

France

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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 been severely affected by the financial crisis over the last 12 months, with the bankruptcy of Lehman Brothers in September 2008 being a turning point. Investment deals were restrained by tighter financing conditions and the difficulty for buyers and sellers in agreeing prices. Large deals have been rare as a consequence.

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?
- Institutional investors.
- Private investors.

Structures commonly used

Investment is usually through special purpose vehicles (SPVs), incorporated as French companies. There are also real estate investments by institutional investors (mainly traditional property companies and insurance companies) and by open-ended German funds.

REITs

A tax regime known as SIIC (*Sociétés d'Investissements Immobilières Cotées*) (largely inspired by US REIT legislation) came into force in 2003. The regime is only available for real estate investment companies that:

- Have a minimum share capital of EUR15 million (about US\$21 million).
- Are listed on a French regulated market.
- Have a minimum floating shareholding of 15% at the date of election for the SIIC regime (floating shareholdings are

those held directly or indirectly by legal or natural persons with less than 2% of the total share capital and voting rights).

- Do not have more than 60% of their share capital or voting rights held directly or indirectly by one shareholder (or by different shareholders in a joint control situation) unless the shareholders are also SIIC qualifying companies.

The SIIC regime also applies to SIICs' subsidiaries that are subject to corporate income tax and that both:

- Are at least 95% held, directly or indirectly, by the SIIC.
- Have the same corporate purpose.

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

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

Distributions paid out of tax-exempt profits are subject to a 20% tax if they are paid to corporate shareholders that hold, directly or indirectly, more than 10% of the dividend rights at the time of the distribution, and that are not subject to corporate income tax or to an equivalent tax on the dividends received.

Companies opting for the SIIC regime are entitled to step up the tax basis of their eligible assets at a reduced cost (19% instead of 33.33%).

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 immobiliers*).** These are regulated entities and must be authorised by the French Financial Market Authority (AMF) to solicit investors through public offerings. Their sole purpose must be the acquisition and management of 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.
- **OPCI (*Organismes de placements collectifs immobiliers*).** These are real estate funds that are fully exempt from corporation tax but that are subject to distribution obligations. Their main business purpose must be direct or indirect

investment in real assets with a view to carrying out rental activities.

Private investors

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 and Housing Code (*Code de la Construction et de l'Habitation*) (for construction and development).
- Urban Planning Code (*Code de l'Urbanisme*) (for planning and development).

There are other rules that are not codified, for example, 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 property includes land and any buildings or fixtures attached to the land, and ownership interests in them.

Generally, if the same entity owns the land and the buildings on it, the title is subject to a single registration, and the land and building(s) on it are registered together. An exception is if the property is divided into sections, where they 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*) (transfer deed). All transfer deeds must be registered by notaries at the local land registry (*Conservation des hypothèques*) after they are executed. The notary must include evidence of a root of title dating back 30 years in the transfer deed. The local land registry is managed by the mortgage registrar (*conservateur des hypothèques*).

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 (lasting 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 confidential, the buyer usually executes a non-disclosure agreement, the breach of which can lead to the payment of damages. Documents that require registration at the mortgage registry are available to third parties. This registration mainly applies to real estate transfer deeds.

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 notaries (*see Question 5*) allows the title holder to exercise owners' rights against third parties. However, an interested third party can challenge the title in court.

Title insurance is not widely available. The notary and its liability insurer guarantee title validity.

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

Freehold and leasehold tenures 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, both granted for a term of between 18 and 99 years, are the following:
 - construction lease (*bail à construction*), where the tenant must construct a predetermined building on the land which is leased; and
 - long-term lease (*bail emphytéotique*), where the tenant must maintain and pay for the upkeep of the property.

Since tenants of both of these 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

Real estate marketing 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, it usually sends 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, a preliminary contract (*promesse*) setting out the terms and conditions of the contemplated transaction and the conditions precedent to be fulfilled is usually entered into. 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 normally make the sale conditional on local public authorities waiving any statutory pre-emption rights (see *Question 24*).

Sale contract

The parties usually execute a preliminary contract (see *above*, *Pre-contractual arrangements*). The parties do not usually 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 by the notary (see *Question 5*).

When legally binding

The transaction becomes binding on the parties on the execution date of the transfer deed. However, if:

- A *promesse unilatérale de vente* is signed, the acquisition is binding on the parties when the buyer exercises its call option.
- A *promesse synallagmatique de vente* is signed, the acquisition is binding on fulfilment of the conditions precedent (see *above*, *Pre-contractual arrangements*).

Registration

The parties and the notary execute the transfer deed and the notary authenticates and stamps it, and must register it at the local land registry within two months of signature to render the title transfer enforceable against third parties (see *Question 5*).

When title transfers

Generally, 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 to the seller of the purchase price.

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*).

Recent French case law has given the seller extensive liability for environmental matters. As a result, the seller must provide the buyer with several documents addressing environmental issues, including:

- Asbestos.
- Termites.
- Lead.
- Land pollution.
- A statement on natural and technological risks (*état des risques naturels et technologiques*) (ERNT).
- An Energy Performance Diagnosis (*diagnostic de performance énergétique*) (DPE). In addition to these statutory warranties, the seller frequently grants additional warranties to the buyer covering, for example, town planning and tenancy issues.

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.
- Investigation of mortgages affecting the real estate.
- 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 share deals, where the buyer does not automatically benefit from the statutory warranties applicable to asset deals (see *Question 11*), equivalent contractual warranties are usually agreed.

In addition, limited corporate warranties (covering accuracy of the accounts and so on) are usually granted.

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 and irrespective of whether the previous owner can be identified. The current owner may subsequently have a claim against the previous owner(s).

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 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 *Question 18*), the fees and costs usually paid by the buyer are:

- Notary's fees, at about 1% of the purchase price (these are negotiable above EUR80,000 (about US\$112,690)).
- Legal fees (usually on an hourly basis).
- Real estate agent's fees.
- Experts' 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*).

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.
- Sales of new buildings (that is, 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 the 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?

Acquisitions of real estate generally trigger transfer tax at a rate of 5.09%. The buyer usually pays this, although the parties may decide 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 the sale.
- Sales of new buildings (see Question 17) are subject to reduced transfer tax of 0.715%.
- Acquisitions of real estate by real estate dealers are subject to reduced transfer tax of 0.715%, provided the buyer undertakes to resell within four years from acquisition (or 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 a 5% 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?

Acquiring a company holding real estate, instead of directly acquiring real estate portfolios, can mitigate real estate tax liability, as this can lead to either:

- A reduction of registration duties. This tax is then 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.

HOLDING BUSINESS PREMISES

20. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria? If yes, please give brief details.

There are no legal targets to reduce greenhouse gas emissions from buildings, although targets exist for specific industrial activities.

New buildings or additional constructions to existing buildings, must be built according to energy efficient standards (for example, the RT 2005 standard) (*Article R.111-20, Construction and Housing Code*). These standards will be modified in the future (see Question 42).

21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties, for example through outsourcing transactions? If yes, please give brief details.

It is increasingly common for real estate companies to entrust third parties (that is, specialised suppliers of services) with the asset management and/or property management of their real estate assets. The consideration paid to managers is usually calculated as a percentage of the collected rents.

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

Legal aspects

Foreign-registered or foreign-controlled entities are free to make real estate investments in France, but they must subsequently file a declaration with the French Tax Administration (*Direction du Trésor*) if building 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 which 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\$21 million) must also subsequently be notified to the central bank (*Banque de France*) for statistical purposes.

In addition, a foreign individual who is resident outside the EEA but doing business in France must:

- File a declaration with the regional administration and obtain a receipt (*récépissé de déclaration préalable*), if he is living abroad.
- Have a valid residence permit allowing the business activity if he is living in France.

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

Tax aspects

Foreign legal entities (but not individuals) that hold, directly or indirectly, real estate located 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:

- International organisations, sovereign states or one of their institutions, including the legal entities, bodies, trusts, or equivalent institutions that they control and have a majority interest in.

- Entities whose French assets are not mainly composed of real estate.
- Entities whose shares are significantly and regularly exchanged on a regulated stock exchange, including any subsidiary entities whose total shares they hold directly or indirectly.
- Entities with their registered office located in France, in a EU member state or in a country or territory that has concluded a reciprocal tax or mutual assistance treaty with France and which either:
 - have a share in properties located in France representing less than EUR100,000 (about US\$140,863) or 5% of the property's market value;
 - are established to manage pension funds (including partnerships between entities), or as charities with acknowledged public utility or a not-for-profit purpose, if their activity or financing justifies the ownership of the real estate assets or rights; or
 - are incorporated as an OPCI (with certain conditions), or a form regulated by similar rules in the country in which they are incorporated.

23. 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 documentation.

24. 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 for sale in certain pre-defined zones.

A seller (in practice through its notary) must notify the local public authority of the terms and conditions of the contemplated sale by filing a declaration of intent to alienate (*déclaration d'intention d'aliéner*).

If the local public authority wants to purchase the property, it then has two months to give notice of its intention to acquire the property, stating whether it intends to purchase it at the price mentioned in the declaration of intent to alienate or at a lower price. If the local public authority fails to reply within the two-month time limit, it 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*) sets the price based on the market value.

25. 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 the business licence tax (*taxe professionnelle*), since it takes account of the 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

26. 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 of putting upstream guarantees in place under French law.

27. How is real estate commonly used to raise finance?

Real estate is used to raise finance mainly through subscription of bank debt, secured by mortgages and other real estate related security interests (assignment of rents and of insurance indemnity, if any).

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

28. What are the most common forms of security granted over real estate to raise finance? How are they created and perfected (that is, made valid and enforceable)?

Mortgages over real estate and assignments of receivables (such as rents and insurance indemnities) are often granted to raise finance.

Mortgages must be granted by a notarial deed, which must be subsequently registered at the local land registry, to allow the title holder to exercise owners' rights against third parties.

Assignment of receivables forms (*bordereau Dailly*) must be executed by the assignor, to be effective between the parties for assignments of receivables and against third parties. There are no specific registration requirements.

29. Is real estate securitisation common in your jurisdiction? If yes, please give brief details.

Real estate securitisation is not widespread in France due to constraints and costs. The current market difficulties render further development in this area unlikely in the near future.

REAL ESTATE LEASES

30. Are rents or lease provisions regulated or freely negotiable?

The general principle of freedom to negotiate contracts (*liberté contractuelle*) applies to leasing commercial premises. However, certain leases of commercial premises can be subject to public policy and mandatory rules under Article L 145-1 to Article 145-60 of the Commercial Code, particularly leases of:

- Shops and commercial premises accessible to the general public.
- Commercial offices, that is, those used by registered commercial companies or individual tradesmen and not professional services.
- Teaching institutions, administration centres and so on.

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

Rents can 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 the variation of the national cost of construction index, published quarterly by the National Institute for Statistics and Economic Studies (INSEE). The commercial rents index (*Indice des Loyers Commerciaux*) can also be used where the parties have expressly chosen this, although this does not apply to office and warehouse premises (see Question 42).

Indexed rents can also be reviewed at any time if the rent has increased or decreased as a result of the indexation by more than 25% since the last date the rent was agreed (*Article L.145-39, Commercial Code*).

If the initial contractual term of the lease is up to and including 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. If so, the rent of the renewed lease can be set by reference to market value, which is usually substantially

higher than the indexed rent. The *plafonnement* provisions do not apply to office space and single-use premises (*locaux mono-valents*) (for example, theatres, clinics and hotels), or where rents are based on the tenant's turnover (*clause recettes*).

Rents (except for furnished premises) are not automatically subject to VAT. However, a landlord can elect to charge VAT on rents when the buildings are of professional use so as to:

- Offset collected VAT against input VAT that it has incurred.
- Avoid the 2.5% tax on certain rental income from real estate buildings completed more than 15 years ago. Rents subject to VAT or received from the state are exempt from this tax. This tax is paid by the landlord, and is generally passed on to the tenant and, in contrast to VAT, the tenant cannot recover this.

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

32. Is there a typical length of lease term and are there 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 be for at least nine years, subject to certain exceptions for short-term leases. A longer term is possible, but leases exceeding 12 years must be registered with the local land registry for 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 to renew its lease. 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.

33. 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, 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.

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

Named tenants can share their business premises with group companies and third parties, provided the landlord has expressly authorised the tenant to enter into subletting agreements.

The lease usually provides for an authorisation to sublet the premises to companies in the tenant's corporate group, provided the (main) tenant remains jointly and severally liable with the subtenant to pay the full rent.

35. 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 the rent is net of all charges, costs and expenses, the tenant bears all repair costs, including all major structural repairs.

36. Who is usually responsible for insuring the leased premises?

The landlord is legally responsible for insuring the property, but the cost is very often passed on to the tenant. The tenant must pay for insuring all risks specific to the running of its own activities, and cannot claim against the landlord's insurer for these.

37. 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?

The landlord can terminate a commercial lease if:

- The tenant fails to pay rent and/or service charges.
- The tenant fails to comply with any other substantial provision of the lease.
- Commercial leases usually contain a termination clause (*clause résolutoire*) allowing automatic termination in these circumstances. However, a bailiff must serve formal notice to the tenant, giving at least one month to remedy the breach before termination.
- The landlord can also terminate in the specific situation where it intends to build or re-build the existing building (in which case the landlord can terminate the lease at the end of each three-year period, subject to giving six months notice).

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

If the parties fail to include a termination clause in the lease, the landlord must start a full action on the merits, to request termination of the lease due to the tenant's default.

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 to terminate the lease at the expiry of each three-year period (see *Question 32*).

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

Under French law, the opening of insolvency proceedings triggers an automatic stay of all actions against the insolvent tenant. Creditors whose claims arose before filing, 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:

- 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 on which the tenant has knowledge of the administrator's decision not to pursue the lease.
- At the landlord's request, as a result of a rent payment default, for rent and service charges due after the opening of the proceedings. The landlord can only ask for the 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 opening 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 lease is transferred, any clause of the lease providing that the transferor is jointly and severally liable with the transferee is null and void. If the liquidator decides not to continue the lease, the lease is terminated on the date on which the tenant has knowledge of the administrator's decision not to pursue the lease.

The landlord can also claim judicial termination of the lease or invoke the termination clause (if any) on any grounds before the opening of liquidation proceedings (except payment defaults), provided that the landlord requests it within three months following 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 opening of the proceedings, where the tenant continues occupying the premises after the judicial liquidation judgment.

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

PLANNING LAW/ZONING

39. 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 divide the area into zones of different uses, and attribute building density ratios to each zone.

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

- A building permit is generally required to either:
- Erect new buildings.
- Carry out works on existing buildings, if those works result in change of use, change of the external appearance or volume, or creation of additional surfaces.

Specific authorisations (*autorisation d'exploitation commerciale*) are also required to operate a commercial activity (such as retail premises, hotels or cinemas) beyond specific legal thresholds.

Authorisations to operate classified facilities for environmental protection (*installations classées*) may also be required.

41. In relation to planning consents:

- Which body grants initial planning consents?
- Do third parties have the right to object? If yes, please give brief details.
- In what circumstances is there a public inquiry?
- What is the standard legal instruction deadline after receipt of the application?
- Is there a right of appeal against a planning decision? If yes, please give brief details.

Initial consents

Applications for building permits are made to the local planning authority, normally the mayor, or in exceptional cases, the state's local representative. The project must comply with the local land use plan, and with any relevant legislation (for example, restricting building in protected coastal or mountain areas). Building permits lapse if works are not started within two years of delivery of the permit to the applicant. After this initial two-year period, the permit also lapses if construction works are interrupted for more than a year, although this period can be extended by one year.

As a temporary measure, the initial lapsing period has been raised to three years for all building permits (*Decree n°2008-1953, 19 December 2008 regarding extension of the validity period of construction authorisations*).

- Issued before the Decree came into force but still valid at that time.
- Issued before 31 December 2010.

REAL ESTATE ORGANISATIONS

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

This provides useful information on French regulations applicable in the real estate and construction sector.

W www.developpement-durable.gouv.fr

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

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

W www.paris.notaires.fr

Le Moniteur

This is a major publication in the construction and real estate sector.

W www.lemoniteur-expert.com

Opérations Immobilières

This is a publication in the construction and real estate sector.

W www.operationsimmobilieres.com

CB Richard Ellis Bourdais

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

W www.cbre.fr

The additional one-year extension (*see above*) also applies to these building permits.

Third party rights

If a building permit 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 on site, interested third parties can appeal against the permit. Even if the notice is not posted, appeals are time barred after one year starting from the completion of the construction works. Appeals are filed with the local authority that issued the permit, 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, or to erect a building for dwelling or office use if the building is 50 metres or more high.

Standard legal instruction deadline

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

Appeals

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

REFORM**42. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.**

Due to a substantial increase of the national construction cost index over the past few years, some study groups have considered new indexes:

- The commercial rents index (*Indice des Loyers Commerciaux*). Under a recent law of 4 August 2008 (*Law on Modernisation of the Economy*), rents can now be adjusted in proportion to the variation in this. However, the commercial rents index is not applicable to office and warehouses premises (see *Question 31*).

- A service rents index (*Indice des Loyers d'Activités Tertiaires*) applicable to office premises is currently being discussed. Several real estate professionals' associations have agreed to promote its legal adoption.

Grenelle II is a bill due to be submitted to Parliament addressing environmental concerns by improving energy efficiency and reducing energy consumption. For example, under these proposals, by 2012, owners must undertake works to ensure better energy efficiency in office buildings within the following eight-year period.

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