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# The Pinel Law: significant changes to rules governing commercial leases

## The Pinal Law significantly amends the rules governing commercial leases and provide for a number of strong measures, among which limiting rent increases, restricting circumstances where a tenant can waive its right to terminate the lease every three years, imposing more transparency in favor of tenants, and granting to tenants a right of first refusal when the leased premises are offered for sale.

## Even if its primary aim is to improve the conditions in which very small companies can rent commercial premises, it will impact all landlords and tenants – whatever their size – of commercial or industrial premises.

Law n°2014-626 of June 18, 2014 on craft and retail sectors and micro-companies, known as the "Pinel Law" (the "Law"), came into force on June 20, 2014. The First Section of the Law brings important changes to rules governing commercial lease agreements. Key provisions are summarized below:

### 1. Rent: restrictions on rent adjustments upon lease renewal or rent revision.

#### 1.1. Cap on rent variations upon renewal of the lease

Pursuant to Article L.145-34 of the French Commercial Code (the "FCC"), as amended by the Law, the determination of the rent cap applicable to the renewed lease agreement must henceforth be calculated on the basis of the quarterly commercial rent index (*indice trimestriel des loyers commerciaux*, also referred to as the "ILC") or quarterly tertiary activities rent index (*indice trimestriel des loyers des activités tertiaires*, also referred to as the "ILAT"), and no longer on the basis of the cost of construction index (*indice du coût de la construction*, also referred to as the "ICC").

Article L.145-34 of the FCC also now stipulates that (i) if there is a significant change in the characteristics of the premises, in the intended use of the premises, in the parties' respective obligations under the lease, and in the local marketability factors, or (ii) if there is an exception to rent cap rules as a result of the inclusion in the lease of a clause on lease term, the rent adjustment can lead to an annual rent increase capped at 10% of the rent paid over the past year.

These provisions shall, however, not apply to commercial leases pertaining to (i) lands, (ii) so-called "single-purpose" premises (i.e. premises dedicated to the conduct of a specific business activity because of their particular lay-out), and (iii) premises exclusively for office use.

### 1.2. Cap on rent variations upon triennial rent review

Similarly, Article L.145-38 of the FCC, as amended by the Law, stipulates that, unless evidence is provided that there has been a material change in the local marketability factors that resulted in a variation of more than 10% of the rental value, the rent adjustment upon triennial rent review may not exceed the variation of the ILC or ILAT since the date on which the rent was last determined by the parties or fixed by a court of law.

If evidence is provided, the rent adjustment can lead to an annual rent increase capped at 10% of the rent paid over the past year.

By way of derogation from the above, if the lease includes a rent indexation clause, the rent revision can be requested each time the rent is increased or decreased as per the indexation clause by more than 25% of the rent previously agreed upon by the parties or set by a court of law.

The variation of the rent that ensues can lead to an annual rent increase capped at 10% of the rent paid over the past year.

## 2. Term of the lease: restriction on the possibility to waive the right to terminate the lease every three years

Pursuant to Article L145-4 of the FCC, as amended by the Law, the tenant may only waive its right to terminate the lease at the end of a three-year period if the lease agreement (i) has been entered into for an initial term exceeding nine years, or (ii) pertains to so-called "single-purpose" premises, or (iii) pertains to premises exclusively for office use, or (iv) pertains to storage premises, as defined in Article 231 ter III §3 of the French Tax Code.

The conclusion of so-called "fixed-term" commercial leases is, therefore, now restricted and can only be envisaged in circumstances exhaustively enumerated in Article L145-4 of the FCC.

## 3. Service charges, taxes, duties and works: Landlords have the obligation to provide

### information upon execution of the lease and regularly thereafter

**3.1. Service charges, taxes and duties: the landlord has the obligation to provide information upon execution of lease, annually during the term of the lease and on specific occasions during such term.**

Article L.145-40-2 of the FCC, introduced by the Law, stipulates that any lease agreement must include a detailed and exhaustive inventory of the types of service charges, taxes, duties and fees related to the lease as well as the allocation of such expenses between the landlord and the tenant.

This inventory shall be used by the landlord to prepare an annual summary statement that must be communicated to the tenant.

In addition, the landlord must inform the tenant of any new service charges, taxes, duties and fees that become applicable during the term of the lease.

**3.2. Works: the landlord has the obligation to provide information upon execution of the lease and every three years thereafter**

Upon execution of the lease agreement and every three years thereafter, the landlord must provide the tenant with (i) a provisional statement of the works that the landlord intends to carry out over the next three years, (ii) a provisional budget, and (iii) a summary of the works performed by the landlord over the past three years as well as the costs of such works.

**3.3. Service charges, taxes, duties and works: building complexes**

In a building complex with several tenants, the lease agreement must henceforth set forth the allocation of service charges or costs of works between the various tenants, it being specified that such allocation must be made according to the surface area used by each tenant.

The amount of taxes, duties and fees that can be allocated to the tenant must also strictly correspond to the premises leased by the tenant and to the share of common areas necessary for the operation of the leased premises.

During the term of the lease, the landlord also has the obligation to inform the tenant of any developments that could impact the allocation of the service charges between them.

## 4. The Tenant has now a right of first refusal if the leased premises are offered for sale

As is the case for residential tenancies as per the Law of July 6,1989, Article L.145-46-1 of the FCC, introduced by the Law, imposes on the owner of commercial or craft premises the obligation to inform the tenant of the contemplated sale of such premises by registered letter, return receipt requested, by hand delivery against

receipt or by signing-off. This notification must include the price and the terms of the contemplated sale, failing which it shall be considered null and void. Such notification constitutes an offer to sell to the benefit of the tenant.

The tenant must either accept this offer or reject it within one month as from receipt.

If it accepts the offer, it has two months as from the date on which it responded to complete the sale, this period being extended to four months if the tenant has indicated in its response that it need to take out a loan.

If the sale is not completed within this period, the offer to sale lapses and becomes null and void.

The same procedure must be followed if the owner decides to sell the premises for a price or on terms and conditions that is/are more favorable for the acquirer. In this case, the notary in charge of the sale must – if the landlord has not already done so – inform the tenant of such price and terms and conditions, failing which the sale could be nullified. This notification to the tenant constitutes an offer to sell.

This new right of first refusal does not, however, apply to (i) single sales of commercial premises located within a commercial complex, (ii) singles sale of distinct commercial premises, (iii) sales of commercial premises to the co-owner of a commercial complex, (iv) sales of a whole building comprising commercial premises, and (v) sales of commercial premises to the landlord's spouse, to an ascendant or descendant of the landlord or his/her spouse.

Subject to the foregoing, these new provisions shall apply to sales of commercial premises concluded on or after December 18, 2014.

## 5. Exceptional short-term leases: maximum term extended from 2 to 3 years and introduction of a move-out period upon expiry of the lease

Article L145-5 of the FCC, as amended by the Law, now stipulates that the parties may, at the time the tenant enters the premises, deviate from the provisions governing commercial lease agreements insofar as the total term of the lease or successive leases does not exceed three years, as opposed to two years previously.

At the expiry of this three-year period, the parties may no longer enter into a new lease which deviates from applicable rules on commercial leases for the same business and for the same premises.

Lastly, the short-term lease is no longer automatically converted into a commercial lease agreement at the expiry of this three-year period: the parties now have one month to arrange for the tenant to leave the premises.

## 6. Precarious tenancy agreements (i.e. tenancy at will): confirmation of the case-law definition.

The concept of precarious tenancy agreement is a court-made doctrine that the Law has enshrined in Article

L.145-5-1 of the FCC that retains the wording used in the past by the *Cour de Cassation* (cf. in particular decision of the 3rd Civil chamber of the *Cour de Cassation*, November 19, 2003, n°02-15.887). As such, a precarious tenancy agreement is characterized, irrespective of its term, by the fact that occupation of the premises is only authorized "*on the basis of specific circumstances that are beyond the parties' control*".

## 7. Obligation to prepare move-in / move-out inventories

Article L145-40-1 of the FCC, as amended by the Law, stipulates that an inventory of the premises must be drawn up in the presence of the landlord and the tenant or by a third party appointed by them, when the tenant takes possession of the premises and leaves the premises, as well as in the event of an assignment of the leasehold right, assignment of the lease agreement or free transfer of the business operated in the leased premises. The inventory of premises must be annexed to the lease agreement or, if it is not, it must be kept by each party.

If the inventory cannot be established in the above conditions, it shall be prepared by a bailiff at the request of the first party to act, and the bailiff's fees shall be equally borne by the landlord and the tenant.

If the above is not complied with, the landlord may not rely on the presumption provided for in Article 1731 of the French Civil Code according to which the tenant is presumed to have received the premises in good rental condition.

## 8. Formal requirements for termination are softened: the lease can now be terminated by registered letter, return receipt requested.

Termination may now be given either through a process server or by registered letter, return receipt requested. Yet, it should be noted that the tenant's request for lease renewal and the landlord's response must still be notified to the other party by a process server.