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Real Estate

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Marc Ambrós and Elena Redondo
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ANDORRA

Law and Practice

Contributed by:
Marc Ambrós and Elena Redondo
Cases & Lacambra see p.22

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1. GENERAL

1.1 Main Sources of Law

As a preliminary consideration, Andorra has neither a civil code nor any regulation based on civil law, to the extent that there was no codification process like in other neighbouring civil law countries that are members of the European Union. Consequently, generic provisions in the field of real estate are based on the applicable Roman Law or Digest, as are guarantee rights.

Notwithstanding this, the pace of change of Andorran society has led to a need to develop specific regulations governing land and urban planning (*Llei General d'Ordenació del Territori i Urbanisme*), real estate building, condominiums, urban leasing and emphyteutic census.

Additionally, the following normative provisions are relevant in the housing sector:

- planning instruments, guidelines and specific regulations on urban planning and real estate building;
- projects of national interest; and
- sectoral plans (*Projectes d'interès nacionals i plans sectorials*) and the Plan and the Master Plan of Urban Planning and Development (*Pla d'Ordenació i Urbanisme Parroquial* – POUP) issued by the respective town halls (*Comuns*).

1.2 Main Market Trends and Deals

The real estate market in Andorra has been driven by five main projects over recent months:

- the White Angel – a 10,428 sq m plot where a residential and commercial development is currently under construction in Andorra la Vella;
- Terrasses d'Emprivat – a project in Escaldes-Engordany that includes the construction of three towers of ten, 15 and 20 floors;
- La Torre and A Tower, two additional projects of luxury houses in Escaldes-Engordany; and
- Ordino residential mountain resort, a residential project in Ordino that includes the construction of six buildings inspired by traditional Andorran architecture.

Likewise, a bill of law is on the verge of being submitted to *Consell General*, the Andorran parliamentary body, by the Andorran government with the aim of regulating the legal status of a new public and independent body, *Institut Nacional de l'Habitatge d'Andorra*, to ensure the development of housing policies within Andorra, under the constitutional right of decent housing. This piece of legislation empowers such body to enhance the creation of a public-private fund to promote rental housing at reasonable prices.

Act 23/2019, 12 December, on urgent measures for rent leases (*Llei 23/2019, del 12 de desembre, de mesures urgents en matèria d'arrendaments d'habitatge i per millorar el poder adquisitiu*) entered into force on 1 January 2020, and states that either party may terminate the contract, with one month's notice.

1.3 Impact of Disruptive Technologies

In the last 12 months, Andorra has experienced emerging growth in initiatives related to disruptive technologies (ie, DLT, blockchain and AI) at various business levels. However, at the present time, the scope of action is limited to the financial industry, public services and university services (digital identity and electronic certificates).

1.4 Proposals for Reform

As stated in **1.2 Main Market Trends and Deals**, the Andorran government is working on a law to govern the legal status of the *Institut Nacional de l'Habitatge d'Andorra* in response to the housing needs of the population.

One of the powers granted to such body is the promotion of a public-private fund to facilitate access to rental housing at reasonable prices.

The proposal is expected to be submitted to *Consell General* soon in order to be passed during the second half of 2021.

2. SALE AND PURCHASE

2.1 Categories of Property Rights

The right of property can be understood as a full right or a limited right. In Andorra, the right of property understood as a full right could be:

- an absolute freehold, permanent and absolute tenure of land or property, with freedom to dispose of it at will;
- a co-ownership, which is the right owned by more than one person over real estate; or
- in a condominium (*propietat horitzontal*), the ownership of common premises is shared by the owners of each of the units that make up the apartments.

On the other hand, a property right could be understood as a limited right. Under Andorran law, the following rights are recognised as limited property rights:

- leasehold, which is the temporary right that includes the ability to build on the ground or in the subsoil, and the right to overhang, with the right to appropriate what has been built for a specific period of time;
- beneficial interest, which is the right by which a person can use the property of another and enjoy the benefits of it, with the obligation to preserve and take care of it; and
- emphyteutic lease, which is the right by which the useful domain of a real estate property is given for a period of time by means of the payment of an annual pension, whereby the assignment is made as recognition of the useful domain of the property.

2.2 Laws Applicable to Transfer of Title

Titles are transmitted by the theory of the title and mode, which is a system of transmission of ownership that requires the conclusion of an agreement, the subsequent delivery of the real estate to be transmitted, and proof before a public notary, without any one aspect being enough separately.

Depending on the activity to be carried out with the real estate, attention should be paid to administrative regulations.

Depending on the economic sector (residential, industrial, offices, retail, hotels), different types of real estate would have specific regulations, but the theory of the title and mode would be applicable to any sector.

2.3 Effecting Lawful and Proper Transfer of Title

The lawful and proper transfer of title to real estate occurs when the conclusion of an agreement and the subsequent delivery of the real estate is made before a public notary.

There is no land registry in Andorra, but each town hall (*Comú*) has its own real estate registry for tax purposes.

The transfer of title is recorded in the Andorran chamber of notaries. The public notaries record all the public deeds that are granted in reference to a piece of real estate, including any encumbrances, modifications and other duly recorded vicissitudes.

Title insurance is not used in Andorra.

2.4 Real Estate Due Diligence

Buyers usually carry out due diligence on a real estate property, undertaking an exhaustive investigation of the ownership and main characteristics of the real estate. The red flag aspects to analyse are the following:

- titles and encumbrances;
- the rights of third parties over the real estate – eg, if there are lease rights, if they are subject to a specific licence, if the real estate is subject to any tax, or if there is some kind of foreclosure on the real estate;
- whether there is any debt involved in the case of condominiums; and
- whether there are any litigious procedures concerning the real estate.

2.5 Typical Representations and Warranties

The parties negotiate the representation and warranties within a real estate transaction. The typical representations and warranties in Andorra are as follows:

- the buyer must obtain authorisation for any foreign investment from the Andorran government, before the completion of the transaction;
- at the time of granting the public deed of sale, the property must comply with the conditions for building on the land, being free of charges, encumbrances, tenants and occupants;
- the property must be transmitted with all the rights, facilities, elements and equipment that are inherent and accessory to it; and
- the seller shall carry out all the necessary or agreed acts in order to avoid the occupation of the property by third parties, so that it is free.

The buyer's remedies against the seller for misrepresentation include the resolution of the contract, with the return of any reciprocal benefits, the compensation of damages to the buyer, or the specific performance of the terms and conditions of the agreement.

2.6 Important Areas of Law for Investors

The most important areas of law for an investor to consider when purchasing real estate could be:

- civil law, in order to have the base knowledge of property rights, and the different charges and encumbrances that the real estate could have;
- administrative law, in order to know the regulations pertaining to planning and zoning; and
- tax law, in order to use the most beneficial tax structure to acquire the real estate.

2.7 Soil Pollution or Environmental Contamination

In accordance with Andorran legislation regarding civil liability, the liability for other's actions must be considered. In this sense, the buyer of the real estate shall be liable for any soil pollution or environmental contamination of real estate, even if it is not attributable to said buyer.

The liability for others' actions allows the buyer of the real estate to claim the necessary expenses to compensate for the damages against the seller, since he or she has responded previously when the real estate did not belong to him or her.

2.8 Permitted Uses of Real Estate under Zoning or Planning Law

A buyer can ascertain the permitted uses of a parcel of real estate under the applicable zoning and planning law by consulting the Andorran Official Gazette (*Butlletí Oficial del Principat d'Andorra* – BOPA), where the permitted uses for a plot or zones are published.

In order to facilitate a project, it is possible to enter into a specific development agreement with relevant public authorities, relating to, for example, the execution of a project of national interest or local sectorial plans, a project concerning the construction of roads and communications infrastructure, or the execution of the hydraulic and energy policy.

2.9 Condemnation, Expropriation or Compulsory Purchase

In Andorra, there is a law of compulsory expropriation.

The procedure first requires the prior declaration of the public utility of the construction project, and necessitates the occupation of the property or the acquisition of the affected economic rights. In order to carry out the expropriation, the expropriator must develop a file, which is public information and must be published in the Andorran Official Gazette. Later, the government transmits all the pieces of the file to the Andorran Parliament (*Consell General*), with all the observation and objections received, attaching a report suggesting the approval or denial of the declaration of public utility and the necessity of occupation. The Andorran Parliament makes the final decision, which has to be published in the Andorran Official Gazette and is directly enforceable.

2.10 Taxes Applicable to a Transaction

Asset Deal

The purchase of a property would be subject to Transfer Tax at a rate of 4% (*Impost sobre transmissions patrimonials*) or to IGI (*Impost General Indirecte*), which is the Andorran VAT, at a rate of 4.5%, depending on the condition of the seller. If the seller is a company or a professional acting in a professional capacity, IGI will be applicable; otherwise, Transfer Tax will be applicable.

On the other side, the sale of a property would be subject to Capital Gains Tax at a rate ranging from 0% to 15%, depending on the time elapsed since the date of purchase.

Share Deal

The purchase of shares of an Andorran company will only be subject to Transfer Tax if at least 50% of the assets would be composed of real estate assets located in Andorra.

The seller would be subject to Capital Gains Tax only if at least 50% of its assets would be real estate assets located in Andorra and the purchaser would hold more than 20% of the shares of the company as a result of the transaction.

2.11 Legal Restrictions on Foreign Investors

There is a restriction on foreign investment in real estate that establishes that a foreign natural person has to obtain prior foreign investment authorisation from the Andorran government before they can acquire real estate located in Andorra.

Furthermore, foreign legal persons cannot directly acquire a property located in Andorra, so they must use an Andorran special purpose vehicle (SPV). The acquisition or constitution of the SPV is also subject to obtaining the relevant prior foreign investment authorisation from the Andorran government if the foreign entity owns more than 10% of the SPV's share capital or controls more than 10% of its voting rights.

Finally, the Andorran government has a veto right, which enables it to deny the authorisation of foreign investment, always in a motivated way, when the investment may harm, even occasionally, the exercise of public power, sovereignty and national security, public and economic order, the environment, public health or the general interest of the Principality of Andorra and

any direct foreign investment related to sensitive goods.

3. REAL ESTATE FINANCE

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate located within Andorra are generally financed with recourse to debt by means of one-off or revolving loans or credits granted by local banking entities.

The structure and disposal conditions of the financing may vary widely, depending on the specific characteristics of the acquisition and the borrower. However, it is common for the guarantee scheme of such financing operations to encompass a mortgage granted over the real estate asset, and one or several pledges granted over any credit rights deriving from agreements entered into by the borrower (eg, insurance contracts) or other instruments (eg, borrower's bank account(s)).

There are no special financing options for acquisitions of large real estate portfolios.

3.2 Typical Security Created by Commercial Investors

The standard security package for a commercial real estate transaction would normally encompass the following:

- a first-ranking mortgage over the target real estate asset;
- a pledge over the shares of the company holding the target real estate asset (normally an SPV);
- a pledge on the company's bank accounts (over the bank account balance and the bank account itself), usually complemented by periodical cash-sweeps, limits for maximum-free disposal amounts or minimum-unavailable amounts and disposals subject to the consent of the financing entity; and
- a pledge granted over credit rights deriving from any income-producing agreement entered into by the borrower and related to the specific real estate asset. In a non-exhaustive manner, a pledge may be created over insurance policies, lease agreements or hedging agreements. The key point is that such agreements generate liquid, due and payable credit rights in favour of the borrower. The creditor shall notify the counterpart of each pledged agreement in an enforcement scenario in order to receive any payments due or positive-balanced set-off rights deriving from the pledged credit rights.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

Lending is subject to the reservation of activity within Andorra, and can only be carried out by local banks that are authorised to operate as such by the Andorran Financial Authority (*Autoritat Financera Andorrana* – AFA). Therefore, direct lending granted by foreign lenders to finance an acquisition of commercial real estate assets located within Andorra is not allowed, as it would result in a breach of the reservation of activity regime. However, indirect lending (ie, the granting of financing to a foreign entity that will acquire the real estate asset located in Andorra) would be allowed.

The recently enacted Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) has expanded the scope of transactions that are subject to review by the Committee on Foreign Investment in the US (CFIUS), which has the authority to examine the national security implications of a foreign acquirer's non-controlling investments in US businesses that deal with critical infrastructure, critical technology or the sensitive personal data of US citizens. Therefore,

FIRRMA grants the Committee the authority to limit those transactions that are subject to its review, by providing that it "shall specify criteria to limit the application of such clauses to the investments of certain categories of foreign persons", and that such criteria shall take into consideration "how a foreign person is connected to a foreign country or foreign government."

FIRRMA does not single out any specific country. CFIUS's authority may be applied to address the national security risks posed by foreign investment in the United States, regardless of where the investment originates. Therefore, FIRRMA will also be applicable to investments made from Andorra to the United States.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Notary fees are generated concerning the granting and enforcement of security over real estate (usually a mortgage or a pledge) in order to benefit from priority over other creditors in an insolvency scenario.

No documentary taxes or registration fees are generated in connection with the granting and enforcement of security over real estate assets.

3.5 Legal Requirements Before an Entity Can Give Valid Security

Other than the limits on financial assistance outlined in **3.1 Financing Acquisitions of Commercial Real Estate**, there are no legal rules or requirements that must be complied with in order for an entity to give valid security over its real estate assets. However, such decision authorising the creation of a valid security over specific asset(s) must be adopted in accordance with the generic legal and statutory requirements that apply to the company.

3.6 Formalities When a Borrower Is in Default

No specific formalities or obstacles need to be overcome in order to enforce a security over real estate against a defaulting borrower, although the granting of security over real estate by public deed before a notary is mandatory in the case of creating a mortgage, and advisable regarding the granting of pledges.

Priority of the lender's security interest is determined by strict order of creation (prior tempore potior iure). In a scenario of borrower default, legal action must be taken by the lender by means of (i) a declarative procedure to ascertain the existence and quantification of the debt, and (ii) filing a payment demand before the competent courts after such declarative procedure. A notarial enforcement proceeding is also available if the parties have previously agreed on this proceeding and its terms and conditions.

According to Andorran case law, the enforcement procedure cannot be started unless the defaulted amount corresponds to at least three defaulted instalments.

3.7 Subordinating Existing Debt to Newly Created Debt

As there is no Land Registry in Andorra, secured debt priority is ranked by means of recording in the Andorran Notary Chamber (*Cambra de Notaris del Principat d'Andorra*).

The subordination of a secured mortgage to a newly created one requires express agreement between creditors and the raising of such consent into the status of public deed before a public notary.

The subordination of a pledge to a newly created one requires express agreement by the parties; its documentation through notarial deed is highly recommended.

3.8 Lenders' Liability under Environmental Laws

Overall, Andorran environmental regulations follow the "polluter pays principle" and are configured as a strict liability system.

Therefore, in an enforcement scenario, the new owner of the land corresponding to a real estate asset may be liable for any environmental damage caused to that specific plot of land or deriving from it, even if that new owner did not cause any pollution of the real estate, irrespective of the new owner (lender) demanding liability from the prior owner (borrower) on the grounds of latent defects.

3.9 Effects of a Borrower Becoming Insolvent

From a general perspective, security interests created by a borrower in favour of a lender are not made void upon the borrower's declaration of insolvency, as protection granted to the lender by in rem guarantees to the lender and its faculties against the guaranteed asset is not affected by either the declaration of insolvency or the development of the insolvency procedure, due to their ranking as privileged claims.

Nevertheless, the claw-back regime provided for under the Insolvency Decree of 4 October 1969 (*Decret de suspensió de pagaments i fallida*) states that the insolvency judge will be able to declare any mortgage or pledge granted over the debtor assets after the cessation-of-payments day in merits of outstanding debts prior to the cessation of payments as unenforceable against the insolvent estate. The insolvency judge can also declare it unenforceable if the granting of such mortgage or pledge occurred six months prior to the cessation-of-payments day as a gratuitous act. Lastly, the insolvency judge can set the declaration of the cessation-of-payments date up to 18 months prior to such effective declaration.

3.10 Consequences of LIBOR Index Expiry

The Financial Conduct Authority of the United Kingdom has suggested that there may be a transitional period following the expiry of LIBOR, during which LIBOR will be maintained as a shadow benchmark rate for use in transactions that are still current.

Parties need to consider the consequences of the LIBOR expiry on contracts if:

- no transitional arrangements are put into place maintaining LIBOR, which are effective in the context of that particular contract;
- there is no new law relating to the interpretation of LIBOR following its expiry; and
- there is no agreement between the parties as to how the particular contract should be amended.

Therefore, the effect of the expiry of LIBOR needs to be analysed in the context of the terms of each contract. Normally, well-drafted contracts have "fall-back provisions" that specify an alternative rate in case LIBOR is unavailable. Thanks to historic confidence in LIBOR, these provisions assume a short period of unavailability, caused perhaps by a technical glitch. Such provisions might say, for example, that it would entail small differences in payments even if interest rates moved significantly. But if "the same rate" persisted over a period of months or years, as it would for many contracts if LIBOR ended, the differences would be considerable. Rather than persist under a disadvantageous fall-back provision, the losing party will be keen to renegotiate the contract, but the gaining party will be equally keen to retain the existing terms. The problem is that the new rates are likely to be lower than the LIBOR rates they replace, which means that new contracts will often increase the "add-on" – the "plus XXX basis points".

The transition will thus have important long-term implications for product design and market risk management. In the short term, the risk management challenge created by the transition is likely to be exacerbated by new reference rates becoming available at different times. Financial firms could find themselves operating in LIBOR for some currencies and in new reference rates in others, sometimes within the same deals. This risk could be reduced if the transition process – currently being undertaken independently for each currency – is co-ordinated at an international level.

To minimise such risks, firms will need to communicate a clear, consistent and justifiable transition approach to both counterparties and regulators. They will need to be especially careful when dealing with less sophisticated retail and commercial counterparties.

4. PLANNING AND ZONING

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

Legislative and governmental controls applicable to strategic planning and zoning principally correspond to the regional authorities (town halls – *Comuns*) of each administrative unit (parish – *Parròquia*), even though the Andorran government sets out the general boundaries regarding development.

In this vein, the regional authorities are competent to do the following:

- draft, pass and publish the general master plans (*plans d'ordenació i urbanisme parroquials*) and special plans (*plans especials*), the regulatory state ordinances (*ordenances reguladores de la normativa subsidiària*), reform ordinances (*ordenances de rehabilitació*) and protection, sanitation and internal reform programmes (*programes de reforma interior, de protecció i de sanejament*);
- advise owners and collaborate with them in drafting and passing town plans (*plans parcials*); and
- issue building licences (*llicències d'obra*).

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

The key control concerning the design, appearance and methods of construction of new buildings or refurbishment is the obtaining of working licences (*llicències d'obra*) and the approval of construction projects (*projectes d'edificació*) by the town halls, in accordance with the applicable generic and sectorial planning and building regulations.

The Construction Act was amended in May 2020 to allow the public authorities to suspend any construction works that are not compliant with the Construction Act or the Urban Act. The amended Construction Act also adapts the authorisation procedures in accordance with the Urban Act.

4.3 Regulatory Authorities

Town halls are responsible for drafting and passing the general master plans (*plans d'ordenació i urbanisme parroquials*) that determine the total buildability for each of the parishes (*Parròquies*) and a priority use for every parcel in accordance with specific technical and administrative restrictions, by establishing the soil classification and the action units (*unitats d'actuació*), and fixing the public service estimations.

In this connection, the Technical Committee of Urban Development (*Comissió Tècnica d'Urbanisme*) is the advisory and executive board for regulating the development and desig-

nated use of individual parcels of real estate and is responsible for deciding on all appeals lodged against the resolutions issued by the town halls in respect of urban development, verifying and reporting on the drafts of special plans or town plans, and ordering the suspension of working licences (*llicències d'obra*).

4.4 Obtaining Entitlements to Develop a New Project

As stated in **4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction**, working licences (*llicències d'obra*) and the approval of construction projects (*projectes d'edificació*) by the town halls must be obtained in order to develop a new project or complete a major refurbishment.

Overall, the general process for the granting of working licences from the town halls involves the following:

- submission of the request by the person concerned (stating personal information, the specific information concerning the plot of land or the building, the sort of urban licence requested, and the place, date and signing of the applicant jointly with documentation of the project);
- upon reception of the documentation legally required and the licence request by the administration, the pertinent internal and external, legal and optional reports required by the specific town hall must be delivered to such administration; and
- a resolution on this procedure must be issued within two months of the date the application is submitted. Third parties do not have the right to participate and object to the procedure until a resolution is issued.

4.5 Right of Appeal Against an Authority's Decision

Concerned persons may appeal a decision within the framework of the administrative route and, subsequently, with recourse to contentious administrative proceedings.

4.6 Agreements with Local or Governmental Authorities

Entering into agreements with local or governmental authorities, agencies or utility suppliers to facilitate a development project relies on the urban planning and construction legislation and may vary on a case-by-case basis, depending on the specific town hall.

4.7 Enforcement of Restrictions on Development and Designated Use

In synthesis, restrictions on development are designed on an ex ante or ex post basis. Overall, the ex ante mechanisms are controlled by means of the granting of licences through a regulated procedure, as stated in **4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction** and **4.4 Obtaining Entitlements to Develop a New Project**, and by the exercise of the urban supervisory power. Ex post mechanisms are the exercise of the sanctioning power by the administration and the imposition of additional measures with the aim of stopping the administrative offence (including the cessation of construction work (*cessació de l'obra*), the demolition of construction work (*demolició*) or the suspension of construction work (*aturada*)).

5. INVESTMENT VEHICLES

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Entities available to investors are as follows:

- corporate vehicles, which may take the form of a limited liability company (*societat limitada*) or a public limited company (*societat anònima*); or
- regulated investment vehicles, which may take the form of an open-ended collective investment scheme (*Societat d'Inversió de Capital Variable* – SICAV) or a real estate fund.

In respect of corporate vehicles, the incorporation of an SPV is a common instrument for investing in real estate assets.

The use of regulated collective investment vehicles is more restricted, due to the costs associated with their incorporation and prior registration requirements to be fulfilled before the AFA. However, the tax treatment of collective investment schemes is highly efficient.

5.2 Main Features of the Constitution of Each Type of Entity

The main features of each type of entity used to invest in real estate are as follows.

- Limited liability company (*societat limitada*) – a company whose share capital is divided into company shares (*participacions*). Partners in the company benefit from limitation on personal liability from the company's debts. Overall, limited liability companies have a closed structure that restricts the transmission of company shares outside the company, and the representation and faculties of shareholders in general meetings are limited.
- Public limited company (*societat anònima*) – a company whose share capital is divided into shares (*accions*). Partners in the company benefit from limitation on personal liability from the company's debts. Overall, public limited companies have an open structure that allows the transmission and traffic of shares as negotiable securities and a broader intervention scope for shareholders in general meetings.
- SICAV – an open-ended collective investment schemes whose share capital is divided into shares (*accions*) and whose general legal regime is determined by corporate regulations applicable to public limited companies (*societat anònima*), with specific regulatory requirements. Its government and management may be performed by a management company (*societat gestora*) if provided for by the SICAV's articles of association.
- Real estate fund – a collective investment scheme whose assets are governed and managed by a management company (*societat gestora*) and held under custody by a custodian (*societat dipositària*). Their relationship is governed under a written agreement, the content of which is legally determined.

5.3 Minimum Capital Requirement

The minimum capital required to set up each type of entity used to invest in real estate in Andorra is as follows:

- Andorran limited liability company (*societat limitada*) – EUR3,000 fully paid upon incorporation;
- Andorran public limited company (*societat anònima*) – EUR60,000 fully paid upon incorporation;
- Andorran self-managed SICAV – EUR300,000, with a minimum of 10% of such estate disbursed upon incorporation;
- Andorran SICAV managed by an Andorran management company – EUR1,250,000, with a minimum of 10% of such estate disbursed upon incorporation; and
- Andorran real estate fund – EUR6 million, with a minimum of 10% of such estate disbursed on the date of incorporation.

5.4 Applicable Governance Requirements

Governance requirements for a limited liability company (*societat limitada*) and a public limited company (*societat anònima*) are quite flexible and allow their setting up and organisation mainly on a shareholder's consensus basis (by means of the articles of association) and, residually, on an imperative basis determined by the provisions of Act 20/2007, 18 October, on limited liability companies and public limited companies. Shareholders must determine the structure and scope of the board of directors' representation powers in the articles of association prior to the incorporation by means of granting a public deed before a notary public. In synthesis, the governing body may take the form of a sole director, two or more directors acting jointly, two or more directors acting jointly and severally, or a board of directors.

Governance requirements for SICAVs and real estate funds differ from those of mercantile companies due to their condition as regulated entities. Governance requirements applicable to collective investment schemes are provided for in the following:

- Act 7/2013, 9 May, on the regime for operating entities in the Andorran financial system and other provisions that govern the financial activities in the Principality of Andorra;
- Act 8/2013, 9 May, which covers the organisational requirements and operating conditions of the operating entities in the Andorran financial system, investor protection, market abuse and financial securities agreements; and
- Act 10/2008, 12 June, governing the collective investment undertakings of Andorra.

In synthesis:

- the governing body shall adopt the form of a board of directors, composed of at least three directors;
- members of the board of directors shall be persons of recognised commercial and professional honourability, and must possess adequate knowledge and professional experience to exercise their duties;
- the elected chairman cannot hold the position of general manager;
- the board of directors shall draft and approve a set of internal operating rules to comply with legal obligations and promote responsibility among all members; and
- both the management company (*societat gestora*) and custodian entity (*entitat dipositària*) must comply with local rules on the conduct of business.

5.5 Annual Entity Maintenance and Accounting Compliance

Costs associated with maintenance and accounting compliance may vary notably, depending on the particulars of each entity, business decisions adopted by the governing body, and whether or not it is a regulated entity. In a non-exhaustive manner, costs may be determined as follows.

- Limited liability companies (*societat limitada*) and public limited companies (*societat anònima*) are legally obliged to draw up financial statements yearly, to submit them to external audit (in certain cases, depending on the business volume and/or number of employees) and to deposit financial statements to the Companies Register (*Registre de Societats*). Moreover, the yearly maintenance fee for the registration of limited liability companies (*societat limitada*) and public limited companies (*societat anònima*) with the Companies Register amounts to EUR851 and EUR935.50, respectively.

- SICAV and real estate funds: due to their condition as regulated entities, the costs associated with maintenance and accounting are generally higher. Specifically, Andorran management companies (*societats gestores*) of collective investment schemes are subject to a yearly fee of EUR3,000 in the concept of supervision payable to the AFA. This fee increases by EUR2,000 if the specific management company carries out the discretional and individualised management of investment portfolios. The collective investment scheme is subject to the same fee, in an amount ranging from EUR1,800 to EUR3,300, depending on the type of the vehicle. Collective investment schemes must comply with accounting requirements stated in Act 10/2008, 12 June, governing the Andorran collective investment undertakings (*Llei de regulació dels organismes d'inversió col·lectiva de dret andorrà*), which essentially are:
  (a) confidential financial statements (to be issued quarterly);
  (b) public financial statements (yearly as minimum and subject to audit); and
  (c) external audit process (permanent; it cannot be the same auditor for a period exceeding five years; such audit entity must be the same as the management's company auditor).

Moreover, distribution, management, subscription and reimbursement fees (for the management company) and depositary fees must also be taken into account, as well as costs arising from the publication of the collective investment scheme prospectus (simplified and complete form).

6. COMMERCIAL LEASES

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

The Andorran regulatory provisions recognise a lease agreement as being commercial if it allows any natural or legal person to occupy and use a piece of real estate for a limited period of time without the tenant having an obligation to purchase it.

6.2 Types of Commercial Leases

The Andorran regulatory provisions do not establish any differentiation between commercial leases. In this vein, commercial leases have the purpose of conducting a commercial, industrial, professional, logistics or teaching activity, as well as other purposes.

6.3 Regulation of Rents or Lease Terms

Unless a law stipulates otherwise, the principle of freedom of contract between/among the parties governs in commercial leases. Without prejudice to the principle of freedom of contract, and pursuant to the Andorran provisions, the maximum length for a commercial lease agreement is four years.

Rent is freely agreed between the landlord and the tenant. A rent adjustment, if such is agreed between the parties, cannot be carried out more than once per contractual year. Any such adjustment is tied to variations in the general Consumer Price Index during the previous calendar year, based on the income paid at the time the right to adjust came into being.

However, a fixed minimum income can be established, and increased according to variables such as turnover or operating income. In this scenario, the period during which the tenant must provide the landlord with business accounts must be agreed upon. If the tenant does not provide

the landlord with the business accounts, the landlord is entitled to terminate the contract and claim the corresponding compensation for damages suffered. Any other adjustment system that is agreed between the parties is void.

6.4 Typical Terms of a Lease

The length of a lease term is agreed by the parties, but it cannot be less than four years. If a term is not agreed by the parties, or if a term lower than the legal minimum is agreed, the lease shall be deemed to be for a four-year term. Once the minimum term has expired, the agreement is tacitly extended for periods of one year, unless a party notifies the other of its willingness to resolve the agreement, with a minimum prior notice of three months before the end of the principal term or any of its extensions.

The landlord is obliged to carry out the necessary repairs so that the tenant can continue carrying out the activity for which the real estate was leased. The tenant is obliged to carry out the repairs that are the result of wear and tear due to normal or abnormal use of the real estate, or its facilities or services.

The rent is paid in the manner agreed by the parties in the agreement. In the absence of such agreement, the rent shall be paid monthly, within the first five days of each month.

6.5 Rent Variation

The rent is freely agreed between the landlord and the tenant. During the contractual term, and in the event that no price adjustment system has been agreed by the parties, the landlord and the tenant may adjust the rent at the end of each contractual year, in accordance with the percentage variation experienced by the general Consumer Price Index, or the other price adjustment mentioned in **6.3 Regulation of Rents or Lease Terms**.

The specific legislation issued by the Andorran government during 2020 following the effects of the COVID-19 pandemic has reduced the rent of commercial leases until the epidemic situation is resolved.

6.6 Determination of New Rent

Any increase of the rent is determined in accordance with the general Consumer Price Index or according to variables such as turnover or operating income. Please see **6.3 Regulation of Rents or Lease Terms** and **6.5 Rent Variation**.

6.7 Payment of VAT

Commercial leases are subject to local VAT, called Indirect General Tax (*Impost General Indirecte* – IGI), at a rate of 4.5%.

Residential leases are subject to IGI at a 0% rate.

6.8 Costs Payable by a Tenant at the Start of a Lease

The tenant has the obligation to arrange an insurance policy that covers at least the risk of fire, explosion, water leaks and civil liability for damages, to sign up for the national electricity company, through an electricity journal, to pay taxes related to the economic activity that is going to take place, and to sign up in the trade register.

6.9 Payment of Maintenance and Repair

The tenant is obliged to pay the expenses that arise from the services and utilities supplied to the real estate that he or she can use. This consideration is derived from the use of common elements of the property such as parking lots, gardens, porter's lodge services, and the supply of water, electricity, heating, telephone and other analogues.

6.10 Payment of Utilities and Telecommunications

In order to collect payment for the supply of utilities and telecommunications services, the landlord must justify the amount to the tenant. If the real estate is enjoyed by more than one tenant, the total cost is distributed among them, according to the surface of each floor, unless the participation fees are set for each floor or premises.

This does not apply if there are individual meter boxes, in which case the tenant will pay according to what the individual meter box indicates.

The agreement of a previously fixed amount for all services is valid.

6.11 Insuring the Real Estate That Is Subject to the Lease

The landlord is obliged to sign and maintain an insurance policy that sufficiently covers the damages that could be caused to the tenant and third parties.

The tenant is obliged to arrange an insurance policy that covers the risks of fire, explosion, water leaks and civil liability for damages, to sign up for the national electricity company, through an electricity journal, to pay taxes related to the economic activity that is going to take place, and to sign up to the trade register.

6.12 Restrictions on the Use of Real Estate

The landlord is entitled to terminate the lease agreement if the tenant:

- changes unilaterally the destination of the leased real estate asset and persists in this action for more than six months during the year;
- subleases or transfers totally or partially the leased asset without prior consent from the landlord;
- causes harm to the leased asset due to wilful misconduct or gross negligence, or carries out construction works that alter the structural configuration of the leased asset or its common elements;
- breaches the essential conditions of the lease agreement (or breaches the conditions specifically determined as being essential in the lease agreement); or
- carries out notoriously immoral, dangerous, annoying or insalubrious activities within the leased asset or when such activities affect the leased asset's common elements.

Furthermore, any activity other than residential use shall require correspondent authorisation from the competent authority (*Comú*).

6.13 Tenant's Ability to Alter and Improve Real Estate

Within the limits provided for in **6.12 Restrictions on the Use of Real Estate**, the tenant may alter or improve the leased asset by carrying out repairs needed due to deterioration through normal or abnormal use.

The Urban Rents Law of 30 June 1999 (*Llei d'arrendaments de finques urbanes*) does not thoroughly regulate the introduction of improvements to the leased asset by the tenant. Thus, there is no obstacle to the tenant introducing improvements to the leased asset, usually subject to the landlord's consent.

Upon the termination of the lease agreement, the tenant is entitled to revert the improvement works introduced to the leased asset, if it can do so without causing harm to the asset.

The minimum legal term for commercial leases is four years. However, if the tenant carries out improvement works that result in a cost exceeding the equivalent of three years' rent, he or she has the right to require an extended lease term of

up to seven years. In this situation, the landlord is obliged to accept this extension.

6.14 Specific Regulations

There are no specific regulations and/or laws that apply to leases of particular categories of real estate, such as residential, industrial, offices, retail or hotels, other than the Urban Rents Law, which provides the common regime for residential and commercial leases.

6.15 Effect of the Tenant's Insolvency

The Urban Rents Law does not expressly provide for insolvency as a termination cause for lease agreements, but states that a default in rent payment by the tenant constitutes a termination cause in favour of the landlord.

However, a declaration of insolvency is not sufficient in itself as a termination cause for the specific lease agreement, in case the insolvency situation of the tenant is rapidly reversed. Generally, Andorran courts may refuse to uphold the termination of a contract based on a breach of obligations, undertakings or covenants, or on a change in circumstances that is merely accessory or complementary to the main undertakings, or based on an unreasonable, inequitable or bad faith interpretation of one of the events of default or changes in circumstance.

6.16 Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations

The Urban Rents Law states that, prior to taking possession of the leased asset, the tenant must deliver to the landlord a guarantee deposit equivalent to a maximum of two months' rent; depending on the case, this security may be replaced by a bank guarantee. Such deposit is held by the landlord, to be returned to the tenant upon termination of the lease agreement against delivery of the leased asset's keys (return of possession over the leased asset).

The tenant and the landlord may also agree additional guarantees in order to cover payment defaults by the tenant (eg, bank guarantees, specific default insurances or even upfront payment).

6.17 Right to Occupy after Termination or Expiry of a Lease

Overall, the tenant does not have the right to continue to occupy the leased asset after the expiration or termination of a commercial lease. Nevertheless, the Urban Rents Law provides for a tacit renewal (*tàcita reconducció*), which takes place if the tenant stays in the leased asset more than 15 days after the termination of the lease agreement without express opposition from the landlord, whereby the lease agreement shall be automatically extended each month without any action by the landlord (or in the same term foreseen for payment of the rent).

The lease agreement may also be subject to tacit extension (*pròrroga tàcita*) for a one-year period upon termination, unless the landlord or the tenant gives prior notice to the other party three months before the termination or any extended period expiry date.

To ensure that a tenant leaves on the date originally agreed, landlords will usually conduct an ocular inspection (or similar inspection mechanisms as inventories) before the tenant leaves the real estate asset.

6.18 Right to Assign a Leasehold Interest

A tenant who has concluded a lease contract for a definite period has a right under Andorran regulatory provisions to lease or sublease all or a portion of the leased premises, insofar as there is written approval from the landlord.

Likewise, there is a prohibition against subletting by the subleased.

6.19 Right to Terminate a Lease

In addition to the events described in **6.12 Restrictions on the Use of Real Estate**, breach by the tenant of the following obligations stated in the lease agreement entitles the landlord to terminate the lease agreement:

- expiry of the lease agreement term;
- loss or destruction of the real estate asset;
- transfer or disposal after expiry of the legal lease agreement term (four years);
- mortgage foreclosure (when the leased agreement has been formalised after creation of the mortgage without the mortgagor's knowledge);
- usufruct extinction (if the beneficial owner had granted the lease agreement and the tenant was aware of such circumstance);
- when the real estate is declared to be in a state of ruin; or
- compulsory expropriation.

The tenant is entitled to terminate the lease agreement without prior notice to the landlord upon verification of the following circumstances:

- breach by the landlord of contractual conditions expressly identified as being of essential character in the lease agreement;
- any de facto or legal interference by the landlord in the use of the leased asset;
- the landlord failing to carry out the necessary repairs to preserve the property in suitable condition for its normal use;
- the landlord failing to render the services stated in the lease agreement; or
- the occupant or tenant of other commercial or residential units located in the same building unit carrying out immoral, dangerous, annoying or insalubrious activities affecting the landlord in any manner.

Furthermore, the Urban Rents Law states that the tenant's death will not constitute a termination cause until the expiry of the term of the agreement if the spouse, ascendants or descendants who have lived together with the deceased tenant choose to continue with the lease for its agreed term. Lastly, a buyer who is entitled to a repurchase right (*pacte de retro*) may not evict the tenant until the expiry of the term of such repurchase right.

6.20 Registration Requirements

There is neither a Land Records in Andorra nor any registration requirements regarding commercial leases.

6.21 Forced Eviction

The landlord may force the tenant to leave if there is an early termination of the lease agreement. The duration of eviction procedures may vary significantly, depending on the specific circumstances.

6.22 Termination by a Third Party

The termination of a lease agreement could normally take place based on either an eviction proceeding, an administrative concession termination or a ruling by the insolvency administrator, as long as it is considered detrimental for the insolvency proceeding.

7. CONSTRUCTION

7.1 Common Structures Used to Price Construction Projects

The price of construction projects may be subject to different criteria:

- fixed price (where the contractor executes and releases the entire work, while the total price is satisfied at the time of receipt of the construction project);
- construction project by units or measures (consists in the partial realisation of the work with the reception of partial payments); and

- the construction project by administration (in which the contractor receives a percentage, or units, of the project executed as payment in kind).

7.2 Assigning Responsibility for the Design and Construction of a Project

In general, in the absence of a contractual agreement, and in the event that different parties intervene, the parties agree that the liability of the contractors and the different parties will be jointly and severally liable.

The period of prescription to carry out claims against the different parties is 15 years. On the contrary, once the work has been carried out and the price has been paid, without the existence of any type of complaint by the buyer, the risk becomes part of it, leaving the contractor or the other parties involved to be responsible.

7.3 Management of Construction Risk

The risk of destruction, loss or deterioration of construction lies with the contractor, and the immediate consequence of such destruction, loss or deterioration is that the contractor is not able to charge the price agreed by the parties. Therefore, it is necessary to differentiate between the following two scenarios:

- when the contractor provides the work but not the materials, because they are provided by the client (in these cases, the contractor must bear the risk of losing or deteriorating, as long as it is not attributable to the contractor or in default due to the contracting party not having received the work when it was agreed); and
- when the contractor provides the work and also the materials (the contractor will be responsible for these damages as long as there is no default on the part of the contracting party).

7.4 Management of Schedule-Related Risk

The reception of the construction project must be carried out within the term agreed by the parties. In the absence of any agreement, it will be understood that the term of termination of the work will be the usual for completion of the construction project, as agreed by the parties.

Often, a conventional penalty is established as a guarantee of the contractor's obligation to deliver the construction project within the agreed term, usually based on the days of delay in delivery. Such conventional penalty shall be enforceable when the delay in delivery is attributable to the contractor, provided that it acts with guilt or fraud, and the determination of the amount corresponds to the parties but may be moderated by the judicial authority if it is excessive.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

Other guarantees may be agreed in order to guarantee the execution of a construction project, as long as they are accepted by both parties.

Comfort letters, parent guarantees and letters of credit are commonly used.

7.6 Liens or Encumbrances in the Event of Non-payment

The contractor has a legal guarantee that substantiates his or her right to receive the price of the construction project carried out. The guarantee consists in the retention of the property, until the price agreed by both parties is paid.

The contractor's right to claim in relation to the contracting party to obtain the agreed price prescribes at 30 years. In cases where the client does not pay the agreed price to the contractor, and the contractor is a debtor of the subcontractor in the construction project, the latter

may exercise direct claims against the contracting party, with the maximum limit of the amount owed to the contractor.

7.7 Requirements Before Use or Inhabitation

The management plans, the zoning plans of the village and the regulatory ordinances will establish the conditions of habitability of the residential buildings and of those buildings that are destined for other uses. These conditions must respect the minimum requirements of the law.

In general, the law imposes the requirement to obtain a certificate issued from the Andorran government to demonstrate that the residential building complies with the conditions of habitability. This certificate must be requested by the promoter of the construction project.

8. TAX

8.1 VAT

According to Andorra Law, IGI (*Impost General Indirecte*) is applicable to real estate transactions, at a rate of 4.5%. The seller has the obligation to pass on IGI to the buyer if the seller is considered by law to be a legal person or individual carrying out habitual business activities. Otherwise, Transfer Tax (*Impost sobre Transmissions Patrimonials Immobiliàries*) should be paid by the purchaser, at a rate of 4% over the total amount of the transaction.

8.2 Mitigation of Tax Liability

There is no exemption from this indirect tax, even for collective investment vehicles. The only advantage of collective investment vehicles relates to the tax treatment of rental income.

8.3 Municipal Taxes

Municipal tax rules apply to commercial or business premises. However, there are exemptions, depending on the business sector of the company and the activity carried out in the relevant business premises.

8.4 Income Tax Withholding for Foreign Investors

Real Estate capital gains are taxed by the law on capital gains tax on real estate transfers (*Llei de l'impost sobre les plusvàlues en les transmissions patrimonials immobiliàries del 14 de desembre del 2006* – IPTPI). The applicable IPTPI tax rate depends on the seller's period of ownership (15% on capital gains if the sale of the real estate property is during the first year, and 0% if the sale of the real estate property is ten years or more after the year of acquisition).

Under the IPTPI, the buyer must apply a withholding of 5% of the sale price and advance this payment to the Andorran government if the seller is a non-resident. If the withholding tax is lower than the effective taxation regarding the IPTPI, the seller could request the Andorran government to undo the difference and the Andorran tax authorities would then refund this amount, within six months of the request date.

Under the Non-Resident Income Tax Law (*Llei 94/2010, del 29 de desembre, de l'impost sobre la renda dels no-residents fiscals* – IRNR), there is a 10% withholding for rental income obtained by foreign investors derived from real estate located within the Andorran territory. In order to determine the rental income tax base, the IRNR allows the deduction of 20% of the gross income, so the withholding tax will be applicable on 80% of the gross income.

8.5 Tax Benefits

Regarding corporate income tax (*impost sobre societats*), the company can deduct the amortisation of the construction according to the amortisation plan adopted by the company and regulated by law.

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AUTHORS

Marc Ambrós leads the firm's Corporate & Foreign Investment practice in the Principality of Andorra, and has extensive experience in corporate and commercial matters. He has advised on M&A, joint ventures, private equity, corporate restructuring and refinancing, representing both Andorran and foreign clients in international transactions with Andorran aspects. He regularly advises throughout the entire process of a transaction, from both the buy side and sell side perspectives, using different legal structures. He also advises companies on project and corporate finance issues. Marc is the author of multiple articles in specialised publications about the legal environment in the Principality of Andorra.

Elena Redondo leads the Public & Environmental Law group of practice at the firm and heads the Andorran office. Her practice focuses on administrative law matters, including real estate transactions and urban planning, where she has broad experience in advising private clients and public administrations. Elena specialises in urban planning, real estate, construction, public procurement and environment matters, actively participating in the drafting of regulatory projects in such areas. Her professional practice includes due diligence processes prior to the acquisition of real estate assets in the tourism, commercial, industrial and energy sectors, and the preparation and execution of all phases of a transaction. She holds an Environmental Sciences and Law Degree and a Postgraduate in Andorran Law and a Diploma in Leadership for Public Management from IESE Business School. Prior to joining Cases & Lacambra, Elena developed her career at Roca Junyent and Manubens, where she founded and led the Andorran office for six years. She is a lecturer in Hotel Law at Vatel Hotel & Tourism Business School in Andorra, and at the Advanced Training Programme for real estate agents in Andorra. She is the Honorary Consul of Brazil in Andorra and the Secretary of the Andorran Business Confederation (CEA).

Cases & Lacambra

Manuel Cerqueda i Escaler, 3-5
AD 700 Escaldes
Engordany
Andorra

Tel: +376 728 001
Email: andorra@caseslacambra.com
Web: www.caseslacambra.com

CASES & LACAMBRA