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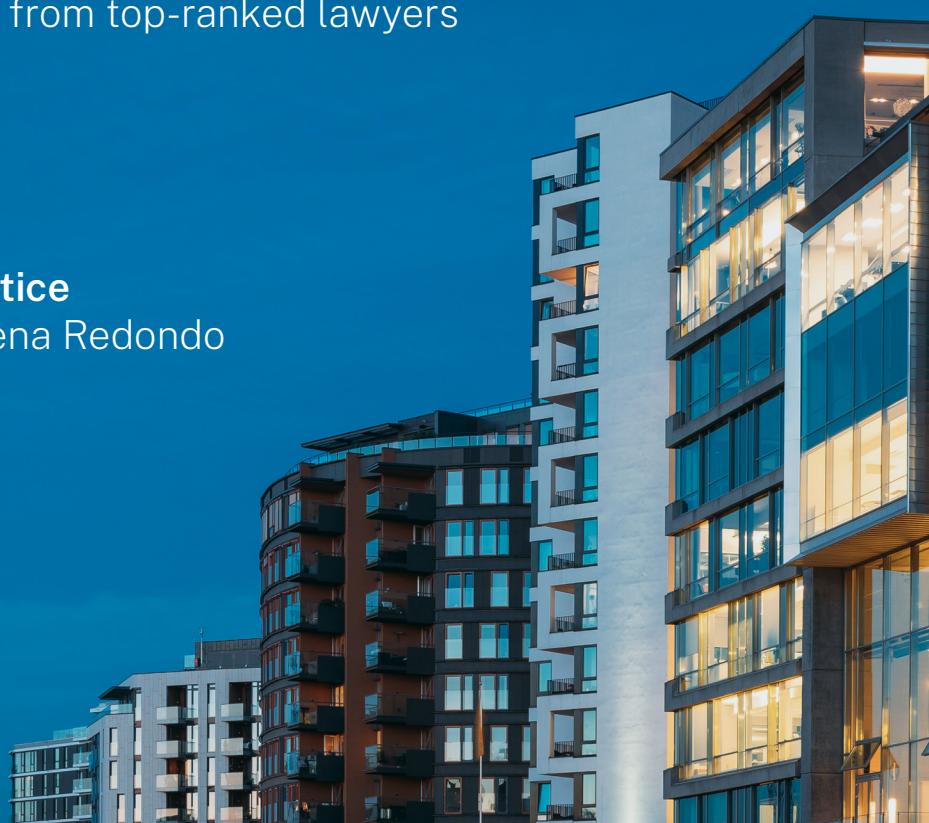

Andorra: Law & Practice

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Cases & Lacambra

ANDORRA

Law and Practice

Contributed by:
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Cases & Lacambra

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CASES & LACAMBRA

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 as in other neighbouring civil law countries that are members of the European Union. Consequently, generic provisions in real estate are based on the applicable Roman Law or Digest, as are guarantee rights.

Notwithstanding this, the pace of change in the Andorran society has led to the 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, as well as projects of national interest and sectorial 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

Over the last months, the real estate market in Andorra has been very active, although focused on smaller operations than those observed in previous years.

On July 2022, the town hall (*Comú*) of Ordino definitively passed the amendment of the Ordinations on subsidiary regulations and building rehabilitation of the Plan and the Master Plan of Urban Planning and Development (*Pla d'Ordenació i Urbanisme Parroquial – POUP*) by means of the Decree of 22 July 2022. The amendments were introduced in order to reduce the occupation of the plots and the maximum size of buildings.

Likewise, Act 32/2022, 14 September, for the promotion of the sustainability of urban development and tourism, and of amendment of the General Act on Land Planning and Urban Planning, of 29 December 2000, and Act 16/2017, 13 July, of Touristic Lodgings has been passed to ensure the sustainable growth of urban development. By virtue of this Act, on the one hand, the Andorran government was mandated to amend the Regulations containing the planning guidelines and, once these amendments came into force, the town halls (*Comuns*) must draw up maximum load capacity studies within a maximum period of one year and adapt the Master Plan of Urban Planning and Development (*Pla d'Ordenació i Urbanisme Parroquial – POUP*) to the content of these studies. Thus, during this period, the Act introduces a new requirement for obtaining the approval of any building permit for new construction, partial plan or urban development project, consisting of obtaining a favourable report issued by the competent ministries in matters of urban planning and the environment, whereby it will be evaluated whether the infrastructures and facilities of each town hall (*Comú*) can adequately cover the needs resulting from the urban development at stake.

On the other hand, this Act also introduced the express suspension of the granting of new authorisations for tourist lodgings in flats and studios for a period of two years as from the entry into force of the Act. However, the Act also provides for an exception to this suspension, in so far as it allows the processing and granting of authorisations that affect lodgings for which it is

accredited that they fulfil the requirements to be classified in the five-star category.

Act 42/2022, 1 December, of the digital economy, entrepreneurship and innovation has also been passed and it establishes, among others, the legal framework for co-living and co-working spaces in Andorra.

The real estate market in Andorra has recovered from the COVID-19 pandemic and is no longer impacted by it.

Notwithstanding the above, the real estate market in Andorra has been impacted by the rising inflation and increases in interest rates, through the increase of the construction costs which caused some works to be temporarily suspended, and the increase of the financing costs which caused some projects to reduce the amount financed by third parties and increase financing by equity partners.

1.3 Impact of Disruptive Technologies

In the last 12 months, Andorra has experienced an emerging growth in initiatives related to disruptive technologies (ie, DLT, blockchain and AI) at various business levels. However, at present, 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

The Andorran government is working on a law proposal to modify the current regulations regarding urban planning and development to substitute the current Act and adapt it to the actual circumstances of the country and the sector. The actual regulation is from the early 2000s.

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 the 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 plurality of owners of each unit that makes up the apartments.

On the other hand, the property right could be understood as a limited right. Therefore, in 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;
- beneficial interest, which is the right by which a person can use the property of another and enjoy its benefits, 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 by 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. This theory 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 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 apply 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 has been 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 granted in reference to a real estate, including the encumbrances, modifications and other duly recorded vicissitudes of the real estate.

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 commercial 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;
- the seller shall carry out all the necessary or agreed acts to avoid the occupation of the property by third parties so that it is free; and
- although, from a legal standpoint, an environmental contingency certificate is not requested, it is highly recommended.

The buyer's remedies against the seller for misrepresentation include the resolution of the agreement, 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.

Depending on the relevance of the transaction, it is customary for the seller's representations and warranties to expire after a certain amount of time. The typical range of that survival period is usually between two to four years.

On the other hand, there is usually a cap on the seller's liability for a breach of its representations and warranties, the typical range of that cap being from a limited percentage of the price to the full price.

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, 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, 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 others' 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 they had responded previously when it did not belong to them.

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.

It is possible to enter into a specific development agreement with relevant public authorities to facilitate a project relating to, eg, 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 be published in the Andorran Official Gazette. Later, the government transmits the entire file to the Andorran Parliament (*Consell General*), with all the observations 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 a 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 professional acting in a professional capacity, IGI will be applicable; otherwise, Transfer Tax will be applicable.

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 a 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 a Capital Gains Tax only if at least 50% of its assets are 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

A restriction on foreign investment in real estate establishes that a foreign natural person has to obtain a prior foreign investment authorisation from the Andorran government to 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 or 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 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 financing structure and disposal conditions 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 (usually 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.
- 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 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 it can only be carried out by local banks 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, granting financing to a foreign entity that will acquire the real estate asset located in Andorra) would be allowed.

The recently enacted FIRRMA has expanded the scope of transactions subject to the Committee's review by granting CFIUS 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 the 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 authorities may be applied to address the national security risks posed by foreign investment in the US, regardless of where the investments originate. Therefore, FIRRMA will also apply to investments made from Andorra to the US.

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) to benefit from a 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**, no legal rules or requirements must be complied with for an entity to give valid security over its real estate assets. However, such a decision authorising the creation of valid security over specific asset(s) must be adopted according to 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 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 the following.

- A declarative procedure to ascertain the existence and quantification of the debt.
- 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 to 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.

The typical range of time needed to successfully enforce and realise on real property security, if such is security is a mortgage, is from six to 12 months.

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 a 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 a 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 the protection granted to the lender in rem guarantees and its faculties against the guaranteed asset are not affected by the declaration of insolvency or the development of the insolvency procedure, due to their ranking as privileged claims.

Nevertheless, the clawback regime provided for under the Insolvency Decree of 4 October 1969 (*Decret de suspensió de pagaments i fallida*) states that the insolvency judge can 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 an 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 that 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 on 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 historical confidence in LIBOR, these provisions assume a short period of unavailability, caused perhaps by a technical glitch. Such provisions might say, ie, that this would entail small differences in payments even if interest rates moved significantly. But if "the same rate" persisted over months or years, as it would for many contracts if LIBOR ended, the differences would be considerable. Rather than continue 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 new reference rates for others, sometimes within the same deals. This risk could be reduced if the transition process

– currently being undertaken independently for each currency – were co-ordinated at an international level.

To minimise such risks, firms must 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 regional authorities (town halls - *Comuns*) of each administrative unit (parish - *Parròquia*), even though the Andorran government set out the general boundaries in respect of its development.

In this vein, the regional authorities are the competent authorities 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 construction methods of new buildings or refurbishment is obtaining 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 construction works if they are not compliant with the Construction or Urban Act. The amended Construction Act also adapts the authorisation procedures under 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)* which 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 configured as the advisory and executive board for regulating the development and designated use of individual parcels of real estate and which legislation applies, including functions such as:

- to decide on all appeals lodged against the resolutions issued by the town halls in respect of urban development;
- to verify and report on the special plan or town plan draft; or

- to order the working licences' (*llicències d'obra*) suspension.

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 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.
- A resolution on this procedure must be issued within two months of submitting the application. 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 administration 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:

- 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 required 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 the 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 the 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 scheme 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 in custody by a custodian (*societat dipositària*). Their relationship is governed under a written agreement the legal 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, and a minimum of 10% of such estate must be 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 (through the articles of association) and, residually, on an imperative basis determined by provisions of Act 20/2007, 18 October, on limited liability companies and public limited companies. Shareholders must determine the structure and the 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 mercantile companies due to their condition as regulated entities. Governance requirements applicable to collective investment schemes are provided for in:

- 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, submit them to external audit (in certain cases, depending on the business volume and/or number of employees) and deposit financial statements to the Companies Register (*Registre de Societats*). Moreover, the yearly maintenance fee for registering 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, ranging from EUR1,800 to EUR3,300, depending on the type of 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 a 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 considered and 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 commercial as long as it allows any natural or legal person to occupy and use a real estate for a limited period 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 upon between the landlord and the tenant. A rent adjustment, if agreed between the parties, cannot be carried out more than once per contractual year. Furthermore, it is the use of variation experienced by the general Consumer Price Index during the previous calendar year based on the income paid when the right to adjust came into being.

However, a fixed minimum income can be established and increased according to turnover or operating income. In this scenario, the period during which the tenant must provide the landlord with business accounts must be agreed. 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 agreed upon between the parties is void.

6.4 Typical Terms of a Lease

The length of a lease term is agreed upon 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 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 upon between the landlord and the tenant. During the contractual term, and if the parties have agreed on no price adjustment system, 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**.

6.6 Determination of New Rent

Any increase in 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 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 an 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 will take place, and 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 they can use. This consideration is derived from the use of common elements of the property, 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 Insurance Issues

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 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, they have 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 guaranteed 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 on additional guarantees 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 one year 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 the right under Andorran regulatory provisions to lease or sublease all or a portion of the leased premises in so far 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 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 the expiry of the legal lease agreement term (four years);
- mortgage foreclosure (when the leased agreement has been formalised after the 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; and
- 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 fails 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, the buyer 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 are no land records in Andorra, nor are there 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 to 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:

- a 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 of 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 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 cannot charge the price agreed by the parties. Therefore, it is necessary to differentiate between two scenarios:

- when the contractor provides the work but not the materials because the client provides them (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 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 upon to guarantee the execution of a construction project, as long as both parties have accepted them.

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 their right to receive the price of the construction project carried out. The guarantee

consists of 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 lasts 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 those destined for other uses. These conditions must respect the minimum requirements of the law.

In general, the law requires obtaining a certificate issued by 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 applies to real estate transactions at 4.5%. The seller has an 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 for this indirect tax, even for collective investment vehicles. The only advantage of collective investment vehicles is 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 *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 law, 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. Then, if the withholding tax is lower than the effective taxation regarding the IPTPI law, 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 requested date.

Regarding Non-Resident Income Tax (*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 Andorran territory. In order to determine the rental income tax base, the IRNR law allows

the deduction of 20% of the gross income. Consequently, the withholding tax will be applicable to 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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