

Enforcement of law N°2005-82 on the pre-emption right in relation to the sale of commercial and artisanal business and the assignment of the lease pertaining to such business

Pursuant to Article 58 of the Law n°2005-82 of August 2, 2005 (codified in Articles L. 214-1 to L. 214-3 of the French Code of Urban Planning) municipalities can exercise a pre-emption right in relation to the contemplated transfer of commercial and artisanal businesses in order to maintain the presence of small shops in downtown areas. The sale of commercial and artisanal businesses located within a preservation perimeter delimited by the municipality as well as the assignment of the lease agreement(s) entered into in connection with such businesses are now subject to the municipality's pre-emption right (please, see our [e-newsletter of July/August 2007](#)).

Decree n°2007-1287 of December 26, 2007 and governmental Order dated February 29, 2008 have specified the conditions of implementation of the Law (Articles R. 214-1 to R. 214-16 of the French Code of Urban Planning) with respect to, without limitation, the delimitation of the preservation perimeter and the terms of resale/reassignment of businesses/leases pre-empted by the municipality. The French Mayors Association, the commercial operators, the Chambers of Commerce and Industry and the Chamber of Trades have been closely consulted on these texts. You will find below a summary of the main terms and conditions of the Implementing Decree.

Scope of application: The pre-emption right can be exercised in relation to the transfer for valuable consideration of commercial or artisanal businesses or lease agreements. The sale, transfer or assignment of one or more business activities in the framework of a preservation or sale plan implemented under a liquidation procedure does not fall within the scope of application of the Law.

Delimitation of the preservation perimeter: First and foremost, the municipal council must, in a reasoned decision, delimit the preservation perimeter within which the pre-emption right may be exercised. The draft decision must be submitted to the Chamber of Commerce and Industry and to the Chamber of Trades for approval.

Notification of intent to sale: Sellers wishing to sell, transfer or assign a business located within the defined

preservation perimeter must send a prior written notification to the municipality. According to the Order dated February 29, 2008, this notification must comply with the terms and conditions set forth in administrative form CERFA 13644*01 created especially for this purposes by the Directorate General For State Modernisation. This form is available on the Website of the French Ministry for Ecology, Energy and Sustainable Planning and Development <http://www.developpement-durable.gouv.fr>. Sales which have not been notified to the competent municipality in accordance with the aforementioned procedure are null and void.

The municipality has two months from the receipt of the notification of intent to sell to waive its pre-emption right (municipalities which do not respond with this timeline shall be considered as having waived their pre-emption right) or to purchase seller's business or right to lease, either for the price and in the conditions indicated in the notification of intent to sell or for the price and in the conditions set by judicial authority. Indeed, in the event of an agreement on the price and sale terms cannot be reached, the municipality willing to purchase shall file a request with the judge dealing with expropriation matters within the two-month period from receipt of the notification of intent to sell (Articles R. 214-5 and R. 214-6 of the French Code of Urban Planning).

In the event the municipality purchases the business or acquire the right to lease, a contract shall be formally entered into within a three-month period as from the date on which the parties have agreed on the price and conditions mentioned in the notice or in the definitive judicial decision. The price shall be paid cash on the day of the sale, transfer or assignment.

Resale, retransfer or reassignment: Unlike the urban pre-emption right, municipalities have the obligation to resale, retransfer or reassign the pre-empted business or lease within one year from the date of its sale, transfer or assignment to a company registered with the *Registre du Commerce et des Sociétés* (Registry of Trade and Companies) or *Répertoire des Métiers* (Registry of Trades). If the municipality fails to find a buyer within this timeline, the former owner shall have a priority right to purchase (Article R. 214-16 of the French Code of Urban Planning) as long as it has been expressly identified under the terms of the notification of intent to sell. However, one can regret that, regarding this matter, Decree n°2007-1287 of December 26, 2007 does not address the issue relating to the administration and management of the pre-empted business during the year preceding its resale.

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