



# ICLG

The International Comparative Legal Guide to:

## **Real Estate 2012**

A practical cross-border insight into real estate law

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## EDITORIAL

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Welcome to the seventh edition of *The International Comparative Legal Guide to: Real Estate*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of real estate.

It is divided into two main sections:

One general chapter. This chapter looks at the development of the Eurozone and the CEE/SEE region and its affect on the real estate market.

Country question and answer chapters. These provide a broad overview of common issues in real estate laws and regulations in 38 jurisdictions.

All chapters are written by leading real estate lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Lagler of Schoenherr, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk)

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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 France. 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 11.1.**

- For property titles, transfers of ownership, civil leases: the Civil Code (*Code civil*).
- For commercial leases and administrative authorisations (e.g. for retailers, hotels, or movie theatres): the Commercial Code (*Code de commerce*).
- For the construction or repurposing of buildings: the Construction Code (*Code de la construction et de l'habitation*).

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

Not applicable. Nevertheless, French lawyers are familiar with common law concepts and adapt French contracts accordingly.

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

Foreign investors are bound by the Hague Convention of 15 June 1955 on the Law Applicable to International Contracts for the Sale of Goods.

## 2 Ownership

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

There are none, either for resident or non-resident persons. There are no foreign exchange controls, though certain foreign investments may involve formalities with the *Banque de France* or the *Direction du Trésor*.

## 3 Real Estate Rights

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

- Permanent ownership:
  - Freehold (*pleine propriété*).
  - Bare ownership (*nue propriété*).
- Concurrent ownership:
  - Co-ownership (*copropriété*) or three-dimensional unit division (*division en lots de volumes*).
  - Joint-ownership (*indivision*).
- Temporary ownership:
  - Usufruct (*usufruit*).
  - Long-term rights: construction lease (*bail à construction*); 99-year lease (*emphytéose*); or concession (*concession*).
- Easements.
- Mortgages.

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

Ownership of the land and of a building constructed thereon may be separated in the following main cases:

- three-dimensional unit division (one unit division corresponding to the building, and another unit division corresponding to the land) may be created to achieve such a result, but reciprocal easements still link the land owner and the building owner; and
- long-term leases (construction lease and 99-year lease) may grant the tenant the ownership of the building while the landlord remains the owner of the land.

## 4 System of Registration

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

All land in France must be registered in the cadastre and the land registry (*conservation des hypothèques*).

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

There is no state guarantee *per se*. However, title is guaranteed both by:

- Notaries (*notaires*), who verify that the seller's property title is valid and enforceable.
- Land Registrars (*conservateurs des hypothèques*), who ensure that deeds are properly registered.

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

All conveyances of real property, all interests in real property (e.g. mortgages, easements) and occupation rights or leases for a term in excess of 12 years must be recorded with the land registry in order to be enforceable against third parties.

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

- Legal easements such as wayleave rights for landlocked properties or the legal curtailment of ownership.
- Short-term occupation rights (i.e. less than 12 years).

#### 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. If a seller conveys the same interest in real property to two different buyers, the buyer who is first to record his acquisition will prevail, and if two interests in the same property are recorded on the same day, priority is given to the interest recorded pursuant to the document bearing the earlier date.

It must be noted that special real privileges (*privilèges immobiliers spéciaux*) such as the vendor's lien (*privilège du vendeur*) or lender's lien (*privilège de prêteur de deniers*) rank from the date of the deed of sale completion (and not from their registration date), provided they are recorded with the land registry within two months of that date.

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

In theory, ownership of a piece of land is deemed to be transferred as soon as the parties to the deed reach an agreement as to (i) the scope, and (ii) the price of the sale. In practice, however, we consider that the transfer occurs when the deed is recorded before a notary (*notaire*).

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

Please see question 4.5 above.

## 5 The Registry / Registries

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

The location of the property determines which of the 354 land registries is territorially competent.

Rules and requirements do not differ between locations, except in *Alsace-Moselle* where a *Livre Foncier* managed by the Court (*Tribunal d'Instance*) replaces the land registry.

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

The land registry provides the owner with an official hard copy of the registered title bearing the official stamp and the registration number.

### 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?

- Although legally entitled to do so since 1 February 2006, notaries (*notaires*) are very reluctant to use electronic means to complete transactions.
- The land registry needs to be provided with an extract of the notarial deed of sale prepared by the notary for the registration of ownership right.
- The land registry cannot yet be accessed electronically.

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

Please see question 4.2 above.

### 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?

Provided a specific form is sent and a fee is paid to the Land Registrar, the land registry can be freely consulted for any information pertaining to:

- the various successive owners (transfer date, purchase price), easements, encumbrances regarding a specific plot of land; or
- all the properties owned by a specific entity within the land registry's jurisdiction.

## 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 France? Please briefly describe their roles and/or duties.

#### a) Notaries (mandatory).

Notaries (*notaires*) are legal professionals with a monopoly on the execution and registration of all real estate documents (deeds of sale and mortgages).

- b) **Real estate agents.**  
 c) **Lawyers.**  
 d) **Others.**

Land, technical, and environmental surveyors are hired during the due diligence process to carry out land surveys, environmental surveys (pollution and decontamination issues), and technical surveys (quality and conformity of the building structure).

## 6.2 How and on what basis are these persons remunerated?

### a) Notaries

The rates of their compulsory fees are set by the Government (approximately 0.825% excl. VAT).

### b) Real estate agents

They receive a percentage of the sale price (approx. 1 to 5%).

### c) Lawyers

Lawyers' fees are flexible and depend on the clients' needs. Most of the time they are a combination of:

- A fixed amount.
- An hourly fee depending on the qualifications and seniority of the lawyer.
- A percentage of the purchase price.
- An abort fee together with a success fee.
- A volume discount, where applicable.

### d) Others

Fees vary according to the scope of the surveys as well as the type and complexity of the property structure and location.

## 6.3 How has the real estate market in France recovered or reacted following the global credit crunch and worldwide recession in 2008/2010? What were the most important real estate transactions in France in the past year? Please include both local and international investors in your answer.

Real estate transactions have slightly increased during the past year (the amounts invested in corporate properties have increased by 46% compared to 2010).

We are uncertain, however, whether this upturn will continue during 2012. Most of the transactions completed during the past year have been carried out to the benefit of certain REIT in consideration of the termination on 31 December 2011 of the specific tax regime regarding taxation of capital gains from the sale of real estate (absence of taxation when the REIT was the seller - corporation tax at 19% instead of 33.1/3% when the REIT was the buyer).

In addition, we have seen banks restarting to provide financing but the leverage rates appear to be lower (current average loan to value at 50%).

## 6.4 Is there a trend in France towards the investment in retirement homes / nursing homes due to the increased ageing of the population?

The supply of specific accommodation for seniors (EHPA) seems to be structurally insufficient in the face of a growing demand (average occupancy rate around 95%). Not only is there an identified need for new places, but major efforts are also required to renew the existing stock.

As a result, we have seen investors specialised in possessing such assets via REIT emerging in the past few years. Competition is now

so keen that the rental returns being offered have fallen (from more than 8% to 6% for the best products). Indeed, the sector has remained practically unaffected by the financial crisis.

Although it is a promising niche in light of the stability of the underlying asset, the sale and lease back of the EHPAs remains a niche market that concerns limited volumes. Given that the specific tax regime applicable to REIT is no longer valid in 2012 (see question 6.3), the sector will have to change in structure.

## 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?

- A copy of all the transfer deeds over the previous 30 years to ascertain that the seller is indeed the owner.
- A land registry certificate to ascertain that there are no encumbrances and that the seller's title to the property is valid.
- A planning certificate to ascertain that the building was legally erected on the land.
- Environmental certificates for asbestos, lead poisoning, woodworm, legionella, energy performance, conformity of internal gas and electrical fittings and individual sanitation (since 1 January 2011).
- A waiver of municipal pre-emptive rights (if applicable).

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

Yes, regarding material information and especially with regard to the environmental certificates referred to in question 7.1.

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

Yes, and in certain cases, the transfer of the property may be rescinded, e.g. if the misrepresentation involves material information.

### 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?

Sellers used to provide buyers with various representations and warranties (in addition to the mandatory warranties) regarding the legal situation of the building and its use, the extent and sustainability of the rental income, its compliance with all applicable regulations, including environmental laws, and other specific representations and warranties depending on the results of due diligences.

Considering the current market (lower prices), sellers are no longer willing to provide buyers with contractual representations and warranties.

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

The seller is legally required to warrant that:

- He is the owner of the property.
- He has full title to the property.
- The buyer will not risk being evicted because of the seller or the enforcement of any third party title to the property, or of any undisclosed charge or encumbrance.

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

Provided he was made aware of their existence prior to the purchase of the property, or that they were registered with the tax authorities (*date certaine*), the buyer is required to implement any existing leases.

## 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?

- Generally speaking, banks benefit from a monopoly on money-lending in France. Consequently, an entity that lends money to third parties must either be licensed as a lending institution in France, or be a lending institution that is (i) licensed in the European Union, and (ii) benefits from a “*European passport*” (EU Directive 2000/12).
- Although intra-group loans do not fall within the bank monopoly, upstream guarantees (i.e. where the target company secures the purchase of its own shares) are prohibited.
- Of particular note is that the all-in rate of interest (*taux effectif global*) must be:
  - Expressly stipulated in every loan agreement.
  - Compounded and calculated on a 365-day basis.

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

A real estate lender will seek to secure its loan with a first ranking security interest over the property, such as a first ranking mortgage (*hypothèque conventionnelle de premier rang*) or a lender’s lien that creates a direct lien over the property.

It should be noted that it is now possible to secure a loan by way of a transfer of the property to a trust (*fiducie sûreté*).

A real estate lender will also seek to secure its loan over the debtor’s other assets (see question 8.1 above) such as:

- An assignment of receivables (rental incomes) by way of security (*cession Dailly*).
- A pledge over the debtor’s bank accounts.
- A share pledge agreement.
- A pledge over on-going business.

### 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?

Since ordinance No 2006-346 dated 23 March 2006, there have been two different options for a mortgagee to realise a mortgaged property:

- regarding both legal mortgages and conventional mortgages, the mortgaged property can either be sold amicably (if the mortgagor agrees the proposed purchase price) or by auction (in both cases a court has to be involved to validate the proposed purchase price or to perform the auction); or
- regarding conventional mortgages, the mortgaged property can be attributed directly to the mortgagee without having to involve court proceedings, as long as the attribution is provided for in the deed of mortgage; in this event, the valuation of the mortgaged property has to be ascertained by an expert listed before the competent court.

### 8.4 What minimum formalities are required for real estate lending?

#### ■ Mortgages / Lender’s lien

Registration with the land registry. Accordingly, mortgage deeds and loans must be executed before a notary (*notaire*).

#### ■ Trust by way of a security

Registration with the National Trust Registry (*Registre National des Fiducies*).

#### ■ Securities over the debtor’s other assets

- Registration with the tax authorities.
- Registration with the Trade and Companies Registry.
- Notification by a bailiff.

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

Please see question 4.5 above. A lender whose loan is secured by a first ranking mortgage or lender’s lien benefit from a lien over the property and accordingly a preferential right over the proceeds of the sale of the property against non-secured creditors or against secured creditors whose mortgages were registered after those of the lender.

Nevertheless, certain creditors whose respective privileges do not need to be registered with the land registry benefit from statutory privileges (regarding judicial costs, employees’ salaries or co-owners syndicates’ debts) rank before any other creditors as their privileges do not need to be registered with the land registry.

Insolvency proceedings such as judicial reorganisations and liquidation procedures may affect the creditors’ rights (whether or not they are secured by a mortgage) imposing on all creditors a moratorium or forgiveness of their respective debts.

## 9 Tax

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

Yes, the transfer of real estate is subject to transfer tax at a rate of 5.09% assessed on the purchase price of the property, or on its fair-market value if higher. The Land Registrar’s salary (“*salaire du conservateur des hypothèques*”) at 0.10% of the purchase price must also be paid.

However, if the transfer of real estate involves buildings that are less than 5 years old, only a land registry tax (“*taxe de publicité foncière*”) at a rate of 0.715% and the Land Registrar’s salary (“*salaire du conservateur des hypothèques*”) at a rate of 0.10%, assessed on the purchase price of the property or on its fair-market value if higher, must be paid.

The transfer of improved land is only subject to a €125 transfer tax, provided the buyer (i) is a VAT payer, and (ii) undertakes to erect a building within 4 years from the acquisition date.

Property dealers benefit from a specific tax regime.

Transfer taxes are due by the buyer, although both parties are jointly and severally liable for the tax.

## 9.2 When is the transfer tax paid?

Transfer tax is paid up front to the notary (*notaire*, see question 4.2) upon the sale of the building.

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

Since 11 March 2010, new VAT rules apply to property transfers and differ according to whether or not the seller is a VAT payer.

Where the seller is **not** a VAT taxpayer, it is VAT-liable on the sale of a building only in the case where the sale occurs within 5 years of the completion of a building having been purchased as a building-to-be (“*vente en état futur d’achèvement*”).

Where the seller is a VAT taxpayer, he is VAT-liable in the following cases:

- Sale of improved land.
- Sale of a building-to-be.
- Sale of a less-than-5-year-old building, regardless of the number of transfers during the 5-year period.
- Sale of a more-than-5-year-old building, in case of electing to pay VAT.

VAT is generally assessed on the sale price of the property. Exceptionally though, if the seller was not able to deduct the VAT levied on its own acquisition of the property, the seller’s VAT tax base becomes the margin between the entire sale price and the original purchase price. Any VAT payer may benefit from this new VAT-on-margin rule, even without being a property dealer.

In any case, unless it is established outside France, the seller of the property is the VAT payer.

There are several exemptions with respect to VAT, e.g. the transfer of a totality of assets or part thereof (*transmission d’une universalité totale ou partielle de biens*, French Tax Code, Article 257 bis).

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

Corporation tax at 33.1/3% is levied on the capital gains from the sale of real estate by a **French resident corporate entity**. The sale of a real estate asset to a REIT no longer benefits (since 1 January 2012) from the lower rate of 19%.

Income tax at 19% (plus 13.5% in social contributions) is levied on the capital gains from the sale of real estate by a **French resident individual**. There are several exemptions (e.g. the sale of a taxpayer’s main residence) and the tax basis can also be decreased: as from 1 February 2012, the tax payer benefits from a progressive deduction, the total exemption being applicable after 30 years (whereas before 1 February 2012, the total exemption was applicable after 15 years).

The sale of real estate by a **non-French tax resident** is subject to capital gains tax at the following rates:

- For companies: prepayment at 33.1/3%. The prepayment can be offset against the French corporate income tax amount.

- For individuals: prepayment at 19% for EU Member States, Iceland, and Norway, or at 33.1/3% for non-EU Member States.
- For companies or individuals located in a non-cooperative State or territory: prepayment at 50%.

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

The transfer of shares in a real estate company (i.e. a company predominantly owning either French property or shares in companies predominantly owning property) is subject to a 5% transfer tax, the tax basis being the fair market value of the assets of the company less the liabilities relating to the acquisition of the real estate assets.

Transfer tax is due by the buyer. When the sale of the shares occurs abroad, the sale must be drawn up by a French notary and recorded within one month at the tax office.

The transfer of shares in a company is not subject to VAT.

Capital gains tax is levied as though the real estate were directly owned, unless otherwise provided for under a tax treaty in the case of foreign residents (e.g. the France/Luxembourg tax treaty).

## 10 Leases of Business Premises

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

#### a) Commercial leases

Commercial leases (“*baux commerciaux*”) are governed by Articles L.145-1 to L.145-60 of the Commercial Code and by Decree No 53-960 dated 30 September 1953, the provisions of which are not included in the Commercial Code (the “Status of Commercial Leases”).

The general conditions of the lease, such as the maintenance and repair of the buildings, are governed by Articles 1714 to 1778 of the Civil Code.

#### b) Professional leases

Professional leases (“*baux professionnels*”) are regulated by Article 57A of Law No 86-1290 dated 23 December 1986 and by the Civil Code.

### 10.2 What types of business lease exist?

There are two main types of business leases: Commercial Leases; and Professional Leases.

The status of professional leases may apply to leases of premises exclusively dedicated to professional purposes. Although the concept of “professional activity” has not yet been defined by Law, the French courts have ruled that a professional activity cannot be commercial, agricultural, industrial, or craft-related.

Only those rules that concern Commercial Leases are presented here.

### 10.3 What are the typical provisions for leases of business premises in France 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?

#### a) Length of term

The minimum term for a commercial lease is nine years. If the term



exceeds twelve years, the lease must be drawn up as a deed by a notary (*notaire*), registered, and recorded in the land registry, which gives rise to substantial expenses.

Short-term leases ("*baux dérogatoires de courte durée*"), not exceeding 24 months but renewable within that period, may be signed. They are exempt from the provisions of the Status of the Commercial Leases.

#### b) Rent increase

##### ■ Mandatory three-year rent review:

Each party to a commercial lease may request before a court that the rent be fixed at the rental value at the end of each three-year period (Commercial Code, Article L.145-38). The rent variation should not exceed the variations of the Construction Cost Index (CCI), although exceptions do exist.

##### ■ Increase or decrease of the rent by more than 25%:

In the event that the rent varies by more than 25% in comparison with the rent previously set by contract (or by court order) due to the indexation clause, either party is entitled to request that the rent be decreased or increased up to the rental value of the premises (Commercial Code, Article L.145-39).

##### ■ Contractual indexation:

The parties can also provide for an automatic annual indexation of the rent, which is usually based on variations of the quarterly CCI or RLI (Retail Rents Index) published by the INSEE.

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

The landlord cannot prevent the assignment of the lease to the buyer of the tenant's ongoing business. However, the following provisions are accepted by French courts:

- Provision submitting the assignment to the landlord's express and/or written consent.
- Provision requiring that the tenant obtain the landlord's approval of the assignee.
- Provision requiring that the tenant notify the landlord of the assignment.

Sub-leasing is prohibited unless the parties agree otherwise in the lease.

#### d) Insurance

The landlord usually insures the building against fire, floods, explosions and all related risks. The landlord also insures itself for civil liability, and its insurance may also cover the loss of rents.

The tenant insures the premises, fittings, equipment and installations against the same risks. It also insures itself for civil liability.

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

Change of control provisions are occasionally included in commercial leases.

#### e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

Should the tenant be merged with another company, or should part of its assets be contributed, the company will automatically be substituted in the rights and the obligations of the tenant under the lease.

#### f) Repairs

In the absence of any provision to the contrary, the landlord is responsible for structural and external repairs, and the tenant is responsible for all other repairs.

The lease may, however, provide that the tenant should bear the cost of all repairs (typically in "triple net" investor leases), such as major works, conformity works and works required by the administration, as well as repairs due to depreciation or acts of God.

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

#### a) Tax on rental income:

For buildings more than 15 years old, a tax on rental income ("*contribution sur les revenus locatifs*") may be due in certain cases by the landlord. The tax is equal to 2.5% of the rents, but is not levied where the lease is subject to VAT. The cost of this tax can be contractually charged back to the tenant.

#### b) Value added tax (VAT):

If the premises are let unfurnished, the landlord can elect for VAT on the rents at the rate of 19.6%. The landlord is therefore authorised to deduct VAT on its acquisition of the building and on its lease-related expenses.

### 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?

Unless otherwise provided for by the parties, the tenant is entitled to terminate the lease at the end of every three-year period by serving a six-month prior notice by a bailiff.

A landlord has only limited rights of termination at the end of each three-year period. These are available where important construction works are to be undertaken on the premises.

The landlord can also terminate the lease if the tenant is in serious breach of its obligations under the lease.

Upon its termination, a commercial lease may either be renewed (at the landlord or the tenant's request), terminated by the parties (the tenant is then entitled to claim compensation for eviction) or tacitly extended for an undefined period of time if the parties remain silent after the expiry of the term (each party then being entitled to terminate the lease at any moment by serving a six-month prior notice by a bailiff).

### 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?

Tenants (but usually not landlords) that have sold their interests generally remain liable for their obligations, at least for the initial duration of the business lease.

### 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).

Green leases are progressively being implemented by law in France.

Recent Acts known as "*Grenelle 1*" and "*Grenelle 2*", respectively dated 3 August 2009 and 12 July 2010, are aimed at reducing energy consumption, especially in buildings, by providing a legal framework. Most *Grenelle 1* and *Grenelle 2* provisions will progressively enter into force over the next few years, such as:

- An energy performance diagnosis, now required for all but agricultural and seasonal lease agreements (Article L.134-3-1 of the Construction Code).
- An energy performance grade for the premises, required in all published rental ads since 1 January 2011 (Article R.134-5-1 of the Construction Code).
- An environmental appendix, provided for by a decree dated 30 December 2011 to be included with leases entered into for office or retail purposes and whose surface exceeds 2,000 sq.m., effective as of 1 January 2012 for leases signed or renewed on that date and on 14 July 2013 for previously signed leases. The environmental appendix includes information on actual water and energy consumption, waste treatment, heating, cooling, ventilation and lighting equipments in the building. The decree dated 30 December 2011 also provides for the obligation of the landlord and the tenant to regularly establish a balance of the evolution of the environmental and energy performance of the leased premises.

## 11 Public Law Permits and Obligations

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

The Urban Planning Code (*Code de l'urbanisme*): sets out zoning rules and governs the location, size, and main characteristics of buildings.

The Construction Code (*Code de la construction et de l'habitation*): sets out regulations for the proper use of building (including compulsory specifications for buildings open to the public or of great height).

The Environmental Code (*Code de l'environnement*): defines risky areas and uses, as well as the related prohibitions and requirements for building contractors and owners.

The Commercial Code (*Code de commerce*): includes rules applicable to the opening of retail premises but an amendment currently under discussion before the Parliament aims at cancelling this procedure.

It should be noted that the *Grenelle 2 Act* (see question 10.7) should lead to amendments in both the Urban Planning Code and the Environmental Code, including:

- New rules for setting out and revising urban-planning documents.
- New definitions of floor areas (i.e. "greener").
- Changes in building permits.

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

The State or local authorities are entitled to:

- Purchase properties that are up for sale in areas where pre-emptive rights are previously defined.
- Expropriate properties that are necessary for the implementation of specific common interest projects.

Where no mutual agreement can be reached by the parties, the purchase price is settled in court.

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

Prior to granting building permits, the mayor ensures that town

planning rules are complied with.

The warden (*Préfet*) may also be involved in specific cases where the provisions of the Construction Code are applicable.

Dedicated administrations are also in charge of supervising the construction of retail premises as well as compliance with environmental issues.

All of the above can provide information regarding applicable regulations, and mayors deliver certificates on applicable town-planning regulations upon request.

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

The main permits pertaining to works and/or the use of buildings are as follows:

- Certain minor constructions (e.g. less than 20 sq.m.) or the repurposing of buildings which does not include any works are subject to prior reporting to the authorities.
- Building permits are required for other constructions.
- Retail premises (and cinemas) are subject to specific authorisations which must be granted prior to filing for a building permit.
- Any construction or use of specific installations that might endanger or damage the environment or public health is subject to prior authorisation, registration or information of the authorities, according to the danger level (*ICPE* regulation).
- A specific permit for certain activities (especially offices) is needed when the project is located in the Paris area.

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

The difficulty in obtaining permits depends on the project, its location, and the applicable rules.

In some cases, implied authorisation can be obtained if the authorities do not reply to a formal request within a timeframe defined by law.

It is quite common to obtain a permit, as long as the project complies with applicable regulations. However, third parties are entitled to challenge a permit before the courts if they can prove that they suffer direct damages as a result.

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

The cost of the permit depends on the project and on whether or not the presence of an architect is necessary (required in most cases).

Deadlines differ according to the type of permit requested.

All permits delivered according to the Urban Planning Code are to be handled by the authorities within a timeframe provided for by law (e.g. two months for building permits). Permits can be withdrawn by the authorities within three months, and may be challenged by third parties within the two months following their display on the construction site, i.e. lengthened time to obtain the final permit.

Moreover, additional delays may be involved in certain specific cases, such as great height, archaeological or historical issues, opening to the public, etc.

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

There are several regulations for the protection of historic monuments, applying both to the monuments themselves and the buildings located nearby such monuments.

They mainly affect the possibility to implement works on them, but do not hinder transfers, subject to specific information obligations (notification to the French Administration and information of the buyer).

The prior consent of the French Administration is only required in case of transfer of an historic monument by a public entity.

### 11.8 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 France?

This sort of specific information is usually provided by the vendor in the course of the data room through the communication of a former pollution diagnosis based on environmental documents in his possession.

If the vendor did not carry out a pollution diagnosis in the past, the buyer can ask the French Administration (DREAL) to provide the documents needed for his information or consult the following databases on-line:

- BASIAS (inventory of industrial sites and service activities); or
- BASOL (database about polluted sites and soils).

### 11.9 In what circumstances (if any) is environmental clean up ever mandatory?

In the event of potential risks to the environment or public health, clean-up is compulsory:

- On land (mainly waste removal from soil and the sanitation of water).
- On buildings (asbestos, *legionella*, etc.).

Specific clean-up measures are required following the termination of an activity under *ICPE* regulation (see question 11.4 above).

### 11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in France.

Certificates describing the energy performance of a building are to be attached to transfers of real estate ownership deeds, as well as to residential and, as from 2011, commercial leases.

In addition, as from 1 January 2012, a “green appendix” will have to be attached to certain leases (see question 10.7 above).

New requirements under the “*Grenelle 2*” Act include works for increasing the energy-efficiency of buildings to be implemented no later than 1 January 2020.

## 12 Climate Change

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

Further to the European Directive 2003/87/EC of 13 October 2003, the Environmental Code provides for a mandatory emissions trading scheme, which is currently limited to energy production activities, the production and processing of ferrous metals, the mineral industry, the production of paper and carton material and civil aviation activities as from 2012.

As far as the building sector is concerned, the *Grenelle* Acts (see questions 10.7 and 11.1) are aimed at reducing energy consumption (e.g. through thermal renovation) and greenhouse gas emissions. For this purpose, the “*Grenelle*” building plan sets out a reduction of 50% of the greenhouse gas emissions by 2020. Even if it is not yet mandatory, investors are anticipating the implementation of these new regulations in the current negotiations of leases.

### 12.2 Are there any national greenhouse gas emissions reduction targets?

The *Grenelle 1* Act established target reductions (e.g. dividing greenhouse gas emissions by 4 before 2050).

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

#### a) The *Grenelle 1* Act imposes the following requirements:

- Regarding existing buildings: Decreasing the energy consumption by 38% by 2020 and establishing a primary energy consumption threshold amounting to 150 kWh/sq.m./year. By 2050, the average consumption of primary energy for existing buildings should not exceed 50 kWh/sq.m./year.
- Regarding newly constructed buildings within the tertiary sector:

Recommendation for “low consumption” buildings (less than 50 kWh/sq.m./year of primary energy) as from 1 January 2013.

- Regarding all buildings:

By 2021, all buildings should be “positive energy buildings” (i.e. generate more energy than they use).

#### b) The *Grenelle 2* Act also imposes two further requirements:

- To complete, as from 1 January 2017, an energy performance diagnosis in the buildings where there are heating or cooling installations.
- To carry out works for increasing the energy-efficiency of buildings by 1 January 2020.
- To procure a certificate regarding the respect of the thermal regulation at the end of the work on newly constructed buildings (as from 28 October 2011 for office, educational and residential buildings (only for the residential constructions located in an ANRU area) and as from 1 January 2013 for other residential buildings).

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