

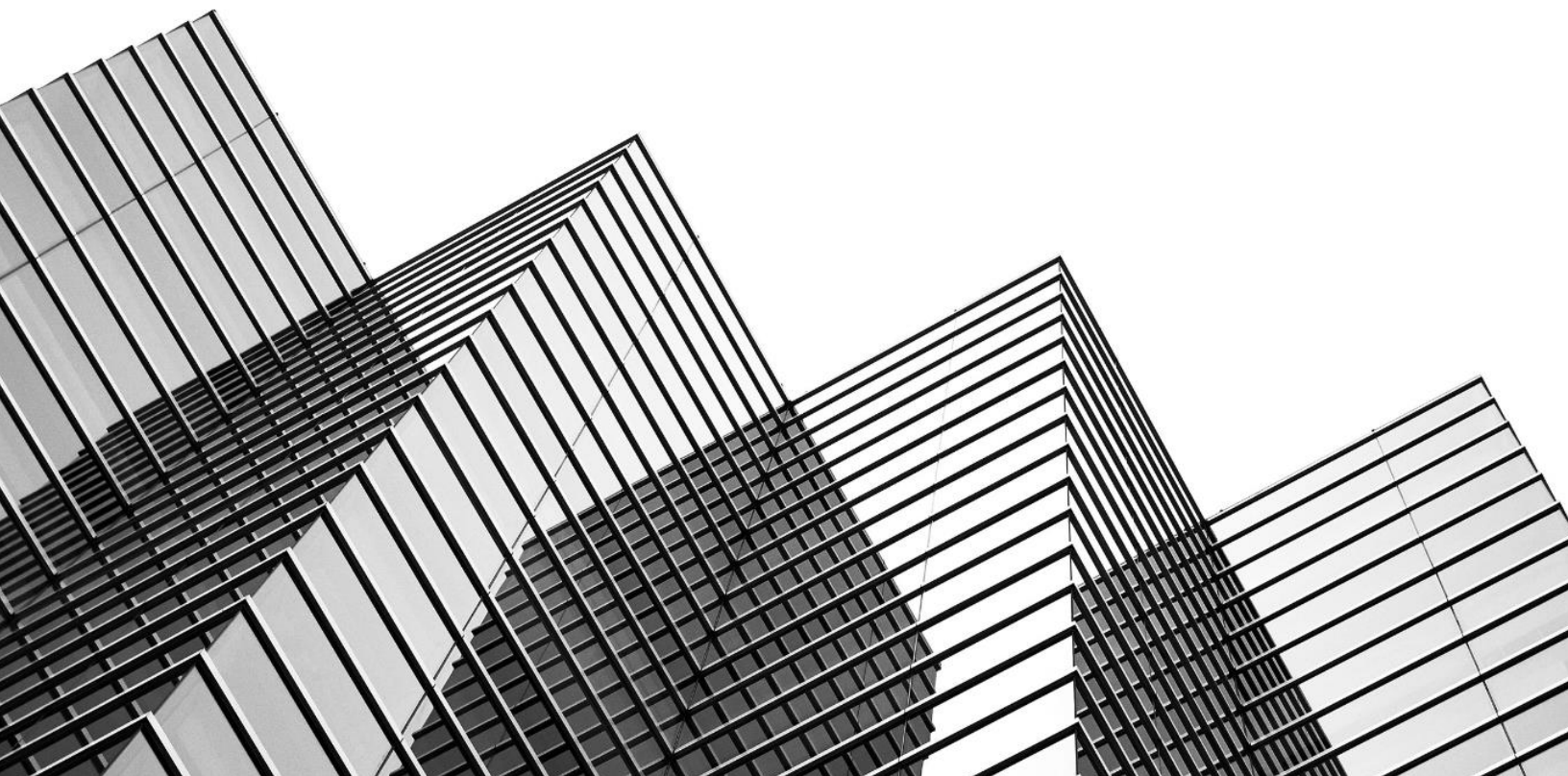


**ALIAN<sup>T</sup>**  
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# GLOBAL QUESTIONNAIRE ON ACQUISITION OF COMMERCIAL REAL ESTATE

A comparative questionnaire on Acquisition of Commercial Real  
Estate in France, Cyprus, Finland, Italy, and Lithuania



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## 1. FRANCE



### **1) Please briefly describe the main laws governing acquisition of commercial real estate in your country.**

French law does not provide for a specific law dedicated to commercial real estate, but there are many regulations for this type of acquisition spread over the various codes and laws. These rules are mainly found in the civil code (obligation's rights / sales law), in the town code, or the construction and housing Code, and in specific decrees.

Among these general rules, some concern the acquisition of commercial real estate. For example, in France, there are the following obligations:

- A) The necessity to establish specific diagnosis, whose list depends on the destination of the real estate acquired.
- B) To sign the deed of acquisition in front of a notary.
- C) The rules which apply in the sale of commercial real estate under collective's proceedings.

## FRANCE

### A) The obligation to establish specific diagnosis for commercial real estate.

The real estate diagnostics aim to inform the buyer on certain aspects of the commercial real estate that he plans to buy. The seller is responsible for the mandatory real estate diagnosis.

For a brief sum-up, the seller must give:

- Energy performance's diagnosis: it indicates the energy class of the property, according to a letter from A to G (A indicating an excellent energy consumption).
- State of risks and pollutions: this diagnosis informs the future occupant of the risks to which the property is exposed such as floods, avalanches, industrial risks etc...
- Asbestos' diagnosis: The objective is to protect the health and safety of people who will be working in the commercial premises.
- Termites' diagnosis: This diagnosis governed by prefectural decree determines the presence or absence of termites in the premises.

Other diagnoses may be requested by the buyer, but the completion of those above-mentioned ones allows a sale to be concluded in complete transparency.

The lack of submission of the legally required diagnostics prevents the seller from conventionally excluding his liability on the subjects concerned.

### B) The monopoly of notaries of all real estate's transaction

In theory, the notary is not mandatory, a real estate transaction without the notary is legally possible under the civil code. But, without the authentic act of sale from a notary, it is impossible to proceed to the publication of the sale at the competent land registry ("*publicité foncière*"s register) and to extend enforceability of the operation to the third party.

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So, the notary draws up an authentic act is highly recommended and legally required to proceed to the publication of the *publicité foncière's register*.

In practice, in major commercial real estate's acquisition, a teams with lawyers and notaries is set up. The lawyer will do the acts related to the acquisition such as the commercial leases & the creation of the company and the notary intervenes for the authentic act of sale.

### C) The rules which apply for real estate transaction under collective's proceedings.

The setting up of a collective procedure, often accompanied by a recovery or restructuring plan, limits the owner's ability to sell the business premises.

If, according to the recovery or restructuring plan, the assets to be sold have not been declared inalienable, in principle, the debtor can freely proceed with the sale of his assets.

Frequently, the recovery or restructuring plan provides for the inalienability of "all the assets of the company" if the commercial property belongs to the liquidated company, any sale becomes impossible until a court decision authorizes the real estate transaction.

In case of judicial liquidation and if the commercial property belongs to the company, the commercial property will be sold to allow the payment of the various creditors. This sale is done either by auction or by private sale.

### **2) Are there any restrictions under your country's legal system with regards to ownership when acquiring a commercial real estate?**

In France, the right to own and enjoy private property is a fundamental right. So, the property is free, it is protected by the constitution, and it is never forbidden to buy. Thus,

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every physical or legal person can buy a commercial real estate, exception made for protected adults and minors (for them, there is a specific frame for their property's rights). All the same, there are rules regulated the use and destination of the real estate, which can make this acquisition inoperative.

It is also necessary to comply with several standards to be an establishment authorized to receive the public.

### Change of use (L631-1 Code de la construction et de l'habitation)

The regulation of change of use, only concerns residential premises transformed for another use (particularly, it is a commercial activity the short-term lease rental) .

On the contrary, no authorization is required if the change of use concerns the transformation of commercial premises into residential premises.

The authorization of change of use is governed by the code of construction and housing. The authorization prior to the change of use is issued by the mayor of the municipality in which the building is located. It is granted on a personal basis and is linked to the occupant.

### Change of destination.

The Local Urban Plan (*PLU*) organizes the city's development by setting urban planning rules and construction rules according to a precise division into different zones. The possible uses of a property are listed exhaustively in the local urban plan (PLU): housing, hotel accommodation, offices, shops, crafts, industry, warehouses, etc.

The change of destination is attached to the premises.

The transformation of a dwelling into professional premises constitutes a change of use subject to administrative control and must therefore receive planning permission.

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### Restrictions related to the co-ownership rules.

It is the co-ownership rules that also determine the destination of the building and whether its use is exclusively for residential, commercial, or mixed purposes. The destination can also be called "exclusively bourgeois", which means exclusively residential, or "simply bourgeois", which admits the presence of liberal professions such as doctors, notaries, lawyers, but not the presence of commercial activities.

Even if the co-ownership rules admit that the destination of the immovable is mixed, they may restrict the commercial exercise to certain activities only or exclude others.

To modify the co-ownership rules, a unanimous vote of the general assembly will be necessary, and very difficult to obtain.

### **3) What types of ownership structures exist in your country with regards to acquisition of commercial real estate?**

In France, the acquisition of a commercial property can take different forms.

It is possible to buy in its personal name or by a company whose social form is free. Any company can buy a commercial property, but only if the real estate acquisition is related to their main activity or if their corporate purpose allows it.

Furthermore, the commercial real estate can be in full ownership, be jointly owned or split up.

- The commercial real estate in full ownership: the owner has full rights to the real property ;
- The commercial real estate jointly owned: The joint ownership means that several people all jointly own the same property, without setting up a company or association;



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- The divided property: in France, it is possible to dismember the property of the real estate. In this case, the owner has only a part of the property's rights. The real estate belongs to the bare owner for ownership without usufruct and to the beneficiary for the usufruct.
- The usufruct is the right to use the real estate and to receive the income it produces. While, the bare ownership hold the property of the thing without being able to enjoy it.
- The tax law organizes the distribution of the value of the real estate between bare ownership and usufruct, according to the age of the beneficiary of the usufruct.
- The transfer of the usufruct by the death of the usufructuary to the bare owner is exempt from inheritance tax. So, there are many tax optimization schemes using the ownership dismemberment mechanism.

#### **4) Please describe in a few steps the processes of transfer of commercial real estate in your country with particular focus to the transfer of the ownership or the title to the buyer.**

In French law, under the civil law, as soon as there is a sale's agreement on the thing and the price, the sale is made.

Whereas in commercial real estate, it is recommended to follow different steps below:

##### Step 1: the meeting of consent

The salesman formulates an offer which can be accepted by the purchaser or to make a counterproposal. This exchange can be framed by a letter of intent to organize the negotiations.

##### Step 2: the promise to purchase.

There are two types of the promise:



## FRANCE

- across promise: the two parties promise, one to sell and the other to buy such as the compromise of sale ;
- a unilateral promise of sale: the purchaser has the right to opt for the acquisition and at any time the purchaser can withdraw.

That it is in one or the other of the configuration, there will be:

- Conditions precedent depending on the obtention of administrative authorisations or a bank loan.
- A clause of transfer of property which has vocation to intervene with the notarial act of sale confirming the payment of the price and the handing-over of the title of property.

### Step 3: regularization of the future sale.

Some formalities must be regularized for the sale to be perfect, such as the lifting of the condition's precedent, the purging of the rights of pre-emption, and the obtaining of information and compulsory legal documents (certificate of urbanism, regulation of co-ownership, diagnoses the state loan to date of the co-ownership).

### Step 4: the signature

Signature at the notary's office of the deed of sale, the seller proceeds to the handing over of the keys and the seller to the payment of the price. The deed of sale is worth title of ownership.

### Step 5: The land publicity

The notary office will oversee the registering at the land publicity register to protect the rights of property.

**5) How are the ownership rights when commercial real estate is acquired protected under your country's legal system?**

The Land publicity register is an administrative and fiscal services which record information on real estate and its successive owners. Each owner must be registered because this register is proof of ownership until proven otherwise, which is very difficult to do.

The fact that the State ensures the custody and the operation of the real estate register and that it is fed by notarized deeds is a guarantee of security for all.

The buyer can verify that the seller is the owner of his property or that he has not already sold it to someone else. He can also make sure that there are no mortgages on the property.

It is the person who claims ownership of a property who must provide proof of this ownership. This is usually done by a title deed. This title deed is not an absolute means of proof, it simply leads to a presumption of ownership, which can be challenged. In other words, proof to the contrary can be provided.

It is possible to challenge ownership with a claim action of property if you have sufficient evidence. It is also possible to acquire ownership by proving the use and possession of the property without interruption for 30 years even if the house was owned by someone else on the land publicity register.

**6) What is country's tax system that governs commercial real estate ownership and the transfer thereof?**

In France, there are several different taxes:

1) taxes during the property holding

1.1. the tax generated by the simple fact of owning the property

1.2. the taxation of incomes from real estate

2) taxes linked to the transfer of real estates

2.1. the taxation of the transfer of ownership: registration fees

2.2. the taxation of profits made during the transfer (capital gain): the tax on real estate capital gains

1) taxes during the property holding

1.1. The tax generated by the simple fact of owning the property: tax on real estate property

In France, if you are an owner, you will automatically have to pay taxes. However, the tax due is different depending on the quality of the owner. the owner will have to pay the property tax and the tax on real estate wealth if he is eligible and if he is a company, he will have to pay the business property tax.

The property tax (for individual): it is due by the owners or usufructuaries of built properties. An exemption is possible if your reference tax income is below certain ceilings.

For wealthy individuals: There is a tax on real estate wealth (IFI), if the net value of your real estate assets exceeds 1.3 million €. These assets include all property and real estate rights held directly or indirectly (including through a company).

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The business property tax (for companies): it must be paid by companies that usually carry out a professional activity. This applies regardless of their legal status, the nature of their activity and their tax regime.

All these taxes are independent of the nationality of natural or legal persons and are linked to the location of the property.

### 1.2. The taxation of incomes from real estate

The income generated by real estate property is also taxed under the tax on real estate income. However, the tax and its calculation will be different depending on the status of the taxpayer.

#### Tax on income generated by real estate of an individual.

The taxation of land income concerns income from the rental of unfurnished housing and land. There are two tax regimes for land income: the micro-foncier regime and the real tax regime.

The micro-foncier regime is a simplified taxation regime for land income. It is reserved for taxpayers with gross property income that does not exceed the threshold of 15,000 euros per year. The property income is made by automatic application of a deduction of 30% on the gross property income.

In the real taxation system, the taxpayer determines his net property income himself. This property income is included to the income of the individual to determine the income tax. It will be equal to the gross property income by deducting the expenses actually incurred and justified. This system is the automatic system when the gross property income of the whole tax household is higher than the threshold of 15 000 euros per year.

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### Tax on income generated by real estate of a legal person.

#### *For companies subject to income revenue tax (IR)*

In France, some companies may be subject to the regime of tax transparency and is not liable for corporation tax.

The profits of these companies are taxed at the level of the partners: they are included in the income of the partners to determine their income tax (or their corporation tax if the partners are companies).

The partners of the companies subjected to the IR are considered, on the tax plan, as personally owners of the real estates to the enjoyment of which their shares or social shares give them vocation. Consequently, these partners are personally subject to income tax or corporation tax for the portion of the property income corresponding to their rights in the company.

It is the case of civil companies (SCI, SCPI) and limited liability company with partners who are members of the same family.

#### *For the companies subject to corporate income tax (IS)*

In this case, the company is directly liable for tax on the income generated by the company's activities. Income from real estate owned by a company subject to corporate income tax are included in the income of the company

The applicable corporate income tax rate is:

- 15% for SMEs up to €38,120 of profits
- 28% for profits not exceeding 500,000 euros.
- 33.33% for the part of the income above this ceiling
- The partners will be taxed personally only if they receive income from the company (remuneration or dividends).

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### 2) taxes linked to the transfer of real estates

#### 2.1. The taxation of the transfer of ownership: registration fees

In France, registration fees are due for each transfer of goods. For real estate, these registration fees are around 5/6% of the sale price (to which are added the notary fees, determined according to the legal scale. The total is around 8%).

#### 2.2. The taxation of profits made during the transfer (capital gain): the tax on real estate capital gains

##### The real estate transfer taxes for an individual.

These taxes are due if an individual makes a capital gain directly or indirectly from the sale of real estate located in France or from the sale of shares in a company whose assets consist mainly of real estate located in France.

This income tax is due even if the seller is foreign resident. The fiscal regime of this tax is linked to the location of the real estate.

The capital gain will be subject to a 19% withholding tax, regardless of your country of residence of the seller. The capital gain will also be subject to social security deductions at a global rate of 17.2%.

##### The real estate transfers taxes for company subject to income revenue tax

With the regime of tax transparency, the capital gain from the transfer of real estate will be taxed at the level of the partners, under the real estate transfer for an individual above.

##### The real estate transfers taxes for a company subject to corporate revenue tax

All real estate's value gains, whether classified as short-term or long-term value, are subject to corporate income tax. There are three tax rates for net capital gains.

- 28% up to €500,000 of profits
- 31% above €500,000 for companies with a turnover of at least €250 million

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- 15% for SMEs up to €38,120 of profits.

At the same time, if the real estate sale generates a capital loss, this is deductible from the company's operating income under the conditions of ordinary law.

**7) Does the transfer of ownership in commercial real estate acquisitions is subject to your country's transfer tax, if so how much is the tax and who will be liable if such tax is not paid?**

The transfer of ownership in commercial real estate is subject to the registration tax and the tax on the real estate's value gain.

The buyer is liable for the registration tax. The seller is liable for value gain.

Those both taxes are taken from the sale price, by the notary's office, during the appointment of signing. So, such taxes are rarely unpaid.

**8) Is expropriation of commercial real estate possible under your country's legal system?**

Expropriation consists of a public authority forcing a private person to transfer real estate or real estate rights for a public purpose, in return for fair and prior compensation. The public authority justifies this expropriation decision with the public interest.

Indeed, expropriation implies the transfer of ownership of the expropriated property to the expropriating authority.

In principle, this extinguishes all existing real or personal rights over the property, including the right to a commercial lease. This expropriation therefore restricts the rights of the evicted tenant and undoubtedly causes him/her a prejudice for which he/she must be compensated.



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In France the state proceeds in a regular way to the expropriation of good and that there is a whole regulation and a jurisprudence bound to valorization of the real estate.

### **9) Do registration costs relate to commercial real estate acquisition exists in your country, if so, what are they?**

In France, there are currently three registration fees: registration fees, the land registration tax and the land registration tax in lieu of registration fees.

#### The registration formality

This is a formality with the administration whose purpose is to keep a record of legal events, according to the results of which a tax is normally levied.

Transfer means the transmission of a right from one person to another, whatever the nature of transfer (sale, merger, contribution, etc.).

When a transfer is evidenced by a deed, its registration results from the formality given to this deed.

The tax on the real estate transfer is between 5,09 % et 5,80 % of the sale price, depending on the department.

An exemption regime exists in the event of companies' mergers, the transfer of real estate is then subject only to the formality of land registration.

#### The formality of land registration

The purpose of land registration is to ensure the publication of rights relating to immovable property to inform third parties of the transfer of a property right or the constitution of real rights or charges on the property.

The land registration tax is 0,715% of the sale price.

### The merged formality

The formalities of registration and land registration are merged for deeds published in the real estate file, the registration of these deeds resulting from their publication. It applies to all deeds that are subject to registration and land registration.

The merged formality applies regardless of the tax regime to which the deeds are subject, without distinguishing whether the formality is to be carried out free of charge or against payment of a fee, or whether the transfer is subject to VAT.

The registration and transfer fees are included in what mistakenly called "notary fees", the purchase costs of a property are mainly composed of taxes collected by the notary on behalf of the State.

It is important for a buyer to understand and calculate the amount of these real estate acquisition fees and to understand their distribution between the taxes for the State and the real remuneration of the notary. The real remuneration of the notary is called the "emoluments". their amounts are subject to a legal scale; therefore, they are identical, whatever the notary you choose.

### **10) What types of documents does your country require to provide to the land registry when the ownership right is registered? Can this be done electronically, or does it need physical attendance?**

Only notarial acts can be published in the land publicity register. The sale's act has to include a certain number of information such as the price, the right of registration, the cadastre, the name of the former owners, precise designation of the preceding owners... In practice, it is complicated to have a notary who accepts electronic signature without a physical appointment because of the restrictive legislation for notaries. So, the notarial acts are signed, with electronic signature, during an appointment in the notarial office.

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The parties, who cannot participate to the signature meeting, must submit a certified power to a notary, to a municipality, or to a consultancy.

### **11) Which parties (aside from seller and buyer) are usually involved in commercial real estate acquisition? Please briefly describe their duties and roles.**

#### The lawyer

The lawyer will be able to analyze the situation and propose the most appropriate strategy.

The lawyer will be a real support to propose solutions that you would not necessarily have considered and a safeguard to avoid inconveniences that are difficult to anticipate without being an experienced practitioner.

The lawyer's role is above all to advise and draft documents, particularly for the drafting of commercial leases and company articles of association, to ensure that no clause in the contract is to your disadvantage. His objective is to preserve your interests and he will be able to prevent you from possible conflicts and limit the risks.

#### The notary

The notary is responsible for collecting the deeds, authenticating them, and keeping them. thanks to this, the buyer can register his deed through the land registry.

#### The estate agent

The estate agent is a sales agent. This implies that he receives a delegation of powers to act in the name and on behalf of his client. His role is to put the buyer and the seller in contact with each other, but he is also a real estate negotiator.

In France, the estate agent's activity is a regulated profession as lawyer or notary.

## FRANCE

### The credit brokers

The broker's mission is to accompany his client at all stages of his loan, from the preparation of the file to the release of funds at the notary's office, including the negotiation of the most advantageous conditions.

**12) Please describe how and on what basis in your country parties mentioned in question 11 are to be remunerated and how to be informed in advance about the range of their fees? \***

### The lawyer

The remuneration of a lawyer is free, every lawyer can have a different price based on the work to do, the difficulty of a case, and his notoriety. You must take contact with the lawyer to know the price of the prestation.

### The notary

The remuneration of notaries is called emolument. The emolument corresponds to the sum received by the notary in return for a service whose rate is regulated (sale, donation, marriage contract, successions). Its amount is identical whatever the notary you choose. Depending on the type of service, the emolument can be fixed (for a deed of notoriety) or proportional (in particular for an inheritance declaration).

### The estate agent

The estate agent will receive a commission on the sale. The remuneration generally varies from 4 to 8% of the sale price. It can be charged to the seller or the buyer. This

## FRANCE

provision taken at the time of the signature of the mandate of sale must be specified in the real advertisement.

### The credit broker.

All brokers are remunerated by the bank as business contributors. This remuneration generally corresponds to a percentage of the amount of the loan (between 0.5 % and 0.8 % of the financing).

### **13) Under your country's legal system is their duty of disclosure for a seller to the buyer in commercial real estate acquisition, if so, please illustrate what matters must be disclosed by a seller?**

In France, there are several protective devices for the buyer, there are general laws establishing a pre-contractual obligation of disclosure to ensure free and informed consent (fraud and error). There are also specific texts for the sale: obligation of delivery in conformity, guarantee of hidden defect, guarantee against eviction.

In France it is recommended to transmit all the useful and determining information of the consent to the purchaser, the legally diagnoses are one of the legal obligations allowing to impose a minimum information, but it is not sufficient.

For example: polluted ground or natural sinister in the sold real estate property, is not obliged by the law to declare it. But if the purchaser discovers it, he can obtain nullity sale.

**14) Please describe what liabilities exist for a buyer (in addition to paying the purchase price) in commercial real estate acquisition under your country's legal system.**

Apart from paying the price, the buyer has another important obligation to respect for the continuity of the activity.

Indeed, the buyer must take over the contracts and obligations in progress, such as commercial leases, residential leases, respect the easements and the co-ownership regulations, take over the taxes and duties from the sale.

These obligations are of high importance in order not to risk that the activity is stopped because of the sale of the commercial real-estate property.

It is as well all the responsibility's incumbent to an owner: the maintenance of the property, not to create nuisance and to guarantee a peaceful enjoyment.

## 2. CYPRUS

### 1) Please briefly describe the main laws governing acquisition of commercial real estate in your country.



The most important law that regulates real estate in Cyprus is The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. Furthermore, the main specific laws that govern real estate in Cyprus are the following:

The Sale of Land (Specific Performance) Law of 2011 (N.81(I)/2011), as amended  
Immovable Property Transfer and Mortgage Law, 9/1965 as amended  
Acquisition of immovable Property (Aliens) Law, Cap. 109, as amended  
Immovable Property Tax Law, Cap. 322

Immovable Property (Fees and Charges) Law, Cap. 219 as amended

General Sources of Real Estate Law are the Constitution of Cyprus, Contract Law Cap. 149, Trustee Law Cap. 193, Civil Procedure Law Cap. 6, Capital Gains Tax Law, 52/1980 and Wills and Succession Law Cap.195.

### 2) Are there any restrictions under your country's legal system with regards to ownership when acquiring a commercial real estate?

There is no restrictions to Cypriot citizens. However, there are restrictions when a thirty-country national (alien) is interested in purchasing residential or commercial immovable property in Cyprus. The Acquisition of immovable Property (Aliens) Law, Cap. 109 states that an alien must obtain the Council of Ministers approval before purchasing immovable property (plots) in excess of approx.. 2.700 m<sup>2</sup>. The new permanent residence permit by investment programme provides that:



A) The applicant may purchase up to two (2) housing units (apartments or houses), provided that the total market value meets the provisions of the programme.

B) The said purchase must relate to dwellings sold for the first time by a development company, unless the purchase took place before 07/05/2013. Sale contracts related to resale of dwellings and have been submitted to the Department of Lands and Surveys before 07/05/2013 (the date of filing of the sale contract will be confirmed by the said Department), will be accepted for the purposes of this policy.

**3) What types of ownership structures exist in your country with regards to acquisition of commercial real estate?**

A purchaser/investor can purchase commercial property in Cyprus either personally on his/her name or under a legal entity of which he/she is the sole owner.

**4) Please describe in a few steps the processes of transfer of commercial real estate in your country with particular focus to the transfer of the ownership or the title to the buyer?**

As soon as the Contract of Sale is signed and stamped by the Registrar of Stamp Duties, the purchase will need to lodge the Contract at the District Lands Office of the District in which the property is situated. Regardless of the six-month expiry date for its deposit, any delay may create problems to the purchaser if in the meantime other encumbrances are deposited as against the object of the sale. Therefore, in order for the purchaser to safeguard the benefits provided by the The Sale of Land (Specific Performance) Law of 2011 he needs to deposit the Contract with the Department of Lands and Surveys, within the specified time limits.

If the purchaser is alien, he will also need to apply to the Council of Ministers for the necessary permission to own immovable in Cyprus, before he/she proceeds with the deposit of the Contract with the Department of Lands and Surveys.

The deposit of a contract of sale is carried out at the District Lands & Surveys Office of the District where the property is situated, by completing Form DE130 (copy of the form may be obtained at any District Lands Office or downloaded from the webpage). The signatures of the contracting parties on the relevant form must be duly certified, unless they are duly certified in the actual Vesting Contract. The application to be lodged must be accompanied by the Vesting Contract duly stamped and by the Certificate of Payment of the Capital Gains Tax.

The above applies provided that the property in question does not have any mortgages or encumbrances, any other co-owners and a title deed exists.

**5) How are the ownership rights when commercial real estate is acquired protected under your country's legal system?**

Ownership rights on immovable property, either residential or commercial, are governed and therefore protected under The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

**6) What is country's tax system that governs commercial real estate ownership and the transfer thereof?**

Owners of commercial property in Cyprus pay every year the immovable property tax, garbage tax and sewage tax.

With respect to the taxes that a purchaser will need to pay upon the transfer of the title deed of the commercial property to his name, these are calculated on the market value of the property to District Lands & Surveys Office as per the below table:

## CYPRUS

Value of Cyprus property			
From	Up To	Transfer Fee Rate	Accumulated Transfer Fees
€	€	%	€
0	85,000	3	2,550
85,001	170,000	5	6,800
170,001	And above	8	To be calculated

Also, it is important to note that there are currently no transfer fees when the immovable property to be transferred is subject to VAT. In case the property is not subject to VAT, the transfer fee will currently be reduced by 50%.

Transfer of immovable property can be treated as a gift between relatives up to the 3<sup>rd</sup> degree of kindred. In these cases, the value of the property is as it has been determined at 1 January 2013.

Mortgage registration fees amount to 1% of the market value of the property.

Nil transfer fees and nil mortgage registration fees are payable in case of immovable property transfer due to a company reorganisation.

No transfer fees are payable in case of loan restructuring.

**7) Does the transfer of ownership in commercial real estate acquisitions is subject to your country's transfer tax, if, so how much is the tax and who will be liable if such tax is not paid?**

Please refer to point 6 above.

**8) Is expropriation of commercial real estate possible under your country's legal system?**

Yes. It is.

**9) Do registration costs relate to commercial real estate acquisition exists in your country, if so, what are they?**

Please refer to point 6 above. Same registration costs will apply to all residential and commercial properties in Cyprus.

**10) What types of documents does your country require to provide to the land registry when the ownership right is registered? Can this be done electronically, or does it need physical attendance?**

Once you arrange an appointment through the District Lands & Surveys Office's portal, you will then have to physically attend the registration and transfer of the acquired property on your name.

The purchaser can also appoint an authorised representative or an attorney through a 'General Power of Attorney' which will need to be notarised if the purchaser is abroad.

**11) Which parties (aside from seller and buyer) are usually involved in commercial real estate acquisition? Please briefly describe their duties and roles.**

Usually, bank institutions that will eventually mortgage the commercial property, lawyers, estate agents and authorised attorneys.

In the event where the purchaser will seek financing for the purchase of commercial property, the bank will need to first make an evaluation of the property and advise the

purchaser of the amount that the bank is willing to finance. Provided that the purchaser will accept the terms of the bank, the bank will need to prepare the relevant documentation and be present at the District Lands & Surveys Office on the day of transfer.

Lawyers are usually commissioned to check the documentation of the property in question and advise the purchaser of any risks that the purchase of the said commercial property involves. The lawyer will also assist with the drafting or review of the Contract of Sale and assist with the transfer process at the District Lands & Surveys Office.

A real estate agent is usually involved at the very beginning of the purchase of the property and is usually the one responsible providing the purchaser and the lawyer with all the relevant documentation of the property.

**12) Please describe how and on what basis in your country parties mentioned in question 11 are to be remunerated and how to be informed in advance about the range of their fees?**

Lawyers are free to make any contractual agreement they wish with the purchaser for their legal fees.

Real estate agents are paid from the seller and their fee is most of the times set between 3-5% on the purchase price.

**13) Under your country's legal system is their duty of disclosure for a seller to the buyer in commercial real estate acquisition, if so, please illustrate what matters must be disclosed by a seller?**

Under Cyprus law, there is no obligation on the seller to disclose any information to the purchaser. The purchaser can request any document he wants, and he can also run any checks he wishes with the District Lands & Surveys Office or any bank institutions, provided that he first obtains the written consent of the seller. If the seller avoids or

denies giving any information to the purchaser in relation to the commercial property, then the lawyer should explain this clearly to the seller and advise on any risks involved if the purchase eventually decides to proceed with the purchase.

**14) Please describe what liabilities exist for a buyer (in addition to paying the purchase price) in commercial real estate acquisition under your country's legal system.**

The purchase will need to pay the relevant taxes (such as VAT or transfer fees), legal fees and from there onwards he will be expected to pay every year the immovable property tax, the sewage and garbage tax.

### 3. FINLAND



**1) Please briefly describe the main laws governing acquisition of commercial real estate in your country.**

Corporate Law (in general, plus special chapters for Real Estate Company), Act on Housing Corporation (in general, plus special chapters for Mutual Real Estate Company), Land Law Code.

**2) Are there any restrictions under your country's legal system with regards to ownership when acquiring a commercial real estate?**

No in case of holding stock in company that owns commercial real estate. Yes in case of direct ownership of land

**3) What types of ownership structures exist in your country with regards to acquisition of commercial real estate?**

Holding stock in a company that owns the land and building, holding stock in a company that owns the building and leases the land, direct ownership of building and land, direct ownership of building and lease of land.

**4) Please describe in a few steps the processes of transfer of commercial real estate in your country with particular focus to the transfer of the ownership or the title to the buyer?**

Preparing and signing acquisition agreement; closing the transaction; registration of (i) ownership of acquired shares at the share and shareholders register, maintained by the (target) company itself, or (ii) ownership of acquired real estate itself at the public land



**5) How are the ownership rights when commercial real estate is acquired protected under your country's legal system?**

By evidence, the strongest evidence being the registration.

**6) What is country's tax system that governs commercial real estate ownership and the transfer thereof?**

Property tax and transfer tax.

**7) Does the transfer of ownership in commercial real estate acquisitions is subject to your country's transfer tax, if, so how much is the tax and who will be liable if such tax is not paid?**

4.0% for real estate (land), 2.0 % for stock in company that qualifies real estate company, 1,6 % for stock in company that does not be characterized as a real estate company. The buyer shall be responsible for the tax, however, the parties can legally agree upon the liability, applicable to their mutual obligations and rights.

**8) Is expropriation of commercial real estate possible under your country's legal system?**

Under normal circumstances no.

**9) Do registration costs relate to commercial real estate acquisition exists in your country, if so, what are they?**

Registration fee of EUR 132.

**10) What types of documents does your country require to provide to the land registry when the ownership right is registered? Can this be done electronically, or does it need physical attendance?**

Agreement or other document showing the transfer of ownership in reliable manner. Transfer of direct ownership to land requires an agreement/document with formal confirmation/notarization as a proof of right parties being involved in the transaction with signings based on their free will. Registration can be done mostly electronically and physical attendance is not needed.

**11) Which parties (aside from seller and buyer) are usually involved in commercial real estate acquisition? Please briefly describe their duties and roles.**

Tenants, investors, debtors

**12) Please describe how and on what basis in your country parties mentioned in question 11 are to be remunerated and how to be informed in advance about the range of their fees?**

I didn't get the meaning of this question.

**13) Under your country's legal system is their duty of disclosure for a seller to the buyer in commercial real estate acquisition, if so, please illustrate what matters must be disclosed by a seller?**

In accordance with the terms and conditions of the agreement. Beyond this, it depends.

**14) Please describe what liabilities exist for a buyer (in addition to paying the purchase price) in commercial real estate acquisition under your country's legal system.**

In accordance with the terms and conditions of the agreement. Beyond this, depends on ground and claims of the third parties and their argumentation.

## 4. ITALY



**1) Please briefly describe the main laws governing acquisition of commercial real estate in your country.**

Below please find a summary description of the main laws governing the acquisition of Italian commercial real estate:

- The Constitution of the Italian Republic, the fundamental law of the Italian legal system which provides the legal basis for the administration of public authorities, in relation to the aspects establishing the right of individuals and entities to fully own private property and the possible limitations for public interest reasons.
- The Italian Civil Code (Royal Decree no. 262 of 1942), a Statute which contains the main rules on the various types of property rights, acquisition and transfer of property and related rights, sale and purchase agreements, financings, mortgages, and leases.
- The Unified Building Act (so called "Testo Unico dell'Edilizia", Presidential Decree no 380 of 2001) which contains the rules governing construction and development of real estate, including commercial real estate.
- The Unified Banking Act (so called "Testo Unico Bancario", Legislative Decree no. 385 of 1993) which sets out the basic rules and standards and defines the competences of the credit authorities (Interministerial Committee for Credit and

Savings - CICR, the Ministry of Economy and Finance and the Bank of Italy). Specifically, it allocates Italian authorities to issue secondary rules and regulations on technical matters and to adopt prudential measures also with respect to financing and certain aspects of mortgages on commercial real estate associated with financing from the banks.

**2) Are there any restrictions under your country's legal system with regards to ownership when acquiring a commercial real estate?**

In general, Italy is considered a "no restrictions" country. Any foreign individual or entity may purchase and own real estate property in Italy, including commercial, provided that the "reciprocity" condition is met. According to this principle, the acquisition/ownership is possible upon condition than an Italian citizen is entitled to the same rights in the home country of the buyer/owner.

The relevant reference rule is given by Article 16 of the Provisions on the law in general (the so-called "Preleggi"), which states that "the foreigner is admitted to the same civil rights attributed to the citizen on condition of reciprocity and subject to the provisions contained in special laws. This provision also applies to foreign legal persons".

Reciprocity is considered to exist for EU member States without any need to verify it.

**3) What types of ownership structures exist in your country with regards to acquisition of commercial real estate?**

The main types of ownership when it comes to acquisition of commercial real estate are:

- *Proprietà*- full ownership, i.e the full and exclusive right to use as well as to dispose of a real estate property in compliance with the national provisions.
- *Nuda Proprietà* – bare ownership, i.e. the private property is not accompanied by a real right of use of the property to which it relates. Typically, it refers to a property of which ownership is acquired, but not the right of usufruct.

- *Usufrutto* – usufruct, i.e. the right of using and enjoying and receiving the profits of the property that belongs to another with the limit of not being able to transfer the full property and the duty to respect the economic destination impressed by the owner.
- *Comunione* - joint co-ownership, i.e an ownership which is divided between a number of entities or individuals where such entities or individuals have rights and obligations towards each other.
- *Multiproprietà* – time-sharing, a form of shared property ownership, commonly vacation property, wherein rights vest in several owners to use property for specified period each year.
- *Usucapione* – adverse possession, constitutes a particular method of acquisition of ownership on an original basis. The possession, if continued for a certain period of time, makes the owner acquire the ownership of the right exercised (full owner ship, usufruct...).

**4) Please describe in a few steps the process of transfer of commercial real estate in your country with particular focus to the transfer of the ownership or the title to the buyer?**

The process of transfer of commercial real estate assets between companies in Italy may be carried out in several different ways, depending on the context in which the transaction arises.

In most cases, the acquisition transaction take place through the purchase of the shares (so called '*share deal*') or the purchase of a company's business unit or going concern (so called '*asset deal*'). Other types of deals, such as mergers, are less frequent.

The main differences between the two scenarios above are:

- "*Share deal*": upon purchase of the quotas or the shares of the target company, the buyer indirectly acquires the entire company assets (real estate, contracts,

instruments, relationships, etc.) and also takes on all company's liabilities relating to the previous management.

- "Asset deal": upon purchase of the company's going concern, the buyer acquires a set of assets and relationships organized for the operation of that business (real estate, plants, employees, contracts, credits, debts, etc.). The advantage of the asset deal lies in the possibility for the parties to define the perimeter of the transfer and, therefore, for the Buyer, to limit the liabilities and the legal risks of the transaction.

In both cases the main steps when transferring ownership are:

- Pre-Contractual Arrangements: this phase starts with the exchange of a non-disclosure agreement, possibly followed by a letter of intent, a legal and tax due diligence and may end with an offer or with a "subject to" offer to the Seller.
- Vendor Due Diligence Assessment: in this phase a more in-depth due diligence (legal and tax, but also zoning, permits, building and environment, consistency of cadastral data, presence of mortgages, encumbrances, rights of third parties, presence of rights of first refusal by third parties, etc.) is carried out by the Buyer's consultant team to carry out the necessary pre-sale technical assessments. Usually during this process, the assistance of an Italian notary is recommended.
- Marketing and Commercial Negotiation, Representations and Warranties, Indemnities: in this phase, the real negotiation takes place. Subject of the negotiation are value of the property, duties and obligation of the parties, final price, extension and duration of the representation and warranties, placement of sums in escrow, etc. The parties are assisted by their lawyers/advisors.
- If these preliminary stages are concluded in a positive way, the parties may (and often will) execute a *preliminary agreement* for the relevant acquisition (Shares/Asset Deal), according to which the parties agree the relevant terms and conditions and undertake the obligation to complete the sale at closing. Closing occurs with execution of a final



deed which establishes the *transferring of the title of the property*. The deed must be signed at the presence of a notary in order to create a *Notarial Deed of Sale* (the "Deed").

- Finally, there are a series of activities in charge of the Notary Public to be performed in order for the title to be registered in the Public Registers (i.e. *Conservatorie dei registri immobiliari*), and to complete the transfer of the property right in favour of the Buyer (more details under Section 5 and 10).

### **5) How are the ownership rights when commercial real estate is acquired protected under your country's legal system?**

Under article 1350 of Civil Code, the transfer of ownership has to be made in writing under penalty of invalidity, by means of a public deed ("*Atto pubblico*") to be signed by a Notary, or by means of a contract certified by a notary ("*Scrittura private autenticata*"). Once the Deed is completed, under Article 2671 of Civil Code, it has to be publicly registered in the so called "Conservatorie dei Registri Immobiliari" (Real Estate Registers) and thus, the right will be protected under the principle of "prior in tempore potior in iure", i.e., the holder of a right who first registers the transfer of the property right will have priority over subsequent parties asserting such rights (Articles 2643 of Civil Code). By way of example, in the case in which the same asset is illegally sold at the same time (or distance of a few days) to two different buyers, the asset will become the effective property of the Buyer who will first perform the registration of the transfer of the property right in the Real Estate Registers (art. 2643 cc), without prejudice, in any case, to the right of the unlucky "second buyer" to start a legal action against the Seller to obtain compensation for all damages suffered.

**6) What is country's tax system that governs commercial real estate ownership and the transfer thereof?**

Transfer of real estate is governed under the transfer tax system which includes the following taxes:

- VAT, governed by the VAT Code ( D.P.R. no. 633 of 1972 so called "Testo IVA"), who regulates the sale and the rent of real estate. It regulates also the territoriality of the Real Estate transactions.
- The Stamp Duty, governed by the Stamp Duty Code (D.P.R. no. 131 of 1986 so called "Testo dell' Imposta di Registro"). In the case of the purchase of Real Estate, the Stamp Duty, mortgage and cadastral taxes are paid by the notary at the time of registration of the deed. The Stamp Duty is alternative to VAT. In fact, the deeds subject to VAT do not discount the stamp duty, except as provided for the rental and sale of Real Estate by construction companies. The principle of alternation between VAT and Stamp Duty is provided by Article 40 of the Stamp Duty Code, which provides that for acts concerning the sale of goods and services subject to VAT , the Stamp Duty is applied at a fixed rate.

**7) Is the transfer of ownership in commercial real estate acquisitions subject to your country's transfer tax, and if so, how much is the tax and who will be liable if such tax is not paid?**

Yes, the transfer of commercial real estate ownership is subject to a transfer tax (called Stamp Duty) which may vary depending on the nature of the Seller. The tax is due by the Buyer.

If the Seller is a natural individual selling to another natural individual or a business entity: the tax is equal to 9% of the fair market value of the asset + other minor fixed

taxes (mortgage and cadastral taxes). If the Seller is a natural individual selling to another natural individual a property to use as main residency, the tax is equal to 2%. If the Seller is a business entity selling to another business entity or natural person:

- a) If the sale is made by a construction company within 5 years of termination of the construction works: in general, VAT as transfer tax applies in the measure of 10% (22% for luxury property) of the transfer price + 200 euro for stamp duty + mortgage and cadastral taxes equal to 3% on the fair market value of the assets. If the property is used as main residency for natural person, the tax is equal to 4% ;
- b) If the sale is made by a construction company after 5 years of termination of the construction works or by other company in favour of a VAT-subject Buyer or natural person, the Seller may choose:
- to request that the sale is subject to VAT, so the sale will be subject to VAT (10%, 22% for luxury property, 4% as main residency for natural person) + 200 euro for registry tax + mortgage and cadastral taxes equal to 3% on the fair market value of the assets. If the purchaser is liable for VAT, is necessary the application of reverse charge ;
  - to request that the sale is VAT exempt, so the sale will not be subject to VAT, but 200,00 euro for registry tax + mortgage and cadastral taxes equal to 3% on the fair market value of the assets shall apply.

There are also some other minor taxes such as the "imposta di bollo" to be paid on a fixed basis depending on the number of standard pages of the sale and purchase agreement.

As to the liability, the transfer tax is usually paid by the notary at closing, meaning that by that time the notary must have received by the Buyer the funds to pay the taxes in his/her separate dedicated bank account. In case of a taxes assessments, Seller and Buyer are jointly liable.

**8) Is expropriation of commercial real estate possible under your country's legal system?**

Yes, the expropriation of commercial real estate is possible, under article 834 of the Italian Civil Code in very specific cases. Both local and national authorities (depending on their competences) have the power to possess private properties, however this has to be done within the public interest, and a fair compensation to the owner has to be paid.

**9) Do registration costs relate to commercial real estate acquisition exists in your country, if so, what are they?**

Yes, a stamp duty is the only form of registration costs in Italy. The tax rate varies between 2% and 9% on the value of the transaction. In situations where a transaction is subject to VAT, the stamp duty is then a fixed nominal amount.

**10) What types of documents does your country require to provide to the land registry when the ownership right is registered? Can this be done electronically, or does it need physical attendance?**

The Notary who sealed the Deed shall file the transcription note (so called "*Nota di trascrizione*") with the Real Estate Registry (so called "*Conservatoria dei Registri immobiliari*") electronically (Article 2671 of the Civil Code), and immediately afterwards he/she shall provide for the original title Deed in paper form for the registration.

**11) Which parties (aside from Seller and Buyer) are usually involved in commercial real estate acquisition? Please briefly describe their duties and roles.**

Real estate agents are often present in the preliminary stage of the transaction. They usually have the task of putting the parties in contact and show case the property. If the deal is concluded as a result of their work, they are entitled to a commission as described in the paragraph below.

Where an asset presents particular criticalities, an in-depth due diligence shall be carried out, for the execution of which consultants with specific technical skills are usually appointed (lawyers, tax advisors, engineers, surveyors), in order to provide advice and assist the parties.

A Notary Public must also be present in order to execute the final Deed of sale. The Notary Public may be involved also in the execution /transcription of the preliminary agreement, if requested and in the due diligence activities.

The particular value of the sale and purchase agreement by means of a "public deed" (which may only be executed by means of a Notary Public as a Public Official), lies mainly in the following elements:

- official certainty as to its content and the identity of the parties and the date;
- proper value of the public Deed under the probation aspect in legal proceedings.
- Notary Public carry out all the activities subsequent to the execution needed for the effectiveness of the deed and its enforceability towards third parties (so called "opponibilità nei confronti dei terzi").

**12) Please describe how and on what basis in your country parties mentioned in question 11 are to be remunerated and how to be informed in advance about the range of their fees?**

The remuneration for legal advisors is borne by each party and it is subject to a prior agreement consisting of an engagement letter and a retainer. Flat fees (subject to caps) or hourly rate fees are both used.

The Notary Public has to be remunerated by the party appointing him/her (usually the Buyer).

Real estate agents are usually compensated by both parties, unless otherwise agreed.

Commissions range between 2-4% of the purchase price.

**13) Under your country's legal system is there a duty of disclosure for a seller to the buyer in commercial real estate acquisition, if so, please illustrate what matters must be disclosed by a seller?**

Yes. In Italy, there is a duty to disclose for the Seller who shall act in good faith in the negotiations with the Buyer. As such, the Seller cannot conceal or not disclose important information related to the real estate asset from the Buyer.

In general, the matters which have to be disclosed by a Seller are:

- Any information which would prevent the Buyer from completing the acquisition of the real estate
- Elements which would materially affect the value of the property, and which could even determine the decision not to purchase
- Any defects, unconformity related to the real estate asset or related to the permits and authorization process, or lack of quality of the property.

In this regard, please note that the Italian system provides for particular protection for the Buyer in case of: (i) real estate assets that do not meet the promised requirements (so-called *Aliud pro alio*), or (ii) the Seller's breach of the obligation to sell after the execution of the preliminary agreement. In this latter case, art. 2932 of the Italian Civil Code allows a particular protection to the Buyer who may start a legal action towards the Seller aimed at obtaining a judgement that produces the effects of the non-concluded agreement.

In this way, the creditor may obtain satisfaction of his/her claims as a result of the decision which must therefore be duly transcribed (e.g. in the hypothesis of a preliminary sale, the Buyer who has already paid the price will become the legitimate owner of the asset by virtue of the effectiveness of the judgement, in place of the non-fulfilled agreement by the Seller).

**14) Please describe what liabilities exist for a Buyer (in addition to paying the purchase price) in commercial real estate acquisition under your country's legal system.**

In case Buyer and Seller signed a preliminary agreement, the Buyer has to comply with the obligation to complete the sale under the same terms and conditions. In case of breach of the obligation to stipulate the final Deed due to reasons attributable to the Buyer, he/she will lose any deposit paid at the time of signing the preliminary contract.

**15) Numbers and Trends (Pre-Covid 19 Period)**

*Main trends*

In 2019, real estate investments in Italy exceeded EUR 12 billion, an increase of around 37% compared to 2018. However, growth was not uniform across the sector. The market for offices remained stable. The logistics and hospitality sectors grew notably but the

## ITALY

retail sector suffered and there was no significant growth, except for in outlets and high street retail.

Based on reports circulated by the major players, investment was segmented as follows:

- Offices: around EUR 5 billion, the majority of it in the Milan area.
- Hospitality: around EUR 3.3 billion.
- Logistics: around EUR 1.4 billion.
- Retail: around EUR1.6 billion, a significant decrease compared to past years.

### *Geographical trends*

Geographically, the North-West was the largest market with the highest number of deals.

- Milan remained the most dynamic market, regardless of the asset class.
- Florence and Venice saw major investments in the hotel sector. Student housing investment was concentrated in Florence, Rome, and Milan.
- Rome's market continued to suffer bureaucratic difficulties, although some transactions were completed.



## 5. LITHUANIA

- 1) Please briefly describe the main laws governing acquisition of commercial real estate in your country.



*Civil Code of the Republic of Lithuania.* Civil Code of the Republic of Lithuania consolidates general provisions of purchase-sale contracts (Articles 6.305 – 6.349) and special provisions of real estate purchase-sale contracts (Articles 6.392 – 6.401). General provisions can be applied to real estate purchase-sale contracts as long as special provisions do not comprise a situation in question.

*Republic of Lithuania Law on Land.* Republic of Lithuania Law on Land governs special rules of land, as a real estate object, acquisition, including the process of expropriation, i. e. taking land for public needs (Chapter VIII), main requirements for land contracts (Chapter V), etc.

*The Republic of Lithuania Forestry Law.* Republic of Lithuania Forestry Law governs special rules of forest, as a real estate object, acquisition, including an ownership right of forests and forests of national importance (Article 4), priority right to acquire private forestry land (Article 41), etc.

*Republic of Lithuania Law on the Acquisition of Agricultural Land.* Law on the Acquisition of Agricultural Land governs special rules of an agricultural land, as a real estate object, acquisition, including an obligation regarding acquired agricultural land to ensure its use for agricultural purpose (Article 2), the biggest possible territory of acquired agricultural land (Article 3), etc.

**2) Are there any restrictions under your country's legal system with regards to ownership when acquiring a commercial real estate?**

The legal acts of the Republic of Lithuania provide a certain restrictions for foreign legal entities and natural persons related to the acquisition of land (including commercial real estate). The right to acquire land in Lithuania for foreign legal entities is regulated by the Constitution of the Republic of Lithuania and the paragraph 3 of Article 47 of the Constitutional law on the implementation of the Constitution of the Republic of Lithuania. In Lithuania, land, inland waters and forests may be acquired by those foreign legal entities and natural persons who meet Lithuania's European and transatlantic integration criteria, i. y. a foreign state whose legal entities or natural persons wishes to acquire land, inland waters and forests in Lithuania does not belong to political, military, economic or other state unions or alliances established on the basis of the former Soviet Socialist Republics and is at least one of these unions, agreements or organizations - member of the North Atlantic Treaty Organization, member of the Agreement on the European Economic Area, member of the Organization for Economic Co - operation and Development.

**3) What types of ownership structures exist in your country with regards to acquisition of commercial real estate?**

Commercial real estate can be acquired under the right of private ownership, the right of joint partial ownership and the right of joint ownership.

**4) Please describe in a few steps the processes of transfer of commercial real estate in your country with particular focus to the transfer of the ownership or the title to the buyer?**

The Commercial real estate purchase and sale agreement must be in notarial form (Paragraph 1 of Article 6.393 of the CC). Disregarding the mandatory requirement for a notarial form invalidates the agreement (Paragraph 2 of Article 6.393 of the CC).

Therefore, in order for the commercial real estate purchase and sale agreement to be considered concluded, it must be signed in a notarial form.

In order to conclude a notarial contract, the seller must submit documents proving the right of the ownership (an excerpt from the Registry Center or the sale-purchase agreement that proves the acquisition of the ownership). In addition, the seller has to provide real estate cadaster file and an energy performance certificate, if the building area exceeds 500 sq. m. If the parties of the transaction are legal entities, the founding documents of the legal entities and, if necessary, the decisions / consents of the management bodies of the legal entity for the conclusion of the sale and purchase agreement must be submitted.

The moment of transfer of the ownership and the moment of signing the contract may differ, as the transaction is only the basis for the acquisition of the right of ownership, but the right of ownership is not necessarily acquired from the moment of concluding the transaction. It is considered that the ownership right to the real estate property passes to the buyer from the transfer of the property (Paragraph 4 of Article 6.393 of the CC). Normally, in practice, the transfer of real estate property is formalized by the acceptance – transfer deed, as specified in Paragraph 1 of Article 6.398 of the CC.

Therefore, it is the moment of signing the acceptance - transfer deed of the real estate property that is considered as the moment of acquisition of the right of the ownership. Unlike the real estate property purchase and sale agreement, the acceptance - transfer

deed does not require a notarial form, therefore, in accordance with Article 6.398 of the CC, the acceptance

- transfer deed of the real estate property may be in simple written form.

## **5) How are the ownership rights when commercial real estate is acquired protected under your country's legal system?**

Article 4.95 of Civil Code of the Republic of Lithuania (hereinafter referred to as CC) governs owner's right to vindicate a thing from another's illegal possession (vindication claim). As there is comprehensively being interpreted in case law of the Supreme Court of Lithuania (hereinafter – SCL), a vindication claim has to be filled against a person, who is not and was not legally connected to the owner by obligational relations associated to property, when the latter is required to be returned. This claim is being filled against a person, illegally possessing another's property, i. e. for the person to whom that property is located (SCL ruling in a civil case No. e3K-3-460-690/2017).

Article 4.96 of CC governs a vindication of property from an acquirer in good faith; paragraph 2 states that an immovable property, i. e. real estate object, can not be vindicated from an acquirer in good faith with the exception of cases when the owner had lost such property due to a crime committed by other persons. Paragraph 3 states that if a property was acquired without remuneration from a person who had no right to transfer its ownership, the owner has a right to vindicate the property in all cases.

Article 4.98 of CC governs the defence of ownership right from violations unrelated to loss of possession and states that the owner may claim elimination of all violations to his right, even if unrelated to loss of possession.

Paragraph 4 of Article 6.393 of CC consolidates a way for a seller to protect his or her legal interests after selling a real estate object. The provision states that a seller may plead to the court demanding to make a decision on the registration of ownership, based on a real estate purchase-sale contract and a Delivery and Acceptance Certificate or other type of document, if a buyer, to whom a property was transferred, avoids

registrating an acquired ownership right. After the court makes a decision on the registration of ownership, this ownership is being registrated on a base of a court decision. This provision shows a great importance as a guarantee of protection of seller legal interests, that is, until a buyer will not registrate an acquired ownership right in a public real estate registry, in this registry a seller will still be considered as a holder of an ownership right.

## **6) What is country's tax system that governs commercial real estate ownership and the transfer thereof?**

The tax system of the Republic of Lithuania is consisted of two sections:

- (1) Periodical taxes, applied to a subject having an ownership right of commercial real estate object;
- (2) One-off real estate transfer fees.

In the first case, the amount of periodical taxes depends on: (1) rates, applied by municipalities, in which a particular real estate is located, and (2) an average real estate market value. It is important to pay attention, that:

1. If the object of real estate is a land, the Republic of Lithuania Law on Land Tax must be applied. This legal act determines the rule that the rate of land taxes is being set by a municipality, in which the land is located, and the amount of this rate can vary from 0,01% to 4% of average land market value (Article 6). This tax is being paid annually by a person, who was a land owner on June 30 of a current tax period (Section 3 of Article 12). The tax period coincides with calendar year (Article 7);
2. If the objects of real estate are commercial buildings and premises, the Republic of Lithuania Law on Immovable Property Tax must be applied. This legal act determines the rule that the rates of real estate taxes is being set by a municipality, in which these buildings and premises are located, and the amount of this rate can vary from 0,5% to 3% of average commercial buildings and premises market value (Article 6). This tax is being paid annually by a person, who at a certain time (in a particular month of tax

period) was the owner of commercial buildings and (or) premises (Article 12). The tax period coincides with calendar year (Article 5). A private person pays real estate tax one time per year, whereas juridical entity pays it in parts four times per year (Article 12). Councils of municipalities have a right to reduce or waive this tax at the expense of their budgets.

In the second case, one-off real estate transfer fees are known as Resident Income Tax (hereinafter referred to as RIT) and Value-Added Tax (hereinafter referred to as VAT). Their application depends on legal relations of real estate transfer between parties. RIT is regulated in the Republic of Lithuania Law on Income Tax of Individuals; the application of this legal act is intended exclusively for private persons. After selling a real estate object, private persons have an obligation to pay RIT only if they sold their real estate object for a bigger price than they paid themselves when acquiring it and if they did not keep it in their possession for 10 years. This tax is being calculated based on the difference between purchase and sale prices. Income from selling real estate are taxed at 15 or 20 percent income tax rate. If the income from selling real estate, in conjunction with other sorts of income that are not related to legal relations of labor, do not exceed 120 national average wages (hereinafter – NAW) (136 344 euros), they are taxed 15% income tax rate, whereas the share of mentioned income, exceeding 120 NAW, is taxed 20% income tax rate.

VAT is regulated in the Republic of Lithuania Law on Value Added Tax; this legal act, on the contrary to the legal act that regulates RIT, is intended to both private persons and juridical entities, pursuing economical activities. A private person must registrate himself or herself as a VAT payer and pay VAT, if his or her income from pursued economical activities exceed 45k euros per last 12 months. Accordingly, juridical entities should pay VAT, if they sold their real estate of these types: (1) a land, along with new buildings or their parts; (2) a land for construction; (3) new buildings or their parts. Contrarily, juridical entities should not pay VAT if they sold their real estate of these types: (1) a land, which is not intended for construction and land, which is given along with old

buildings or their parts; (2) old buildings or their parts. If a real estate that is being sold is taxed with VAT, a standard 21% VAT rate applies.

**7) Does the transfer of ownership in commercial real estate acquisitions is subject to your country's transfer tax, if, so how much is the tax and who will be liable if such tax is not paid?**

As it was mentioned in the answer of question No. 6, in case of transferring real estate, RIT or VAT can be applied. If these taxes are applied, the duty to pay them arises for a seller of commercial real estate. RIT (15% or 20%) is paid by a private person when he or she declares his or her income, whereas VAT (21%), when it has to be applied, is included in the main price of real estate. In the latter case, a buyer, acquiring real estate, pays the price of real estate along with added VAT, and a seller pays VAT when declaring his, her or its income. Therefore, both real estate seller and buyer are bound of obligation to pay all taxes, required for this kind of contracts. For not complying with the procedure, set in legal acts of tax regulation (particular legal acts were mentioned in the answer of question No. 6), fines and penalties can be imposed.

**8) Is expropriation of commercial real estate possible under your country's legal system?**

In accordance with the legal acts of the Republic of Lithuania, for example - Article 23 of the Constitution, Articles 4.100-4.102 of the Civil Code of the Republic of Lithuania, in exceptional cases provided by law, real estate may be expropriated for the needs of the society. In such cases, the owner of the property must be fairly remunerated for the expropriation of the property: in accordance with the procedure established by law and at market prices.

**9) Do registration costs related to commercial real estate acquisition exist in your country, if so, what are they?**

According to the Minister of Justice of the Republic of Lithuania in 2014. October 20 order no. 1R-329 "On the Minister of Justice 1996 September 12 order no. 57 "For approval of provisional amounts of remuneration charged by notaries for performance of notarial acts, preparation of draft transactions, consultations and technical services", a fee of 0.37 per cent of the transaction amount shall be charged for approval of a real estate purchase and sale agreement, but not less than EUR 33.00 not more than 5,000.00 Eur.

Remuneration to a State Enterprise Center of Registers for Registration or Deregistration of Ownership of an Immovable Property 17.19 Eur.

**10) What types of documents does your country require to provide to the land registry when the ownership right is registered? Can this be done electronically, or does it need physical attendance?**

A person wishing to register a land plot and ownership rights to it in the Real Estate Register must submit an application to the customer service department of the Center of Registers. The application must be accompanied by a cadastral data file of the newly formed land plot, prepared by surveyors referred to in Article 11 of the Law on Real Estate Cadastre, The decision adopted by the head of the National Land Service or the head of the territorial unit authorized by him regarding the formation of this land plot and the documents confirming the established cadastral data and the emergence of ownership rights to that land plot.

An application for registration of an immovable and its ownership right to it shall be submitted by the person who acquired it himself or through his or her representative who has a power of attorney issued in accordance with the procedure established by law.



An application for registration of immovable property, property rights, restrictions on property rights and legal facts may be submitted in person, by post, by electronic means of communication.

The application submitted by electronic means must be signed by the person with a secure electronic signature certified by a qualified certificate.

**11) Which parties (aside from seller and buyer) are usually involved in commercial real estate acquisition? Please briefly describe their duties and roles.**

*Notary.* According to Paragraph 1 of Article 6.393 of CC, a real estate purchase-sale contract must be signed and approved by a notary, except for the contracts concluded during the process of bankruptcy. Paragraph 4 of Article 46 of Law on the Notary Office and Paragraph 1 of Article 17 of Law on the Real Property Register forms a provision that the notary, after signing and approving a real estate purchase-sale contract, no later than 24 hours since the approval must transfer the main data, requisited to create a mark of a real estate purchase-sale contract as a judicial fact, to the manager of Real Estate Register.

**12) Please describe how and on what basis in your country parties mentioned in question 11 are to be remunerated and how to be informed in advance about the range of their fees?**

The buyer must pay other costs of concluding the purchase and sale agreement provided in the contract or relevant laws (Paragraph 3 of Article 6.344 of the CC), unless the parties agree otherwise. Minister of Justice of the Republic of Lithuania in 1996 September 12 has approved the order no. 57 "The list of fees for the performance of notarial acts, preparation of draft transactions, consultations and technical services", which specifies the procedure for calculating the notary's fee and the limits of the fee. The fees of the manager of the Real Estate Register are specified in the Government of

the Republic of Lithuania 2020 July 8 resolution no. 763 "List of amounts of remuneration for registration of objects of registers managed by the state Enterprise Register Center, management of data, information, documents and / or copies of these registers and real estate cadaster".

**13) Under your country's legal system is their duty of disclosure for a seller to the buyer in commercial real estate acquisition, if so, please illustrate what matters must be disclosed by a seller?**

The seller must disclose the information known to him, which is essential for concluding the contract (Paragraph 4 of Article 6.163 of the CC) and ensure the quality of the property (Paragraph 1 of Article 6.317 of the CC). It is important that the seller acts in good faith in carrying out this duty, i. y. discloses to the buyer information available about the property that may be relevant to the conclusion of the contract. The seller must inform the buyer, whether the right to use, dispose of the property is restricted, whether there are arrears for the property and other services, whether there are any legal disputes regarding the property and the condition of it. The case law also states that in concluding each transaction, the acquirer of the property has an interest in not having issues with the acquired property, seeks to protect himself, therefore, the disclosure of essential information is a necessary duty of the seller. Failure to disclose such information shall be considered a breach of the seller's obligation to disclose material information for the conclusion of the transaction.

**14) Please describe what liabilities exist for a buyer (in addition to paying the purchase price) in commercial real estate acquisition under your country's legal system.**

Other liabilities for a buyer apart from paying the purchase price are covering the costs of concluding a real estate purchase-sale contract, except if the parties agree otherwise,

## LITHUANIA

costs of accepting a property and signing an Acceptance and Delivery Certificate (Paragraph 1 and Paragraph 3 of Article 6.310 of CC).

## CREDITS

Global Questionnaire On Acquisition Of Commercial Real Estate was created by Aliant's Real Estate Practice Group with the help of Aliant's Marketing Director and PR Manager. Aliant's experienced and well-established lawyers from France, Cyprus, Finland, Italy, and Lithuania have answered some fundamental and up-to-date questions on Acquisition of Commercial Real Estate and our Marketing and PR Team helped putting the Guide together.

### Aliant's Real Estate Practice Area Group:

**CLAUDIA BORTOLANI**

**Aliant Italy**

**E-mail:** [cbortolani@aliantlaw.com](mailto:cbortolani@aliantlaw.com)



**DŽIOLANA TARVAINYTĖ**

**Aliant Lithuania**

**E-mail:** [dtarvainyte@aliantlaw.com](mailto:dtarvainyte@aliantlaw.com)



**ALiant'S REAL ESTATE PRACTICE AREA GROUP**

**FANNY HURREAU**

**Aliant France**

**E-mail: [fhurreau@aliantlaw.com](mailto:fhurreau@aliantlaw.com)**



**SOCRATES PARPARINOS**

**Aliant Cyprus**

**E-mail: [sparparinos@aliantlaw.com](mailto:sparparinos@aliantlaw.com)**



**TUOMO KAUTTU**

**Aliant Finland**

**E-mail: [tkauttu@aliantlaw.fi](mailto:tkauttu@aliantlaw.fi)**



## Creative Team Behind the Questionnaire:

**Kamola Alikulova**

**PR & Engagement Manager**

**E-mail:** [kalikulova@aliantlaw.com](mailto:kalikulova@aliantlaw.com)



**Kim Brown**

**Aliant Marketing Director**

**E-mail:** [kbrown@aliantlaw.com](mailto:kbrown@aliantlaw.com)

