

Real Estate

Contributing editor
Joseph Philip Forte



2018

GETTING THE
DEAL THROUGH

GETTING THE
DEAL THROUGH 

Real Estate 2018

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Monaco

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General

1 Legal system

How would you explain your jurisdiction's legal system to an investor?

Monaco has a civil law system. Courts rule in law, but equity must be observed during all court proceedings.

Parties can obtain ex parte decisions concerning real estate (eg, provisional mortgage) or even injunctions (eg, deed or lease communication), but proceedings are essentially governed by the adversarial principle.

Parol is admissible evidence by testimony (rare) or affidavit, but any obligation of more than €1,140 must be evidenced in writing (with some exceptions). Electronic documents are admitted under certain conditions.

Oral contracts involving real estate (eg, lease agreement) are often admitted by the courts but their content can be difficult to evidence.

Except for real estate deeds signed before public notaries, lawyers can prepare and review any contract involving real estate (eg, undertakings or draft agreements, lease agreements, works contracts, etc).

2 Land records

Does your jurisdiction have a system for registration or recording of ownership, leasehold and security interests in real estate? Must interests be registered or recorded?

A public registry both registers and records, among other things, ownership deeds, mortgages, long-term leasehold (over nine years) and generally any real estate in rem rights.

Failure to record does not make the transaction or action void, but renders it unenforceable against third parties.

Registration does not fully guarantee title (eg, ownership can still be challenged by third parties before the courts within statutory limitations), but it guarantees priority ranking for a mortgage.

3 Registration and recording

What are the legal requirements for registration or recording conveyances, leases and real estate security interests?

Registration fees or value added tax (VAT) (20 per cent) for sale of new buildings or leases (optional) are collected by the tax administration (directly or by the notary public) on most transactions involving real estate.

Registration fees rates, depending on the type of transaction, are basically:

- 8.5 per cent of the market value, for any sale of real estate, usufruct or company shares owning real estate in Monaco, when the beneficial owner is unknown to the tax administration;
- 5.5 per cent on the market value, for any sale of real estate, usufruct or company shares owning real estate in Monaco, when the beneficial owner has been declared by the tax administration; or
- 1 per cent on the amount of the rent plus rental cost, for the whole duration of the lease.

Registration fees or VAT are customarily paid by the purchaser or the tenant, and at latest:

- to the notary on the day of signature of the sale of real estate or foreign company shares;
- to the tax administration within one month following the signature of the sale of Monegasque company shares owning real estate; or
- to the tax administration within three months following the signing of the lease.

Failure to pay within the time limits makes the party responsible liable to the payment of a fine, extra fees or both.

4 Foreign owners and tenants

What are the requirements for non-resident entities and individuals to own or lease real estate in your jurisdiction?

What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

Foreign owners or tenants can freely acquire or lease real estate in Monaco provided they are able to make contractual commitments to do so according to their national law.

Foreign owners must comply with anti-money laundering regulations when financing their acquisition and should take into account tax matters when purchasing real estate with a foreign legal entity.

Foreign tenants should take into consideration the permitted conditions of the residency card or administrative authorisation to carry out a professional activity in Monaco.

Both owners and tenants should also take in consideration that any foreign individual must be in possession of a passport with visa or authorisation to enter, travel around or settle in French territory in order to enter, travel around or settle in the Principality of Monaco.

5 Exchange control

If a non-resident invests in a property in your jurisdiction, are there exchange control issues?

Any foreign legal entity owning real estate in Monaco must appoint a professional representative and declare each year the name of its beneficial owner.

Any modification of the beneficial owner is subject to a 5.5 per cent registration fee on the basis of the market value of the real estate.

Failing to appoint a representative, declare the beneficial owner or pay tax is liable to the payment of a fine, extra fees or both.

6 Legal liability

What types of liability does an owner or tenant of, or a lender on, real estate face? Is there a standard of strict liability and can there be liability to subsequent owners and tenants including foreclosing lenders? What about tort liability?

Owners are mainly liable for any violation of planning (eg, lack of planning permission) or environmental (eg, asbestos exposure) regulations. Such liabilities extend to subsequent owners (subject to statutory limitations).

Tenants are mainly liable for improper use or maintenance of the premises, or improper behaviour regarding neighbourhood.

Tort responsibility follows general civil law principles, except alleged tort responsibility of the:

- owner when the building falls into disrepair; and
- tenant for fire in the rented premises.

7 Protection against liability

How can owners protect themselves from liability and what types of insurance can they obtain?

Owners can limit liability towards their tenants by inserting specific clauses into the lease agreement.

Owners and tenants can obtain insurance covering the usual occupier's risks (eg, fire, flooding, etc).

Specific insurance benefiting an owner can cover the responsibility of all construction participants (architects, engineers, builders, etc).

8 Choice of law

How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction? Are contractual choice of law provisions enforceable?

Monaco law is applicable only to real estate located in Monaco. Contractual choice of law provisions might be admitted for contracts involving real estate located in Monaco depending on their purpose and stipulations, but are very unusual and would jeopardise insurance coverage.

9 Jurisdiction

Which courts or other tribunals have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

The Tribunal of First Instance and, subsequently, the Court of Appeal and the Court of Revision have subject-matter jurisdiction over real estate disputes.

The Arbitral Committee for Commercial Rent has jurisdiction over commercial owners' and tenants' disputes about commercial rent amounts or tenants' eviction indemnity rights.

Foreign parties must have or have elected domicile in Monaco to defend themselves before the courts or committee and can only be represented by a Monegasque lawyer.

10 Commercial versus residential property

How do the laws in your jurisdiction regarding real estate ownership, tenancy and financing, or the enforcement of those interests in real estate, differ between commercial and residential properties?

If a commercial activity has been in operation for at least three years on the premises, the owner would face commercial lease mandatory status. The commercial tenant would then be entitled, among other things, to have the lease renewed for an equal period at its end or to obtain payment of an eviction indemnity when the lease is terminated without valid or legitimate grounds.

Both commercial owners and tenants have, under certain conditions, pre-emption rights:

- the owner on the commercial activity operated in the premises when sold by the tenant, and
- the tenant on the premises when sold by the owner.

For real estate built before 1 September 1948, residential owners shall face mandatory restrictions compelling them, among other things, to rent the premises to local tenants only, with a limited rent amount and for a six-year period with renewal right at the end. In the case of sale of such real estate, the Monaco state has a pre-emption right over the premises.

11 Planning and land use

How does your jurisdiction control or limit development, construction, or use of real estate or protect existing structures? Is there a planning process or zoning regime in place for real estate?

Planning and real estate use is strictly controlled and limited.

A zoning regime, limiting building density and height or protecting certain types of buildings against external changes, is established by sovereign ordinance.

Planning permission must be obtained, and the works checked by the public administration for external and even some internal works.

Authorisation voted by the general meeting of co-owners, or in certain circumstances given by the property management, must also be obtained when the premises and the planned works are covered by co-ownership regulations.

12 Government appropriation of real estate

Does your jurisdiction have a legal regime for compulsory purchase or condemnation of real estate? Do owners, tenants and lenders receive compensation for a compulsory appropriation?

In addition to pre-emption rights (see question 10), the Monaco state can expropriate real estate for public utility reasons. Owners receive compensation for expropriation.

Tenants and lenders (provided they had taken out a mortgage to guarantee repayment of the loan) must make themselves known to city hall services to be entitled to compensation.

Compensation for expropriation is awarded by the Tribunal of First Instance, following expert evidence, except in the case of agreement between the parties.

13 Forfeiture

Are there any circumstances when real estate can be forfeited to or seized by the government for illegal activities or for any other legal reason without compensation?

Any vacant property and property without an owner or heir is deemed to belong to the Monaco state.

The Monaco state cannot seize real estate for illegal activities, but criminal justice can still freeze or seize, without compensation:

- real estate belonging to a suspect or convicted criminal individual or company;
- real estate obtained by crime or infringement; or
- real estate used to commit crime or infringement.

14 Bankruptcy and insolvency

Briefly describe the bankruptcy and insolvency system in your jurisdiction.

Bankruptcy or insolvency is declared by the Tribunal of First Instance at the debtor's request, on any creditor's writ of summons or by the tribunal itself, when the debtor is unable to settle its current liabilities with available assets.

The debtor's liabilities and assets are temporarily frozen for the Tribunal to evaluate such liabilities and decide whether a plan of settlement can be executed or the creditor's assets must be liquidated.

An administrator is appointed to assist the debtor in any act of administration or disposition of the assets. The administrator immediately registers a legal mortgage over the debtor's real estate.

Any mortgage taken over the debtor's real estate after the insolvency judgment is unenforceable against declared creditors. Former mortgages remain enforceable.

The debtor's real estate is liquidated following auction sale proceedings regulated by the Civil Procedure Code. The proceeds of sale are shared between creditors by rank of priority defined by legal provisions.

Investment Vehicles

15 Investment entities

What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

Subject to the consequences of the choice of investment entity for real estate investment in Monaco from a tax perspective, ownership of real estate can take various forms (either a foreign form, such as an offshore vehicle or a local form such as *société civile immobilière* (SCI) a specialist type of company that is constituted for the ownership and management of property).

16 Foreign investors

What forms of entity do foreign investors customarily use in your jurisdiction?

Foreign investors used to use offshore companies to own real estate, but now might prefer a Monegasque civil company (except public limited company and limited partnership) to avoid annual declarations and professional representation fees (see question 5).

17 Organisational formalities

What are the organisational formalities for creating and maintaining the above entities? What requirements does your jurisdiction impose on a foreign entity? Does failure to comply incur monetary or other penalties? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

Creating a local entity entails having a registered office in Monaco, signature of the articles of association and registration of the created entity in the appropriate public register (different for commercial or civil entities). Any foreign shareholder or manager of a local entity undertaking commercial or professional activities must obtain administrative authorisation.

Companies are created for a maximum 99-year time period, which can be extended by unanimous agreement of shareholders given at an annual general meeting held at least one year before the end of that period.

Any local commercial company must report annually on the company general meeting's vote on the annual balance sheet, profit and loss account and management report. Failure to do so is subject to a fine.

Civil companies must maintain a balance sheet and profit and loss account and keep them at the registered office for five years. Failure to do so is subject to a fine, but civil companies are not subject to annual reporting, neither are foreign companies.

Using civil entities (except a public limited company or a limited partnership) for holding real estate is more advantageous for tax liability regarding transparency regulations. (See questions 3, 4 and 5.)

Acquisitions and Leases

18 Ownership and occupancy

Describe the various categories of legal ownership, leasehold or other occupancy interests in real estate customarily used and recognised in your jurisdiction.

The legal ownership categories are:

- full ownership: this can be divided into bare property and usufruct (the usufructuary only having the right to use the real estate, the bare owner having the right of disposal);
- undivided ownership (eg, between heirs): this requires unanimous agreement between the undivided owners for use or disposal of the real estate (sharing can be requested at any moment by any undivided owner unless there is agreement to the contrary); and
- co-ownership: this allows right of restricted private use of certain parts of the building (eg, apartment) and common use of others (eg, elevators, stairs, corridors).

The leasehold categories are:

- civil lease agreement: owner and tenant freely agree on the duration, price and specific conditions of use of the premises (except special protective status for habitation leases in buildings constructed before 1 September 1948). (See question 10);
- commercial lease agreement: see question 10;
- construction lease agreement: the tenant is committed to build on the owner's property and to keep the buildings in good condition during the lease; the owner will benefit from improvements to its property at the end of the lease; and
- emphyteutic lease agreement: owner and tenant agree a long-term lease (18 to 99 years) giving rights in rem to the tenant, such as the right to take a mortgage.

Free occupancy may be considered as a loan for use, obliging the borrower to use the premises as a normally prudent and diligent occupant and give them back after use (the lender being able to ask for restitution should he or she have an urgent or unexpected need of such premises).

19 Pre-contract

Is it customary in your jurisdiction to execute a form of non-binding agreement before the execution of a binding contract of sale? Will the courts in your jurisdiction enforce a non-binding agreement or will the courts confirm that a non-binding agreement is not a binding contract? Is it customary in your jurisdiction to negotiate and agree on a term sheet rather than a letter of intent? Is it customary to take the property off the market while the negotiation of a contract is ongoing?

Letters of intent or term sheets are not customarily used in Monaco.

Pre-contracts for real estate sale (more rarely for leases) are draft agreements or accepted offers, which are always binding agreements.

The property is not taken off the market while negotiating, but selling real estate under offer may give rise to liability to damages.

20 Contract of sale

What are typical provisions in a contract of sale?

The typical provisions in a contract of sale are:

- full identity of the seller and purchaser, including matrimonial status for individuals;
- full description of the real estate, mentioning easements or special status (eg, co-ownership) if applicable;
- history of the property over the previous 30 years at least;
- discharge of the guarantee against hidden defects (except seller's bad faith); and
- price.

A down payment of 10 per cent of the total price is customarily paid when signing the draft agreement and held in escrow by the public notary until signature of the notarised deed.

The deed registered by the notary evidences the good title of the property of the purchaser.

Tax (only registration fees or VAT) is paid by the purchaser.

21 Environmental clean-up

Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

Environmental liability for real estate is the responsibility of the current owner. Clauses regarding long-term environmental liability are not customary in sale contracts. Typical general covenants exclude guarantee for hidden defects; therefore, the purchaser could sue the seller for damages or cancellation of the sale only in the case of bad faith.

22 Lease covenants and representation

What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after property sale is completed? Are estoppel certificates from tenants customarily required as a condition to the obligation of the buyer to close under a contract of sale?

Real estate sellers usually make representations regarding the last receipt of payment of the lease and a statement concerning the absence of any pending or foreseen litigation with any of the tenants.

Prohibition on contracting new leases between the draft agreement and the final contract of sale is sometimes mentioned in the draft agreement, but contracting new leases in the meanwhile would probably allow the purchaser to disengage (depending on the stipulations in the draft agreement).

Brokerage agreements only engage the seller and usually do not survive after the sale is completed, except by contrary agreement.

Estoppel certificates from tenants are not customary.

23 Leases and real estate security instruments

Is a lease generally subordinate to a security instrument pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a security instrument upon foreclosure? Do lenders typically require subordination and non-disturbance agreements from tenants? Are ground (or head) leases treated differently from other commercial leases?

Leases are not subordinate to any security instrument.

24 Delivery of security deposits

What steps are taken to ensure delivery of tenant security deposits to a buyer? How common are security deposits under a lease? Do leases customarily have periodic rent resets or reviews?

No specific steps ensure delivery of tenant security deposits to a buyer, but the notary drafting the deed is liable for lack of information concerning the existing leases and deposit that should be automatically transferred to the purchaser.

Deposits are very common in all types of lease and are sometimes replaced by bank guarantees.

Clauses usually provide an annual indexation of the lease in any type of lease. On top of annual indexation, the rent can be reviewed during an ongoing commercial lease after at least three years from the previous agreement on the rent, when the owner (more rarely the tenant) can prove that the rental value has changed because of a modification in the general economic conditions in Monaco or in the conditions affecting the activity operated in the premises.

25 Due diligence

What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Discuss the priority among the various interests in the estate. Is it customary to obtain government confirmation, a zoning report or legal opinion regarding legal use and occupancy?

The typical and customary method of title search is a request to the public registry of deeds and mortgages. Protection for acquirers against bad title essentially depends on the public registry's information.

Zoning reports about applicable planning regulations are not customary but can be requested, but from an architect rather than a lawyer.

Government confirmation can be obtained only regarding to construction rights but are not common (except for large or complex construction projects).

Legal opinions regarding legal use and occupancy, especially concerning mandatory protected status of tenants for certain types of buildings or occupancies, are more common.

26 Structural and environmental reviews

Is it customary to arrange an engineering or environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

No.

27 Review of leases

Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

Lawyers do review, or even draft, commercial (rarely residential) leases when asked by their clients. Lawyers most usually point out or draft clauses avoiding or compensating commercial property, clauses concerning works authorised in premises and clauses spreading maintenance or repair obligations between owner and tenant.

28 Other agreements

What other agreements does a lawyer customarily review?

Lawyers customarily review real estate purchase offers or draft agreements, or even purchase deeds including client assistance for signature before a notary.

Lawyers also often review works contracts, including for example requirement specifications, subcontract agreements, etc.

Lawyers sometimes review real estate agency mandates and co-ownership general meeting minutes.

29 Closing preparations

How does a lawyer customarily prepare for a closing of an acquisition, leasing or financing?

Notaries close acquisition of real estate, generally after the draft agreement. There are usually few documents that are requested for closure (essentially powers of attorney for signatures of the non-attending parties, bank transfer certificates for payment of the price, and documents justifying the realisation of the suspensive conditions, if any).

Closing documents that are requested for signature of a lease agreement are:

- notary deed to evidence the owner's property;
- full identity documents evidencing both parties' civil and marital status;
- commercial registry certificate; and
- articles of incorporation for companies.

Closing documents that are requested for financing real estate acquisition are usually:

- corporate documents;
- business plan;
- cash flow statement;
- insurance policies; and
- legal opinions.

30 Closing formalities

Is the closing of the transfer, leasing or financing done in person with all parties present? Is it necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction?

Parties can either attend personally or be represented by special mandate for the signing of a real estate sale, of a lease agreement or of a financing agreement. A real estate final sale contract must always be signed before a notary.

A lease or financing agreement can be signed by the parties (usually with lawyer's assistance).

31 Contract breach**What are the remedies for breach of a contract to sell or finance real estate?**

Parties to a real estate sale contract can, depending on the situation, cancel or enforce the sale, and in any situation claim for damages.

32 Breach of lease terms**What remedies are available to tenants and landlords for breach of the terms of the lease? Is there a customary procedure to evict a defaulting tenant and can a tenant claim damages from a landlord? Do general contract or special real estate rules apply? Are the remedies available to landlords different for commercial and residential leases?**

Lease agreements usually contain a termination clause stipulating that the lease would be automatically terminated should the defaulting tenant not fulfil its obligations within the stipulated delay (usually from eight days to one month) after formal notice. When using the termination clause, the lease termination has still to be confirmed by interim court order, which also orders the eviction of the tenant.

The tenant can still claim for damages when the landlord does not fulfil its obligations according to the lease agreement.

In the absence of a termination clause in the lease agreement, any party evidencing the counterparty's default can request from the court termination of the lease, damages or both to remedy the consequences of the default.

Remedies available to landlords are different for commercial leases, for which the tenant benefits from mandatory right for renewal (provided he or she had legally operated a commercial activity for at least three consecutive years in the premises). Commercial tenants have therefore a substantial right to indemnity (allocated by the court when an agreement cannot be found between landlord and tenant) and a right to occupy the premises until effective payment.

Financing**33 Secured lending****Discuss the types of real estate security instruments available to lenders in your jurisdiction.**

The usual guarantees granted in case of the acquisition of an asset are as follows:

- mortgage;
- lender privilege;
- assignment of insurance indemnity, guarantee of the holding company with a pledge over its shares in the purchaser company;
- subordination of loans granted to the borrower by another company in its group;
- pledge over borrower's bank accounts; and
- recourse against the borrower's shareholders.

34 Leasehold financing**Is financing available for ground (or head) leases in your jurisdiction? How does the financing differ from financing for land ownership transactions?**

Financing is available to acquire commercial leasehold rights in Monaco (ground – emphyteutic – leases being somewhat rare).

Such financing essentially differs from land ownership transactions as a mortgage cannot be taken on leasehold rights (except for emphyteutic leases), but is usually replaced by a pledge over the leasehold right and often additional personal securities taken on the acquiring entity.

No specific lease provision is required to make it financeable, but the bank would rather finance an emphyteutic lease (because of its long duration and the possibility to take mortgage on it) or a commercial lease (because of the right for renewal or eviction indemnity and its market value) than an office lease.

Update and trends

Law #1,433 dated 8 November 2016 has created a new 'office use' lease, which status (when applicable and expressly chosen by the parties) excludes commercial leases' mandatory status.

An 'office use' lease can be concluded by written agreement for a five years' renewable time period, except prior notice given at least six months before its end. The tenant only can also anticipate the lease's termination at any moment after at least one year, by giving prior notice with a six months' delay to his landlord.

The premises must be assigned to an intellectual activity and additional administrative deliveries only: the tenant can meet clients in the premises, but cannot receive nor stock goods, nor carry out any commercial, industrial or artisanal activity in the premises.

Rent price is freely agreed by the parties and automatically revised according to the annual variation of the public Index for Constructions Cost, unless otherwise stipulated.

When legally applicable, the 'office lease' status avoids threshold or eviction indemnity.

New thermal regulations for existing and new buildings to be built should also be taken soon by the government, as to comply with the Kyoto Protocol commitments for regulating greenhouse gas emissions.

35 Form of security**What is the method of creating and perfecting a security interest in real estate?**

Security interests in real estate can be created either by common agreement, judgment or even by law. Most of them (eg, mortgages) must be registered to be enforceable.

36 Valuation**Are third-party real estate appraisals required by lenders for their underwriting of loans? Must appraisers have specific qualifications?**

It is common for lenders to request appraisals. There is no specific qualification required for an appraiser (except being agreed by the lender).

37 Legal requirements**What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?**

Concerning banking operations, French banking restrictions (banking monopoly) apply in Monaco, according to treaties between France and Monaco. Banking operations include credit operations. Banking operations cannot be conducted in Monaco by a unauthorised entity, owing to the principle of banking monopoly. A lender wishing to conduct a credit operation in Monaco must be licensed accordingly. However, a foreign lender can conduct a credit operation in its own jurisdiction and secure the loan by collateral in Monaco.

38 Loan interest rates**How are interest rates on commercial and high-value property loans commonly set (with reference to Libor, central bank rates, etc)? What rate of interest is legally impermissible in your jurisdiction and what are the consequences if a loan exceeds the legally permissible rate?**

Interest rates on high-value property loans are commonly set with reference to Euribor. According to section 357 of the Monaco Criminal Code a lender is prohibited to fix an interest rate higher than 50 per cent of a 'market value' interest determined each year by the Monegasque government depending on the type of credit extended and the borrower (ie, a private individual or a professional). The said interest rate includes the interest itself and all the fees in relation with the loan.

For 2017, the Sovereign Ordinance 6,250 dated 20 January 2017, set the market value interest rates as the following:

- 15.39 per cent a year for overdrafts for individuals;
- 5.39 per cent a year for overdrafts for business needs;
- 3.68 per cent a year for personal loans; and
- 2.46 per cent a year for real estate loans.

The violation of article 357 of the Monegasque Criminal Code is a criminal offence and the lender, whether regulated or unregulated, may be fined or, in case of recidivism, imprisoned for one to six months.

39 Loan default and enforcement

How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?

Realisation of collateral depends on the type of collateral concerned.

A mortgage (ie, the most common collateral in real estate transactions) must be realised through judicial proceedings, including auction sale followed by sale price distribution between creditors. Auction sale proceedings must start after a formal notice delivered by bailiff and last from a minimum of six months to a maximum of three years.

Several actions may be necessary to realise all types of collateral, the time frame depending on the type of collateral. Even though monetary default is most common, any major or stipulated default can bring a foreclosure proceeding (usually after expiry of a certain period following formal notice).

Legal action to realise collateral can be restricted or even cancelled by a judge considering its utility to obtain repayment of the debt.

40 Loan deficiency claims

Are lenders entitled to recover a money judgment against the borrower or guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure? Are there time limits on a lender seeking a deficiency judgment? Are there any limitations on the amount or method of calculation of the deficiency?

Lenders are entitled to recover a money judgment against a borrower or a guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure. The time limit may vary between two and five years.

41 Protection of collateral

What actions can a lender take to protect its collateral until it has possession of the property?

There is no concept of receivership under Monaco law.

42 Recourse

May security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy or insolvency filing? Is personal recourse to guarantors limited to actions such as bankruptcy filing, sale of the mortgaged or hypothecated property or additional financing encumbering the mortgaged or hypothecated property or ownership interests in the borrower?

Recourse is typically limited to the collateral. Bankruptcy leads to a suspension of recourse except for lenders seeking to enforce a mortgage.

43 Cash management and reserves

Is it typical to require a cash management system and do lenders typically take reserves? For what purposes are reserves usually required?

It is not typical to require a cash management system.

44 Credit enhancements

What other types of credit enhancements are common? What about forms of guarantee?

Other than an undertaking to allocate funds deposited in a pledged bank account, it is not common to have other types of credit enhancements.

45 Loan covenants

What covenants are commonly required by the lender in loan documents?

This depends on the nature of the underlying acquisition, but the following are the basic covenants required by a lender in a loan document:

- compliance with applicable status;
- binding obligations;
- non-conflict with other obligations;
- power and authority;
- authorisations;
- insolvency;
- no filing or stamp duty;
- deduction of tax;
- no default;
- no misleading information;
- budgets and financial statements;
- no proceedings pending or threatened;
- no breaches of law;
- taxation and social security;
- security and financial indebtedness;
- ranking;
- good title asset;

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- no ownership;
- assignable receivables;
- ownership, disposal and condition of the property;
- acquisition documents;
- environmental matters; and
- insurance policies.

46 Financial covenants

What are typical financial covenants required by lenders?

The typical financial covenants are based on the loan-to-value ratios.

47 Secured moveable (personal) property

What are the requirements for creation and perfection of a security interest in moveable (personal) property? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

Security interests in moveable (personal) property can be created either by common agreement, judgment or even by law.

Pledge deeds on intangible assets must be notified to the debtor by bailiff. Commercial pledges necessitate the debtor's dispossession of the pledged asset.

Certain types of collateral (eg, on business capital or commercial leasehold) must be registered and notified to third parties (eg, lessors).

48 Single purpose entity (SPE)

Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy or insolvency filing, has the concept been upheld?

It is not required that each borrower be an SPE. This may happen depending on the structure of the loan. The basic SPE for a real estate financing acquisition is an SCI (see question 15), the incorporation of which is simple and fast.

Getting the Deal Through

Acquisition Finance	Enforcement of Foreign Judgments	Pharmaceutical Antitrust
Advertising & Marketing	Environment & Climate Regulation	Ports & Terminals
Agribusiness	Equity Derivatives	Private Antitrust Litigation
Air Transport	Executive Compensation & Employee Benefits	Private Banking & Wealth Management
Anti-Corruption Regulation	Financial Services Litigation	Private Client
Anti-Money Laundering	Fintech	Private Equity
Appeals	Foreign Investment Review	Private M&A
Arbitration	Franchise	Product Liability
Asset Recovery	Fund Management	Product Recall
Automotive	Gas Regulation	Project Finance
Aviation Finance & Leasing	Government Investigations	Public-Private Partnerships
Aviation Liability	Healthcare Enforcement & Litigation	Public Procurement
Banking Regulation	High-Yield Debt	Real Estate
Cartel Regulation	Initial Public Offerings	Real Estate M&A
Class Actions	Insurance & Reinsurance	Renewable Energy
Cloud Computing	Insurance Litigation	Restructuring & Insolvency
Commercial Contracts	Intellectual Property & Antitrust	Right of Publicity
Competition Compliance	Investment Treaty Arbitration	Risk & Compliance Management
Complex Commercial Litigation	Islamic Finance & Markets	Securities Finance
Construction	Joint Ventures	Securities Litigation
Copyright	Labour & Employment	Shareholder Activism & Engagement
Corporate Governance	Legal Privilege & Professional Secrecy	Ship Finance
Corporate Immigration	Licensing	Shipbuilding
Cybersecurity	Life Sciences	Shipping
Data Protection & Privacy	Loans & Secured Financing	State Aid
Debt Capital Markets	Mediation	Structured Finance & Securitisation
Dispute Resolution	Merger Control	Tax Controversy
Distribution & Agency	Mergers & Acquisitions	Tax on Inbound Investment
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