

France



Jacques Henrot and Emmanuel Fatôme, De Pardieu Brocas Mafféi

www.practicallaw.com/8-383-4645

THE CORPORATE REAL ESTATE MARKET

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

The French real estate investment market has seen a significant decrease over the last 12 months, with fewer significant transactions taking place.

Another noticeable trend in the real estate investment market is the increasingly important role of French REITs, listed players and the role of OPCIs (that is, real estate collective investment funds with simplified operational rules). A significant number of investors list the companies holding their French real estate assets, because of the attractive tax regime (see *Question 2*).

Significant recent transactions include:

- The acquisition by a joint venture created by Axa Reim France, of 57 hotels located in France and Switzerland from Accor and the leaseback to Accor Group companies for a consideration of EUR518 million (about US\$817 million).
- The setting up on behalf of Aéroports de Paris of the first phase of the new international business area “Coeur d’Orly” with a surface area of 160,000 square metres.

REAL ESTATE INVESTMENT

2. Please briefly outline the opportunities for investing in real estate in your jurisdiction. In particular, consider:

- The structures commonly used (for example, property companies and partnerships).
- Are real estate investment trusts (REITs) available? If so, are they commonly used?
- The role of institutional investors.
- The role of private investors.

Structures commonly used

Apart from real estate investment made by institutional investors (mainly traditional property companies and insurance companies)

and open-ended German funds, investment is usually made through special purpose vehicles (SPVs), incorporated as French companies.

REITs

In 2003, a new tax regime known as SIIC (*Sociétés d’Investissements Immobilières Cotées*), largely inspired by US REIT legislation, came into force. The regime is only available for real estate investment companies listed on a French regulated market with a minimum “floating” of 15% and a shareholder (other than a SIIC company) holding more than 60% of its shares. “Floating” shareholding interests are interests held by legal or natural persons, who directly or indirectly hold, less than 2% of the share capital and voting rights.

The SIIC regime allows for full exemption from corporation tax on profits derived from real estate investments, provided that distribution obligations are fulfilled. Taxation is therefore passed onto investors, who are subject to either:

- French personal or corporate income tax, if they are French residents.
- French withholding tax, if they reside abroad.

Companies opting for the SIIC regime are entitled to step up the tax basis of their eligible assets at a reduced cost of 16.5% instead of 33.33%.

The role of institutional investors

Institutional investors play a key role in the French real estate market, either as direct investors, or through SCPIs (*Sociétés civiles de placements immobilières*) or OPCIs (*Organismes de placements collectifs immobilières*).

SCPIs are regulated entities and require authorisation issued by the French Financial Market Authority (AMF) when they solicit investors through public offerings. Their sole purpose must be acquiring and managing real estate assets with a view to leasing them. They cannot dispose of more than 15% of their portfolio every year and must keep each of their assets for at least six years.

OPCIs benefit from a SIIC-inspired status and are progressively replacing existing SCPIs. Their main business purpose must be direct or indirect investment in real assets with a view to carrying out rental activities.

The role of private investors

Despite the recent scarcity of bank financings, private investors also play an important role. Their investments are frequently made through SPVs.

REAL ESTATE LEGISLATION

3. Please briefly set out the main real estate legislation that applies in your jurisdiction.

French real estate law is mainly codified in the:

- Civil Code (*Code civil*) (for transfers of title and non-commercial leases).
- Commercial Code (*Code de commerce*) (for commercial leases and shopping centre authorisations).
- Construction Code (*Code de la Construction de l'Habitation*) (for construction and development).
- Urban Planning Code (*Code de l'Urbanisme*) (for planning and development).

There are other real estate rules that are not codified, such as rules applicable to real estate agents (*agents immobiliers*).

TITLE

4. Please briefly state what constitutes real estate in your jurisdiction. Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate includes land and any buildings or fixtures attached to the land.

Generally, if the same entity owns the land and buildings on it, title is subject to a single registration; the land and building(s) on it are registered together. As an exception, if the property is divided into sections, land and any building(s) must be registered separately.

5. How is title to real estate evidenced, for example, by registration in a public register of title? Which authorities manage the public title register?

To be effective against third parties, transfers of real estate ownership must be evidenced by a written deed of transfer authenticated by a notary (*acte notarié de vente*). Notaries must register all deeds of transfer at the local land registry after they are executed. The notary must include evidence of a root of title dating back 30 years in the deed of transfer.

The land registry (*Conservation des Hypothèques*) handles the registration of all deeds transferring ownership of real estate in France. There are 354 land registry offices in France, which are independent from one another since each land registry covers its own specific area.

6. Please briefly set out the information and documents registered in the public register of title, for example a description of the real estate, the owner, matters affecting the title and any relevant documents.

Information available at the land registry includes:

- The identity of current and past owners.
- The acquisition date of the real estate.
- Easements and encumbrances.
- Registered mortgages.
- Long-term leases (that is, with a term of over 12 years).
- Finance leases, if any.

7. Can confidential information or documents be protected from disclosure in the public register of title?

If the parties deem information or documents as confidential, the buyer usually executes a non-disclosure agreement, breach of which can lead to payment of damages.

Documents requiring registration at the mortgage registry, consisting mainly of real estate transfer deeds, are available to third parties.

8. Is there a state guarantee of title? Is title insurance available? If so, is it commonly used?

There is no state guarantee of title and the land registry cannot be liable for registering inaccurate information. Registration of title with the land registry by a notary (see *Question 5*) allows the title holder to exercise owners' rights against third parties. However, an interested third party can challenge title in court.

Title insurance is not widely available. A notary and their liability insurer guarantee title validity.

9. How can real estate be held (that is, what types of tenure exist)?

Freehold and leasehold, which are the two types of tenure that exist in the UK, do not exist in France. French law recognises:

- Full ownership of real property (*droit de propriété*).
- Long-term leases, granting the tenant the equivalent of a real property right or right *in rem* (*droit réel immobilier*). The two main types of long-term leases, granted for a term of between 18 and 99 years are the:
 - Construction lease (*bail à construction*), where the tenant must erect a predetermined building on the land which is leased; and

- Long-term lease (*bail emphytéotique*), where the tenant's obligation is essentially to maintain and pay for the upkeep of the property.

Since tenants of both long-term and construction leases hold the legal equivalent of full property rights, they can grant mortgages over the property.

SALE AND PURCHASE OF REAL ESTATE

10. What are the main stages and documents in the sale and purchase of real estate? In particular:

- How is real estate marketed, when does commercial negotiation occur and what pre-contractual arrangements are used?
- When is the sale contract negotiated and executed?
- When are the parties legally bound?
- When is the change of title registered?
- When does title transfer and what are the formal legal requirements to transfer real estate (for example, in writing and signed by the parties)? Is notarisation required?

Marketing

Marketing of corporate real estate is usually handled by real estate brokers (for simple transactions) or by investment banking institutions.

Commercial negotiation

When an investor is interested in acquiring a specific asset, they usually send a written and detailed offer to the seller, which is subject to completion of satisfactory due diligence. If this offer is accepted by the seller, the seller grants an exclusivity period and allows the investor to conduct further due diligence.

Pre-contractual arrangements

Once due diligence is completed, the buyer and seller usually enter into a preliminary contract (*promesse*) setting out the terms and conditions of the contemplated/proposed transaction and the conditions precedent to be fulfilled. The preliminary contract is generally a promise to sell, either:

- Granting an option to the buyer (*promesse unilatérale de vente*), who remains free to decide whether to purchase. The buyer usually pays an indemnity (*indemnité d'immobilisation*), generally about 5% to 10% of the purchase price, which is payable to the seller if the buyer does not exercise its option after completion of all conditions precedent, if any.
- Committing the buyer and seller to buy and sell on completion of certain conditions precedent (*promesse synallagmatique de vente*). The buyer usually pays a deposit of between 5% to 10% of the purchase price.

Preliminary contracts make the sale conditional on local public authorities waiving any statutory pre-emption rights (see Question 23).

Sale contract

The parties do not usually directly enter into a transfer deed, without having first executed a preliminary contract, even though they can legally do so. The transfer deed is executed by the parties and the notary, who authenticates, stamps and registers it at the local land registry (see Question 5).

When legally binding

The transaction binds the parties on execution of the transfer deed. However, if:

- A *promesse unilatérale de vente* is signed, the transaction binds the parties when the buyer exercises the option.
- A *promesse synallagmatique de vente* is signed, the transaction binds the parties on fulfilment of the conditions precedent.

Registration

It is the notary's duty and legal responsibility to register all deeds of ownership transfer within two months from their execution (see Question 5).

When title transfers

Title technically transfers as soon as the asset and its sale price have been agreed between the parties, even if the asset has not been delivered or the purchase price paid.

However, the parties usually agree that title only transfers on payment in full of the purchase price to the seller. Registration with the local land registry is required to make the title transfer enforceable against third parties (see Question 5).

11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate, for example to disclose real estate information, or in relation to title?

A seller automatically warrants that the:

- Property complies with the agreed definition and characteristics (obligation of compliant delivery) (*Article 1605, Civil Code*).
- Buyer will enjoy all benefits resulting from full ownership of the property (*Article 1626, Civil Code*).

The seller must also provide the buyer with documents addressing environmental issues (asbestos, termites, lead and land pollution) and any other environmental information the seller has.

Generally, disclosure of available information is not specific to real estate. Parties to any type of contract governed by French law must act in good faith while entering into a contract. In particular, a contract may be voided where a party to a contract has withheld information from the other party, which would have prevented that other party from entering into the contract.

12. Please briefly outline the real estate due diligence that is typically carried out before an acquisition (including title investigation and searches of public authorities).

Standard due diligence covers:

- Investigation of title.
- Town planning and environmental due diligence.
- Review of rental situation.

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

In addition to statutory warranties provided (see Question 11), the seller frequently provides additional warranties to the buyer covering, for example, town planning and tenancy issues.

In asset deals, the buyer benefits from legal warranties (see above). In share deals, the buyer usually benefits from corporate warranties, for example, relating to the accuracy of accounts and the limited scope of the business.

However, such warranties tend to be limited (provided the buyer has been able to conduct full due diligence).

14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it? For example, environmental liability, or liability under a lease.

If environmental damage to real estate affects third parties, such as neighbours, the current owner can, under certain limited circumstances, be liable to indemnify these third parties, even if the damage dates back to before the acquisition, irrespective of whether the previous owner can be identified. The current owner may subsequently have a claim against the previous owner(s).

Under a recent statute dated 29 May 2008, the pollutant itself must bear the cost of all clean up works. This law only covers pollution that presents a:

- Risk to human health.
- Danger of soil contamination.
- Threat to the ecological state of water (*état écologique de l'eau*).
- Risk of attack to animal or plant species under Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, which established a European ecological network called Natura 2000.

15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it? For example, environmental liability, defects in the real estate, and contractual liability to the buyer.

A seller can have post-disposal liabilities, but only for:

- Breach of the representations and warranties in the purchase agreement.
- Fraud. If the seller intentionally fails to disclose material information, the buyer can apply to court to have the sale declared null and void, or bring a claim for damages.
- Hidden defects (*vices cachés*). The buyer can obtain a price reduction or annulment of the sale for defects that would prevent the buyer from using the property as intended (*Article 1641, Civil Code*).
- Environmental damage (see Question 14).

16. What costs are usually paid by the buyer? What costs are usually paid by the seller?

Buyer's costs

In addition to transfer tax or VAT (see Questions 17 and 18), the fees and costs usually paid by the buyer are:

- Notary fees, at around 1% of the purchase price (these are negotiable above EUR?80,000 (about US\$126,000)).
- Legal fees (usually charged on an hourly basis).
- Real estate agent fees.
- Expert fees (for example, environmental experts, surveyors and valuers).

Seller's costs

The seller may also be subject to capital gains tax.

REAL ESTATE TAX

17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

Generally, sales of real estate are subject to transfer tax (see Question 18), not VAT. However, transfers of real estate are subject to VAT in the following circumstances:

- Sales of development land (that is, land on which the buyer intends to erect new buildings within four years following completion of the sale). VAT is charged at the standard rate of 19.6% of the sale price and is paid by the buyer, unless the seller has previously placed the property within the scope of VAT. If the seller pays VAT, it recharges it to the buyer.

- The first sale within five years following completion of a new building. VAT is charged at the standard rate of 19.6% of the sale price and is paid by the seller, who recharges it to the buyer.
- Real estate dealers (*marchands de biens*) pay VAT on pre-tax profits made on real estate transactions and often recharge it to the buyer.
- Adjustments for VAT can be recharged by the seller to the buyer on sales of real estate under the transfer tax regime. The amount of VAT recharged to the buyer is the same as the part of the VAT previously deducted by the seller.

VAT paid on the acquisition of real estate can be deducted by the buyer from VAT incurred on rents (if such rents are subject to VAT).

18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase? Who pays? What are the rates? Are there any exemptions?

Acquisition of real estate generally triggers transfer tax at a rate of 5.09%. The buyer usually pays this, although the parties can agree otherwise. In addition, specific transfer tax regimes apply in the following situations:

- Sales of development land (*see Question 17*) are exempt from transfer tax, provided the buyer commits to erect and complete new buildings on the land within four years following completion of sale.
- Sales of new buildings (*see Question 17*) are subject to a reduced transfer tax of 0.715%.
- Acquisitions of real estate by real estate dealers are subject to a reduced transfer tax of 0.715%, provided the buyer undertakes to resell within four years from the acquisition or within two years, if the buyer intends to split the property into several plots to be sold separately.
- Sales of shares in real estate companies (with assets consisting mainly of French real estate) are subject to 5.09% transfer tax, based on the shares' net value.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?

One method commonly used is acquiring a company holding real estate, instead of directly acquiring real estate portfolios, since this can lead to:

- A reduction in registration duties. Tax is calculated on the shares' net value (after deduction of the company's debt) instead of the total value of the real estate portfolio.
- An exemption from registration duties for the purchase of foreign companies' shares.

Another method is to benefit from the SIIC regime or to make investments through OPCIs (*see Question 2*), to reduce the seller's capital gain.

HOLDING BUSINESS PREMISES

20. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties, for example through outsourcing transactions?

It is increasingly common for real estate companies to use third parties (that is, specialised suppliers of services) for asset management and/or property management of real estate.

21. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

Foreign-registered or foreign-controlled entities are free to make real estate investments in France, but they must file a declaration with the French Tax Administration (*Direction du Trésor*) if the property is intended for resale to the public or for rental purposes (*Article L.151-1 et seq, Monetary Code*).

The declaration is filed after the investment has been made and must contain information on:

- The foreign investor (name, address and shareholders).
- The French company that was incorporated, or in which a stake was purchased (name, address, type of activity and financial statements).
- The transaction, including its location, scope and use, and terms and conditions.

Real estate investments exceeding EUR15 million (about US\$24 million) must also be notified to the central bank (*Banque de France*) for statistical purposes.

In addition, a foreign individual doing business in France must hold a special permit (*carte de commerçant étranger*) to carry out his activities, unless he:

- Is a resident of an EEA country.
- Is a resident of a country where French residents are not required to obtain such a permit.
- Has a valid residence permit in France.

This special permit is granted to foreign individuals providing the regional administration with evidence that they will carry out activities under conditions similar to those applicable to French individuals.

Foreign investors owning French real estate can grant the same type of guarantees and security interests as French owners.

Tax aspects

Foreign legal entities (but not individuals) that directly or indirectly hold real estate in France, must pay an annual tax equal

to 3% of its fair market value, regardless of any acquisition debt. However, the following are automatically exempt from this tax:

- Companies owning French non-real estate assets, with a value that represents more than 50% of all their French assets.
- Companies owning French real estate to carry out a non-real estate oriented activity.
- Companies carrying out a property development activity or a real estate dealer activity, which record their French real estate assets in their financial statements as inventories.
- Companies listed on a stock exchange.
- International organisations, sovereign states and public institutions.
- Pension funds.
- Non-profit organisations.

In addition, entities that do not qualify under the above automatic exemptions can be exempt from this annual tax if they are either:

- Tax residents in a country with which France has concluded a tax treaty providing for mutual assistance, provided they file a form with the French tax authorities each year, disclosing certain information (mainly the identity of their shareholders and location and market value of their French real estate assets).
- Tax residents of France or a country with which France has concluded a tax treaty containing non-discrimination provisions, provided they either file the above form or undertake to disclose the same kind of information on the tax authorities' request.

If the real estate is owned by a chain of companies, the conditions under these exemptions must be met by all the companies in the chain of ownership, until the ultimate individual shareholders (who may be liable to French wealth tax) are identified or until the top shareholders benefit from an automatic exemption as listed above.

22. Does change of control of a company affect its holdings of real estate?

The change of control of a company does not affect its holdings of real estate as such. However, change of control provisions are often found in financing documents.

23. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

To assist with town planning, a statutory pre-emption right (*droit de préemption urbain*) allows local public authorities to become priority acquirers of property located in certain pre-defined zones, when such property is put up for sale.

Through their notary, a seller must notify the local public authority of the terms and conditions of the proposed sale by filing a declaration of intent to alienate (*déclaration d'intention d'aliéner*).

Following notification of a declaration of intent to alienate, if the local public authority wants to purchase the property it must, within two months, give notice of its intention to acquire the property and whether it intends to purchase it at the price mentioned in the declaration of intent to alienate, or at a lower price. If it fails to respond within the two-month time limit, the local public authority is deemed to have waived its pre-emption right.

If the local public authority notifies the seller of its intent to acquire the property at a lower price, the seller must, within two months, notify the local public authority of one of the following:

- It no longer intends to sell the property.
- It accepts the public authority's proposal.
- It intends to proceed with the sale but does not accept the lower price offered by the local public authority. In this case, the civil court (*Tribunal de Grande Instance*) will set the price based on the market value.

24. Are municipal taxes paid on the occupation of business premises, for example business rates? Are there any exemptions?

The main local tax paid on the occupation of business premises is business licence tax (*taxe professionnelle*), since it takes account of real estate used by taxpayers. Exemptions from this tax may be granted for investments made in specific urban areas, such as an urban free zone (*Zone Franche Urbaine*) or urban regeneration zone (*Zone de Redynamisation Urbaine*).

REAL ESTATE FINANCE

25. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?

Acquisitions of large real estate portfolios

Acquisitions of real estate are generally financed by a combination of equity and bank debt. A lender will usually require both:

- A first ranking mortgage over the real estate.
- Assignments of rents and of insurance indemnities (if any).

Real estate investors can also finance their real estate acquisitions through a finance lease (*crédit-bail immobilier*), which allows the tenant (*crédit preneur*) to exercise an option to purchase after a minimum tenancy period.

Acquisitions of companies holding real estate

Acquisitions of companies holding real estate are generally financed by a combination of equity and bank debt (acquisition loan and mortgage loan at the level of the target company). Acquisition financings are mainly secured by share pledges, given the difficulty under French law, of putting upstream guarantees in place.

26. How is real estate commonly used to raise finance? In particular through:

- Secured lending.
 - Sale and leasebacks.
 - Other financing such as real estate securitisation.
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Real estate can be used to raise finance mainly through subscription of bank debt secured by mortgages and other real estate related security interests (assignment of rents and insurance indemnity, if any).

Sale and leaseback transactions are also used by substantial real estate owners to get cash from their property assets, while retaining the right to occupy such assets as a tenant and, as the case may be, the right to repurchase them after a given period of time.

Although not commonly used at present (because of related constraints, costs and the difficulties encountered by the market), real estate securitisations (through the sale of future rent flows) can also be used.

REAL ESTATE LEASES

27. Are contractual lease terms regulated or freely negotiable?

Commercial leases must be entered into for at least nine years, subject to certain exceptions regarding short-term leases. A longer term is possible but leases exceeding 12 years must be registered with the local land registry, in return for the payment of a substantial fee (based on the total rent).

Unless otherwise agreed, the tenant can terminate the lease at the expiry of each three-year period, by giving at least six months' prior notice. In practice, tenants often contractually waive their termination right, at least for the first three-year period, and agree to occupy the premises for at least six years. A tenant that has complied with its obligations is entitled, by law, to renew its lease.

28. How are rent levels usually reviewed and are there any restrictions on this? Is VAT (or equivalent) payable on rent?

Rent can only be reviewed at the request of either party after three years, unless the parties have agreed an annual adjustment (*indexation*). Indexed rents are usually adjusted in proportion to variation of the national cost of construction index, published quarterly by the National Institute for Statistics and Economic Studies (INSEE).

If the initial contractual term of the lease is less than nine years, the rent of the renewed lease is capped at the initial rent, subject to indexation (*plafonnement*), unless there has been a substantial change in the factors generally used to set rental values in the area. In this case, the rent of the renewed lease can be set by reference to market value, which is usually substantially higher than the *plafonnement* rent. The *plafonnement* provisions apply neither to office space and single-use premises (*locaux monovalents*) (for example, theatres, clinics and hotels), nor if rents are based on the tenant's turnover (*clause recettes*).

Renting activities (except renting of furnished premises) are not subject to VAT by law. However, a landlord can elect to charge VAT on rent to:

- Offset collected VAT against input VAT that it has incurred.
- Avoid the 2.5% tax on income from the renting of real estate buildings completed more than 15 years ago. The landlord pays this tax and generally passes it on to the tenant. In contrast to VAT, the tenant cannot recover this tax. Rent subject to VAT or received from the state is exempt from this tax.

If the tenant is subject to VAT, it can deduct VAT paid on rent from input VAT that it has incurred.

29. What is the usual length of lease term and are there any restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term? If yes, please give details.

Commercial leases must have a term of at least nine years, subject to certain exceptions (*see Question 27*).

Commercial tenants have extensive rights to preserve the value of their business. Unless it fails to remedy a breach of a fundamental provision of the lease after formal notice has been served, the tenant can renew the lease at the end of the initial contractual lease term.

If the landlord refuses to renew the lease at its expiry, compensation (*indemnité d'éviction*) must be paid to the tenant to indemnify it for the loss of goodwill suffered. The tenant can, however, be evicted without compensation, if the premises are to be totally or partially demolished for health and safety reasons.

30. What provisions or restrictions typically apply to the disposal of the lease by the tenant (for example, can the tenant assign or sublet the lease with the landlord's consent)?

Subletting of the whole or part of the premises is usually prohibited under the lease, unless otherwise agreed between the parties. Commercial leases can be freely assigned, unless otherwise agreed, which is usually the case. The tenant has the right to assign its lease to the buyer or successor of its ongoing business (*fonds de commerce*) and any contractual prohibition of this right contained in the lease is null and void.

31. Who is usually responsible for keeping the leased premises in good repair?

Unless otherwise agreed, the tenant bears the cost of repairs, except for major structural repairs (*grosses réparations*, as defined under *Article 606 of the Civil Code*). However, if the lease stipulates that rent is net of all charges, costs and expenses, the tenant bears all repair costs, including all major structural repairs.

32. Who is responsible for insuring the leased premises?

The landlord is legally responsible for insuring the property, but insurance-related costs are often passed on to the tenant. The tenant must pay for insuring all risks specific to the running of its own activities and has no right of claim against the landlord's insurer in this respect.

33. Can tenants usually share their business premises with companies in the same corporate group? If yes, on what terms?

Named tenants can share their business premises with group companies and third parties, provided that the landlord has expressly authorised the tenant to enter into subletting agreements. The lease usually provides for authorisation to sublet the premises to companies in the tenant's corporate group, provided the head tenant remains liable for the full payment of rent.

34. On what grounds can the landlord usually terminate the lease? Please briefly outline any restrictions or procedure that applies. Can the tenant terminate the lease in certain circumstances?

Commercial leases usually include a termination clause (*clause résolutoire*), allowing automatic termination by the landlord if the tenant fails to pay rent and service charges, or fails to comply with any other substantial provision of the lease. Formal notice requiring the breach to be remedied within a period of at least one month must be served on the tenant by a bailiff before termination.

A court can, in certain circumstances, grant the tenant grace periods (*Article 1244-1, Civil Code*) and suspend the effect of the termination clause, provided that the tenant complies with its rescheduled rent payment obligations.

If the parties fail to include a termination clause in the lease and the tenant defaults, the landlord must commence an action in the courts for termination of the lease.

The tenant can terminate the lease if the landlord cannot ensure peaceful enjoyment (*jouissance paisible*) of the premises. Unless otherwise agreed by the parties, commercial tenants are entitled by law to terminate the lease at the expiry of each three-year period (*see Question 27*).

35. What is the effect of the tenant's insolvency (under general contract terms and insolvency legislation)?

Under French law, the start of insolvency proceedings triggers an automatic stay of all actions against the insolvent tenant. Creditors whose claims arose before proceedings are barred from enforcing their rights against the debtor.

If the tenant is subject to safeguard proceedings (*procédure de sauvegarde*) or rehabilitation proceedings (*redressement judiciaire*), the lease can be terminated:

REAL ESTATE ORGANISATIONS

French civil service (*Service Public*)

Main activities. This provides useful information and guidelines on French administrative forms and formalities of all types.

W www.service-public.fr/formulaires/index.html

Association of Paris notaries (*Chambre des Notaires de Paris*)

Main activities. This is the regulatory body for notaries in the Paris area.

W www.paris.notaires.fr

Le Moniteur

Main activities. This is a major publication in the construction and real estate sectors.

W www.lemoniteur-expert.com

Ministry for infrastructure, transport and housing (*Ministère de l'Écologie, du Développement et de l'Aménagement durables*)

Main activities. This provides useful information on French regulations applicable in the construction and real estate sectors.

W www.developpement-durable.gouv.fr

CB Richard Ellis Bourdais

Main activities. This is a major real estate consultancy firm, providing many services including valuations.

W www.cbre.fr

- At the administrator's request, even if the term of the lease has not ended. In this case, the termination is effective as of the date of the request.
- At the landlord's request, as a result of a rent payment default, for rent and service charges due after the start of proceedings. The landlord can only ask for termination of the lease on expiry of a three-month period following the opening judgment. If, during the three-month period, the tenant pays any sums due to the landlord, the lease cannot be terminated.

The start of liquidation proceedings against the tenant (*liquidation judiciaire*) does not lead to automatic termination of the lease. The liquidator can opt to continue the lease or to transfer it according to the terms and conditions of the lease. If the liquidator decides not to continue the lease, the lease is terminated at the liquidator's request.

The landlord can also claim judicial termination of the lease or invoke the termination clause (if any) on any grounds before the start of liquidation proceedings, provided that the landlord requests termination within three months of publication of the judicial liquidation judgment. The landlord can also request termination of the lease for a rent payment default, for rent and service charges due

after the start of proceedings, where the tenant continues to occupy the premises after the judicial liquidation judgment.

Any clause of a lease stating that it will automatically terminate on insolvency is null and void.

If the tenant's business is sold to a third party in the framework of a court-approved sale plan (*plan de cession*), whether in rehabilitation or liquidation, the court can decide to automatically transfer the lease to the buyer of the business.

PLANNING LAW/ZONING

36. What authorities regulate planning control and which legislation applies?

The Urban Planning Code (which applies nationwide) and local land use plans (POS/PLU) regulate zoning and urban planning. Local government largely regulates planning. The state's regional representative (*Préfet*) controls the legality of local plans and influences their preparation, through specialised departments of the regional administration. Each municipality prepares local land use plans, which divides up the area into zones of different uses, and attributes building density ratios to each zone.

37. What planning consents (for example, planning permission or building permits) are required and for which types of development?

Planning permission is generally required to either:

- Erect new buildings.
- Carry out works on existing buildings, if those works result in:
 - change of use;
 - change in external appearance or volume; or
 - creation of additional surface.

38. In relation to planning consents:

- Which body grants initial planning consents?
- Do third parties have the right to object?
- In what circumstances is there a public inquiry?
- How long does an initial decision take after receipt of the application?
- Is there a right of appeal against a planning decision?

Application

Applications for planning permission are made to the local planning authority, that is, the mayor, or in exceptional cases, the state's local

representative. The proposed project must comply with the local land use plan and with any specific legislation (for example, restricting building in protected coastal or mountain areas). Planning permission will lapse if works are not started within two years of granting planning permission. This deadline may be extended by one year, if preliminary works are started before the end of the two-year period.

Third party rights

If planning permission is granted, a notice must be posted at the local town hall and on site. During the two-month period from the posting of the notice, interested third parties can appeal against the permission. The appeal is filed with the local authority that issued the permission, or with the local administrative courts.

Public inquiries

A public inquiry (*enquête publique*) must be conducted for major projects, for example, to create a commercial centre with a surface area of over 10,000 square metres.

Initial decision

The time taken to issue a decision on a planning application ranges from two to four months. However, this period can be extended in specific cases, if the granting of the planning permission is subject to other specific authorisations (for example, landmark administration and ministry of health authorisations).

Appeals

If a request for planning permission is denied, the applicant can file an appeal with the local authority or with the courts, within two months of notification of the decision.

REFORM

39. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

A reform dated 23 March 2006 created a new form of mortgage (*hypothèque rechargeable*). This type of mortgage can secure not only the original credit facility but also subsequent credit facilities, which would be made available to the borrower after repayment of the first credit facility. This is a major reform, which is likely to be used by real estate investors.

ABOUT THE CONTRIBUTORS

Jacques Henrot and Emmanuel Fatôme
De Pardieu Brocas Mafféi

T +33 1 53 57 71 71

F +33 1 53 57 71 70

E henrot@de-pardieu.com

fatome@de-pardieu.com

W www.de-pardieu.com