

COMMERCIAL REAL ESTATE INVESTMENT IN FRANCE : REVIEW AND PROSPECTS

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At the beginning of 2020, France is showing economic resilience and growth indicators that are slightly better than those of its neighbours. This resilience is notable given the uncertain international and national economic environment. At international level, trade frictions, especially between the United States and China, generate many instabilities for the markets. International political tensions remain just as high: for example, the situation in Iran or North Korea, the complex relations with Russia and China, but also the numerous political crises existing within the European Union itself. These tensions and uncertainties are compounded by a global health crisis caused by the emergence of the Coronavirus. At national level, the French government, for more than a year now, has been facing several waves of protests, first from the 'yellow jackets' movement and then in reaction to the controversial pension reform project.

Despite this, the French economy seems stable. According to the latest estimates for the year 2019, it shows growth of around 1.2%, with similar forecasts for the year 2020. On the labour market front, figures published by INSEE

indicate that 8.1% of the workforce is unemployed, the lowest figure since 2008. As a result, in a volatile global environment, France remains considered relatively stable and predictable over the medium term by international investors.

Regarding commercial real estate investments, this general economic context and the good performance of this market allow France to envisage a new record for the year 2019, which will probably exceed the 40-billion-euro investment mark.

Regarding the origin of international investors, whose proportion is slightly up to almost 50% of investments in France, 2019 was marked by the massive arrival of South Korean investors. They represented only a small minority of investments in 2018 but they disbursed more than 5 billion euros in 2019 on a small but emblematic number of deals (as evidenced by the 'Lumière', 'Crystal Park' and 'Majunga' deals). The geographical origin of other foreign investors remains fairly stable: historically very present on the French market, Germans remain the largest foreign investors, and American investors complete the podium.

The increase in investment volume benefits all asset classes

Traditionally in France the office real estate sector attracts most of the investments.

2019 is no exception with more than 2/3rd of the investments made in this sector, which, despite the fall in rates of return, is carried by the good health of the rental market with falling vacancy rates and rising rental values.

The retail sector, which had a bad press at the beginning of 2019 has seen a good upturn with emblematic and diverse deals. The acquisition of a portfolio of premises rented luxury brands on Avenue Montaigne in Paris or the acquisition of the 'République' portfolio compounding boutiques in the centre of Lyon are proof of this. In Paris, the 'Italie 2' shopping centre also changed ownership.

Finally, the appetite for logistics assets is not wavering despite the decline of the average rates of return observed in this market. This type of asset class is now part of the investment specifications of all investors.

Investors currently have significant liquidity at their disposal, and we understand from the numerous exchanges with the market players that the main difficulty lies in the search for available assets.

In this trend, which seems to be confirmed at the beginning of 2020, we would like to present some legal developments to accompany and structure investments.

In terms of structuring

In the past, for a foreign institutional investor, structuration through a Luxembourg vehicle were heavily favoured. Depending on the choice of structure, the taxation could reach 5% corresponding to the tax withholding on dividends paid. Several factors altered this approach: in the first place the removal of the levy rate up to 5% following the modification of the French-Luxembourg tax treaty limits the benefits of such arrangement. In the second place, the government's decision to lower progressively the tax on society increases France's attractiveness. The said rate goes from 33,33% at the beginning of the presidential term to 25% in 2022. Therefore, and depending on the different international tax treaties, many investors are now choosing to invest directly from their country of origin, sometimes by setting up dedicated investment vehicles, notably OPCI or similar solutions when it comes to medium- and long-term investments. Other solutions such as setting up a professional fund or sociétés de libre partenariat (SLP) may be considered. In any case, existing

legal structures, already tested and performing, allow the implementation of bespoke structures according to the investment vehicle of the country of origin.

In terms of liability guarantee

Apart from the purely economic aspects of an investment, the question of representations and warranties remains at the core of the negotiations between the purchaser and the seller of a real estate asset. Moreover, the question of the counter-guarantee given as an answer to potential claims on guarantees made by a purchaser. In the recent years the W&I insurance has experienced an upturn in the real estate sector, primarily in connection with share deals. The benefit of this type of clause is twofold: by substituting insurance for the seller, the latter is in principle freed of any future commitments allowing him to distribute the proceeds of the sale more quickly to his partners. For the assignee, the question of the implementation of the guarantee clauses can be facilitated in cases where the assignor is a foreign entity and/or if it is a vehicle with a limited financial surface area. The assumption of cost of insurance, which is sometimes not negligible, is subject to negotiation between the parties.

In terms of new technological tools

The French institutional real estate market is, undoubtedly one of the most transparent and structured in Europe. Thus, a potential purchaser will in almost every case have a well-organized virtual data-room containing essential information regarding the contemplated deal. In addition to international players, such as Drooms and Merrill Lynch, there are data-rooms provided by the chamber of notaries and other legal professionals. Some law firms set up multi-tasking platforms to establish direct and secure communication with the client. With the same aim of fast, secure and efficient exchanges, other tools such as online contract signatures, simplified due diligence, knowledge sharing (training, alert, remote collaboration on documents, etc.) have emerged and are now part of the French real estate transactional landscape.

Finally, 2019 saw the first real estate deal (AnnA project) being carried out entirely through blockchain technology, in collaboration with CMS Francis Lefebvre Avocats.

In a nutshell, France has today all the resources to enable foreign investors to carry out their real estate projects in complete transparency and stability.