of article 1187 of the Civil Code (see above).

7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

The contractual warranties appearing in the "standard" private pre-purchase agreement of French real estate are, as a general rule, very limited and should be checked before the signing of the agreement in front of the *notaire*. They may concern, for example, the nature of the building (land to build), the possibility of obtaining a construction permit or purchasing a vacant building when it is still occupied. It should also allow the new purchaser to substitute the seller in order to benefit from any building guarantees previously granted. However, warranties are never a substitute for the buyer carrying out his own due diligence.

7.5 Does the seller warrant its ownership in any way? Please give details.

As explained before, the seller warrants its ownership of the property. However, this affirmation is automatically verified by the *notaire* or the *avocats* in checking the "*registre cadastral*". The same applies when the shares of the company owning French real estate are sold.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

In the case of the purchase of French real estate, the buyer is only liable for expenses mentioned in the agreement. Assuming the shares of the company owning the French real estate are sold, the purchaser is liable for known and unknown debts of the company. In order to prevent or limit the liable risk of the buyer, a liability guarantee clause along with an escrow clause should be provided in the shares purchase agreement.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

The Finance Bill of 2018 provides that loans granted by family members to finance a French real estate property would only be taken into consideration for real estate wealth tax ("IFI") purposes (see Section 9 below) if the terms and conditions of the loan agreement are at arm's length.

This Finance Bill also provides that for tax payers having a real estate wealth exceeding €5 million, deductible loans for IFI purposes cannot exceed 60% of the value of the real estate. Only 50% of the amount exceeding this limit would be taken into consideration for the determination of the IFI taxable basis.

Finally, loan agreements providing for a "bullet repayment" at maturity ("Balloon Loans") should be amortised over the duration of the loan for IFI purposes. The principal of the loan which should have been theoretically amortised is not deductible for the purpose of determining the net value of the taxable properties.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

The traditional methods by which real estate lenders seek to protect themselves are the inscription of the "*privilège du prêteur de deniers*" (lenders' pledges), registration of the mortgage within the "*registre cadastral*" and by means of a pledge on the shares of the company owning the French real estate.

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

Conventional mortgages as well as "*privilège du prêteur de deniers*" (lenders' pledges) should only be registered in the "*registre*

cadastral" (see above) by French *notaires*. There is no need to involve court proceedings.

One should also be aware that the French tax authorities are allowed to put a legal mortgage on French real estate properties if they have reason to believe that their owners would not be able to pay their taxes.

8.4 What minimum formalities are required for real estate lending?

As already explained, the registration of a conventional mortgage should be executed by a French *notaire*. It is the same for the registration of "*privilège du prêteur de deniers*" (lenders' pledges).

Pledges over shares should only be registered with the "*registre du commerce et des sociétés*" (Companies and Trade Registry). The cost associated with this is very limited in comparison to the fee for the registration of the mortgage.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

The real estate lender is protected against claims against the borrower or the real estate asset by other creditors by registering a "*privilège du prêteur de deniers*" (lenders' pledges) and/or a mortgage of first rank which will allow him to be paid before any other creditors, including the French tax authorities.

8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

The only circumstance where a security taken by a lender can be avoided or rendered unenforceable is in case of fraud when the lender helped the owner to organise his/her insolvency.

8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

There is no action a borrower can take except, of course, to demonstrate that the debts owed have been duly refunded to the lender.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

As a general remark, the "*Code general des impôts*" ("French tax code") provides specialist treatment which is applied to real estate located in France and companies owning such real estate which is very different from the tax regime applicable to other assets or companies. The concept of "*Société à preponderance immobilière*" (SPI) (a real estate company) has been introduced for French tax purposes only, which allows France to apply a specific regime on qualified companies. The concept of SPI has a different meaning depending on each tax involved. However, the common characteristic of the different definitions (either those of the internal law or tax treaties) is that in order to be considered as an SPI, the company (French or foreign) which owns, directly or indirectly, French real estate must have a market value which exceeds that of their movable assets.

Transfer of real estate is subject to transfer duties at the rate of 5.81%, calculated on the purchase price of the property, and at the rate of 5% on the sale price of shares of an SPI.

Traditionally, transfer duties are due by the purchaser even if it may be provided otherwise in the sale agreement. Both the seller and purchaser are liable for their payment *vis-à-vis* the FTA.

9.2 When is the transfer tax paid?

The *notaire* levies transfer duties at the time as the property sale agreement is signed. Transfer duties on sale of an SPI's shares should be paid within 30 days of signing the sale agreement.

9.3 Are transfers of real estate by individuals subject to income tax?

Transfers of real estate are subject to income tax at a flat rate of 19% and social security contributions at the rate of 15.50% for 2017 (which will be increased to 17.20% as of 1st January 2018, as provided by the Finance Bill for 2018). An additional tax at progressive rates varying from 2% to 6% also applies on capital gains exceeding €50,000. Finally, the exceptional contribution on high income may also apply at a rate of 3% or 4% depending on the annual income and capital gains received by a tax payer during a said year. The marginal rate of taxation for 2018 would reach 46.2%.

Exemptions apply depending on the duration of the ownership of the property, under which a total exemption of income tax (at the rate of 19%), an exceptional contribution on capital gains (at progressive rates from 2% to 6%) and an exceptional contribution on high income (at the rate of 3% or 4%) is granted after 22 years of ownership. A total exemption from the social contribution (at the rate of 15.5% for 2017 and 17.2% for 2018) also applies after 30 years of ownership.

The same regime applies for residents and non-residents of France.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

VAT may only apply (at a rate of 20%) on transfers of land to be built upon, on buildings under completion, and on new buildings completed in the previous five years. All other sales of real estate and SPI shares are subject to transfer duties, as explained in the answer to question 9.1.

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

Assuming the seller of the real estate is a company subject to French corporate tax, capital gains are subject to French corporation tax at a rate of 33.33%. The Finance Bill for 2018 provides for a progressive decrease of the corporation tax rate from 28% on the first €500,000 profits for 2018 to 25% on all profits for 2022. A 30% flat tax would apply from 1st January 2018 on the distribution of dividends to French resident individuals. Except when a tax treaty provides a lower rate, a 12.80% withholding tax would apply on distribution of dividends benefiting non-French resident individuals.

Assuming the seller is a foreign company subject to corporate tax, a 33.33% withholding tax applies (for 2017) on capital gains realised upon the sale of French real estate. One may expect that this withholding tax rate would decrease (as from 2019) at the same pace as the decrease of the corporation tax rate.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Transfers of shares of an SPI, when considered fiscally transparent by an individual (resident or non-resident of France) are subject to the same regime as described in the answer to question 9.3. However, the taxable capital gain is obtained by finding the difference between the sale price and the purchase price of the sold SPI shares. The same exemptions for the duration of the ownership also apply (see the answer to question 9.3).

Transfers of shares of an SPI subject to corporation tax by an individual resident of France are subject in 2017 to progressive income tax scale rates (with a marginal rate of 45%) and social contributions at a flat rate of 15.5%. Some reductions amounting to 50% or 65% may apply, depending on the duration of ownership.

The 2018 Finance Bill provides for a flat rate of tax of 30% which applies to the sale by French resident individuals of shares of an SPI subject to corporate tax. However, allowances based on the duration of ownership will no longer be allowed. Non-French residents would still be subject to the same regime as those applicable in cases of sale of shares of an SPI considered as fiscally transparent. Finally, the special tax on real estate capital gains (ranging from 2% to 6%; see the answer to question 9.3) also applies in all cases.

The transfer of shares of an SPI (regardless their fiscal statute) by a company (French or foreign) subject to corporate tax is taxed at a rate of 33.33%. As explained above, the Finance Bill provides for a progressive reduction of corporate tax to 25% in 2022. Foreign companies selling SPI shares are subject to a 33.33% withholding tax levied upon the sale which can be imputed on the corporation tax due.

9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

As explained above, the transfer of real estate is secured in France. However, it is important in our opinion to execute survey diligence before purchasing even if it is, not yet, a common practice. Assuming the purchase of an SPI's shares is contemplated, it is important to conduct due diligence not only on the real estate but also on the tax and financial situation of the SPI.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

The statute of "*baux commerciaux*" (leases of business) provided by articles L145-1 to R145-37 of the "*Code de Commerce*" (trade code), is deemed to protect the tenant's rights. It provides a minimum duration and allows the tenant the right to renew the agreement at its term. It also makes it possible to limit the increase in rental fees when the agreement is renewed.

The statute of "*bail professionnel*" (professional lease) provided by article 57A of the law 86-1290 on 23rd December 1987 and article 1713 of the Civil Code is applicable to professional activities other than businesses. As a consequence, professional premises cannot be used by a tenant running business activities.

10.2 What types of business lease exist?

As explained above, two main types of business lease exist:

- The "*bail professionnel*", which applies to professionals running a civil activity (e.g.: lawyers, doctors…). The professional lease is concluded for a minimum period of six years. It can be renewed for a six-year duration. Each party can refuse the renewal of the agreement by notifying the other party six months before its termination date and the tenant can terminate the lease with six months' notice.
- The "*bail commercial*" which applies to business activities creating a "*fonds de commerce*" is described below.

10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

As explained in the answer to question 10.2, only the aspects relating to the "*baux commerciaux*" will be discussed in these answers. It applies to real estate where the "*fonds de commerce*" is run. The "*fonds de commerce*" is characterised by the existence of a real and independent clientele owned by the tenant. The business activity should be run by a tenant registered within the "*registre du commerce et des sociétés*" (business registry).

(a) Term

The term of the "*bail commercial*" should be concluded for at least nine years. However, the tenant can terminate the agreement at the end of each three-year period with a minimum of six months' notice.

(b) Rent increases

The rental fees are freely determined between both parties upon the signature of the original "*bail commercial*". As a general rule, rental fees can be indexed but no increases may apply before a period of at least three years following the date of first use or of the renewal of the lease agreement. In addition, the increase is limited in order to protect the tenant.

(c) Tenant's right to sell or sub-lease

When business premises are let with a lease to operate a certain type of business, the tenant has the right to sell his right to the lease ("*droit au bail*"). Depending on the provision of the "*bail commercial*" the landlord should either agree or participate in the sale of the "*droit au bail*". The sub-lease should be provided by the "*bail commercial*" and the landlord should either authorise or participate in the sub-lease agreement's signature.

(d) Insurance

Real estate is, as a general rule, insured by the landlord against damage to the building and insured by the tenant again damage to the premises and equipment.

(e)(i) Change of control of the tenant

As a general rule the change of control of the tenant does not interfere with the "*bail commercial*", except of course if it specifically stipulates otherwise.

(ii) Transfer of lease as a result of a corporate restructuring

The "*droit de bail*" owned by a merged tenant is automatically transferred to the absorber.

(f) Repairs

Important renovation work, such as structural and internal work is the responsibility of the landlord, while other repairs are the responsibility of the tenant.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

(a) Taxation of rental income

When the landlord is an individual, French income tax is due on rental income on a cash basis. The determination of the tax basis is different if the building is rented out as furnished or unfurnished. Residents and non-residents are subject to income tax at progressive rates with a marginal rate of 45%. Non-residents are, however, subject to a minimum taxation amounting to 20%. Social contributions are also due at a rate of 15.5% for 2017. They are set to increase to 17.2% from 1st January 2018. Finally, the contribution on high income amounting to 3% or 4% may also apply.

Companies are subject to corporation tax on accrued rental income. The determination of the tax basis is the same as for operational companies. The depreciation of the building is deductible. The standard rate for 2017 of corporate tax is 33.33%. It will progressively decrease from 2018 to reach 25% in 2022, according to the 2018 Finance Bill.

(b) VAT

VAT is due when industrial and/or commercial buildings are rented out as furnished. The landlord of an industrial and/or commercial building rented out as unfurnished may elect for VAT under certain circumstances. This election allows the VAT to be deducted on construction cost, expenses relating to renting out the property and avoiding the "*taxe sur les salaires*" (tax on wages). VAT is never due on residential buildings rented out unfurnished.

(c) French wealth tax and the new IFI

Since 1981, wealth tax has been due every year by resident taxpayers on their worldwide assets (movable and immovable). Non-resident taxpayers are only taxable on their French assets including real estate properties owned directly or indirectly through French or foreign companies and/or trusts. Wealth tax is due when the net market value of taxable assets exceeds €1,300,000 for 2017. It is subject to progressive tax rates from 0.50% to 1.50% for 2017.

The 2018 Finance Bill will replace the wealth tax with a new wealth tax only due on real estate properties called "*Impôt sur la Fortune Immobilière*" ("IFI"). IFI would be due by resident taxpayers on the worldwide real estate properties owned directly or indirectly, and by non-resident taxpayers only on their real estate properties located in France, owned directly or indirectly through French or foreign companies or trusts. The rules governing IFI would be largely inspired by the wealth tax regime with new amendments deemed to avoid what the FTA considered as tax avoidance. Among a few other exemptions, participation in a French or foreign operating company owning real estate which does not exceed 10% would be exempted from IFI. As already explained, some limitation of deduction of debts is also provided.

(d) French gift and inheritance tax

French gift tax and inheritance tax are due on worldwide assets by resident tax payers and only on French assets by non-resident tax payers. Shares of French or foreign companies qualifying as a "*société à prépondérance immobilière*" (see question 9.1) and French real estate owned directly or indirectly by a French or foreign company (or a trust) more than 50% of which is owned by the same family are, among others, considered French assets.

The rate at which French gift tax and inheritance tax are due depends on the relationship between the donor (deceased) and the donees (heirs). A full exemption of inheritance tax applies between spouses. A similar progressive rates scale applies (from 0 to 45%) to donations between spouses and to donations and successions between parents and descendants. A flat tax of 60% applies between unrelated persons. The same regime applies when assets are owned through a trust.

(e) Reporting obligations

In order to allow France to levy its taxes and duties, French or foreign companies, as well as by trustees of trusts owning French assets, including real estate located in France, have a duty to report changes in ownership.

The identity of the ultimate owners of French or foreign companies, regardless of their activities, registered within the French company and commerce registry should be disclosed.

An annual 3% tax is due by French or foreign companies owning directly or indirectly real estate properties located in France. Companies disclosing the identity of their owners benefit as a general rule from an exemption.

An 80% penalty is due on eluded income tax, wealth tax, IFI tax, and gift and inheritance tax when the trustees of a trust indirectly owning assets subject to those taxes fail to report the identity of the settlors and beneficiaries as well as all events affecting the trust.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

As explained above, business leases are usually terminated by the tenant at the end of a three-year period (see question 10.2 and 10.3). The landlord could also terminate a business lease at the end of a six-year period ("*bail professionnel*") or of the nine-year period ("*bail commercial*"). The parties may always decide to extend and renew the lease. The landlord should compensate the tenant if he terminates the lease before or at its expiry.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

Landlords are no longer liable for their obligations once they have sold their real estate. However, the tenants remain responsible if they have sold their interest or sub-leased the real estate.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

The French Construction Code provides for numerous environmental requirements ("green obligations") relating to leases, such as the requirement to include an energy diagnosis performance with all lease agreements, with the exception of agricultural and seasonal lease agreements (Article L.1343-1).

As of 1st January 2011, all rental (and sale) adverts must also contain the energy performance grade (from A to G) of the building (article R.134-5-1).

Since 14th July 2013, leases relating to offices or commercial buildings with a surface area larger than 2,000 m² must contain a

"green appendix" ("*Annexe environnementale*", article L.125-9 of the French Environmental Code). This green appendix contains comprehensive information in respect of the energy equipment of the building (e.g. waste treatment, heating and lighting system, water consumption).

11 Leases of Residential Premises

11.1 Please briefly describe the main laws that regulate leases of residential premises.

Land use regulation in France is complex. As explained in question 1.1, the current frame of the regulation is set out in the Construction Code, the Urban Planning Code, and the Environmental Code.

On 20th September 2017, The French Minister of territories' cohesion set forth a "housing strategy" ("*Stratégie du logement*") which provides for numerous propositions aiming at promoting and simplifying real estate development. It notably includes a commitment not to create any new "technical standards" in building legislation and to create a better management of improper claims against construction permits.

11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?

The laws do not differ if the premises are intended for multiple different residential occupiers. Some rules are, however, organised for multiple different residential occupiers which should be agreed to and followed by new occupiers (i.e. "*Règlement de co-propriété*"). They should be attached to all purchase and lease agreements in the form of an appendix.

11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs" e.g. insurance and repair?

(a) Term

The term of the "*bail d'habitation*" should be at least six years. However, the tenant can terminate the agreement at the end of each three-year period with a minimum of six months' notice.

(b) Rent increases

The rental fees are freely determined between both parties upon the signature of the original "*bail d'habitation*". As a general rule, rental fees can be indexed but no increases may apply before a period of at least three years following the date of first use or of the renewal of the lease agreement. In addition, the increase is limited in order to protect the tenant.

(c) Tenant's right to sell or sub-lease

As a general rule, the tenant cannot sell its rights. The sub-lease should be provided by the "*bail d'habitation*" and the landlord should authorise signature of the sub-lease agreement.

(d) Insurance

As a general rule, the landlord insures the property against damage to the building and the tenant insures against damage to the premises and equipment.

(e) Change of control of the landlord

As a general rule a change of control of the landlord does not interfere in the "*bail d'habitation*".

(f) Repairs

Important renovation work, such as structural and internal work, is the responsibility of the landlord, while other repairs are the responsibility by the tenant.

11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?

The protection of the tenants is a very serious issue in France, and therefore strictly regulated. A landlord wishing to terminate a residential lease should indemnify the tenants.

12 Public Law Permits and Obligations

12.1 What are the main laws which govern zoning/permitting and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.

As already explained, the "*Code de l'urbanisme*" ("Planning Code") provides rules harmonising the use of the French territory. It governs the location, size and main characteristics of buildings. It also provides zoning rules.

The "*Code de la Construction et de l'habitation*" ("Construction and Housing Code") gathers together construction, development and social housing rules. It provides compulsory specifications and proper use of buildings.

The "*Code de l'environnement*" ("Commercial Code") provides, among others, rules prohibitions, and requirements for buildings contractors and owners.

12.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

The local authorities, and under certain circumstances the State, may exercise their pre-emptive rights upon the sale of real estate properties as already mentioned above.

They can also force land owners to sell their land. The expropriation procedure is provided by an ordinance dated 4th November 2004. It should, however, only be applied for public utility purposes. Evicted land owners receive full compensation, determined either by a contractual agreement or settled by the judge.

12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Lands and building use are under the control of local administrative authorities. The "*Maire*" (Mayor) ensures the town planning and grants the "*permis de construire*" ("prior construction permits"). The "*préfet de région*" ("regional prefect") may also be involved in specific circumstances. Other administrative authorities may also be included in the process, for example, for historical monuments or for environment concerns.

12.4 What main permits or licences are required for building works and/or the use of real estate?

Various permits granted by the administrative authorities are required in France for building works as well as for the use of real estate.

Prior construction permits as well as specific authorisations should be obtained for constructions exceeding 20 m^2. Any modification of the use of buildings should also be authorised.

12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

Compulsory regulations which should be complied with in order to obtain building/use permits are, as a general rule, well-known by architects. As a consequence, preparing the request for a building permit is not particularly difficult. Nevertheless, any obtained administrative permit can be challenged by third parties if they are effected by the contemplated project. As a consequence, it can take time to obtain a favourable decision, which is finally given by an administrative judge.

12.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

As any administrative authorisations for building/use permits are free of charge, the cost of their request is, as a general rule, included in the architect's fees. When the building permit is challenged before the administrative court, its cost may become more substantial depending on the importance of the project.

As a general rule, the time necessary to obtain the building permits is relatively short. A two-month period is required for ordinary building permits, three months for construction-development permits and six months for high-rise or public access buildings. They can be challenged by third parties within two months following their display on the building site.

12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate?

As already mentioned, several regulations apply allowing for the protection of historic monuments. However, they only apply on renovation work of the building which is considered either as historic or located in an historic area. However, there is no regulation limiting the transfer of the ownership of such buildings.

12.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

Careful investors must exercise due diligence and request a pollution diagnosis from the vendor based on environmental documents.

Investors can also ask the "DREAL" (a French public body) for the relevant documentation, or consult databases such as "BASOL" and "BASIAS" which notably identify sites and soils which are polluted or may potentially be polluted.

12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

Environmental clean-up is mandatory in case of risk to human health, security and the environment. Public authorities can automatically proceed with the clean-up if a formal demand was unsuccessful. The person responsible for such pollution must bear the cost.

12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

A diagnosis of energy performance (so-called "DPE") must be attached to the deed transferring the real estate ownership or to the lease agreement (either residential or commercial).

13 Climate Change

13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

France transposed the European Directive 2003/87/EC of 13th October 2003 establishing a scheme for greenhouse gas emission allowance trading. The French environmental code therefore provides for a mandatory emissions trading scheme applicable to energy production activities, civil aviation activities, production of paper and carbon, the mineral industry and the production and processing of ferrous metals.

13.2 Are there any national greenhouse gas emissions reduction targets?

Law n° 2009-967 of 3rd August 2009 (the "*Grenelle 1*" Act) aims at reducing greenhouse gas emissions to a quarter of current levels by 2050.

13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

The "*Grenelle 1*" Act encourages the construction of "low energy consumption" buildings (i.e. less than 50 KWh/m^2/year) and requires a reduction of energy consumption by 38% by 2020 in the existing building stock. By 2020, all new buildings should produce more energy than they use.

Law n° 2010-788 of 12th July 2010 (the "*Grenelle 2*" Act) completed and implemented the "*Grenelle 1*" Act, notably by introducing specific requirements such as the completion of an energy performance diagnosis as of 1st January 2017 for buildings which have heating or cooling systems, and the requirement to carry out works to increase the energy efficiency of buildings for commercial use before 1st January 2020.

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Co-founded in 1989 by Jean-Marc Tirard and Maryse Naudin, Tirard, Naudin is a boutique law firm which specialises in international taxation. The founding partners are assisted by Ouri Belmin, who is in charge of the team in Paris. Tirard, Naudin is regularly involved in structuring acquisitions of French assets (especially real estate) on behalf of foreign investors. The firm also has proven experience in procedural and tax litigation with a particular emphasis on international tax issues, especially in respect of the major European freedoms and fundamental principles. Finally, Tirard, Naudin has particular expertise in issues related to the use of tools and concepts of Common Law in the context of Civil Law (particularly trusts). Clients of the firm include large companies and foreign institutional investors, as well as a prestigious private clientele. The firm also works as an expert on behalf of French and foreign colleagues.

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