



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
France: Construction

This country-specific Q&A provides an overview to construction law in France.

It will cover termination requirements and obligations, permits and licence, procurement, financing and security, and disputes as well as insight and opinion on challenges and opportunities.

This Q&A is part of the global guide to Construction. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/construction/>



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1. **Is your jurisdiction a common law or civil law jurisdiction?**

Our jurisdiction is a civil law jurisdiction.

2. **What are the key statutory/legislative obligations relevant to construction and engineering projects?**

French law provides for complex sets of rules and mandatory obligations to be complied with by the parties to construction and engineering projects, for all their aspects (from the initial design to the completion of the works).

The key aspects include inter alia, the obligations to comply with:

- the town planning rules, which regulate the types of construction that can be built, and state the type of planning authorizations (building permits, etc.) to be obtained prior to the start of the works;
- for public projects, the specific rules for public contracts and works (tender rules for the procurement of the contracts, types of contract that can be executed, etc.), which can differ substantially from the rules applicable to private projects. Such public contracts can also fall under the jurisdiction of the administrative courts, which under constitute a separate Court order with a specific case law system. This area is also subject to specific European Union regulations, notably with respect to tender procedures;
- strict regulations relating to health and safety, the protection of the environment and the fight against illegal work, which bind all parties, including the project owner;
- technical rules and regulations, to be complied with by the consultants and contractors for the design and the performance of the construction works;
- mandatory legal provisions aiming to protect contractors and subcontractors, relating to payment guarantees, payment terms, retention provisions and subcontracting;
- mandatory contractors' guarantees (including the so-called "decennial guarantee" (garantie décennale) mechanism) which aim to cover construction defects for a period of up to ten years from the date of acceptance of the construction works. These guarantees are doubled by the obligation, for the different parties to the construction project, to subscribe mandatory insurance coverage.

3. **Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and**

bribery.

(a) Health and safety;

French law provides for numerous regulations, set notably by the French Labor Code (Code du travail), in relation to health and safety applicable to a construction or engineering project. These rules provide for obligations for all the parties involved in the project, including the consultants, the contractors and even the project owner himself.

They include, inter alia:

- the obligation for the project owner to appoint, from the design stage, a specific consultant, the health and safety coordinator (Coordonnateur Sécurité-Protection-Santé), who will be in charge of the coordination of the different contractors involved on the project for health and safety issues,
- numerous health and safety prescriptions to be applied by the contractors on the work site to protect the workers,
- the obligation for the project owner to have a specific maintenance file (dossier d'intervention ultérieur sur l'ouvrage) issued after completion of the works.

Non-compliance with health and safety regulations can constitute a criminal offence sanctioned by the Criminal Code (Code Pénal).

(b) Environmental;

Environmental regulations provide for several obligations, which will depend on the type of projects. For instance:

- building construction projects in France have to comply with thermic regulations (the so-called RT 2012 regulations), aiming to optimize the energy consumption of the future building;
- some projects (especially industrial or logistic projects) are subject to regulations relating to facilities classified for environmental protection (installations classées pour la protection de l'environnement - ICPE). These regulations will depend on the type of activity that will be carried out within the project after its completion. These rules entail,

inter alia, an obligation to secure a prior declaration or authorization prior to the start of construction works and prior to the start of the operation of the project;

- several types of mandatory environmental assessments, declarations or authorizations may also be applicable to a construction project, depending on whether such project will have an impact on the environment, agricultural land, or the aquatic environment;
- depending on the use contemplated for the project, existing site conditions with respect to pollution may lead to removal and/or monitoring obligations;
- obligations apply in case of works to be performed in a site containing hazardous materials (such as asbestos). This includes the obligation to perform specific diagnostics prior to the start of the works and to comply with specific regulations for the performance of the works.

Apart from mandatory provisions, it is now a market practice for owners of real estate project in France to pursue environmental certifications for their buildings. This is an additional source of environmental prescriptions for the construction, as the certifications will only be obtained if the building meets the environmental standards and criteria set by the certifying authorities.

(c) Planning;

Town planning rules under French law include national and local rules. Most cities in France have a local urban planning plan (PLU) which will provide for the local planning rules that each construction project will have to comply with.

Compliance with town planning rules are subject to a prior control by the authorities: indeed, construction works are subject to the prior obtaining of town planning authorisations (generally a building permit to be issued by the City).

After its issuance and for a limited period of time, a building permit can be subject to claims from third parties or from the Prefect (local representative of the French State) and to a withdrawal right from the City.

(d) Employment;

French law provides for a body of very strict labor rules relating to employment contracts (type and content of the employment contract, duration, dismissal, etc.), health and safety and fight against illegal work.

Specific regulations have also been adopted to control and regulate the use of “posted workers” employed by foreign contractors but who are temporarily assigned to work on a project in France. These regulations bind the contractors themselves, but also the project owner, who has specific control obligations in this respect.

Compliance with employment regulations is controlled by labor inspectors, who are government officials with the authority to proceed to on-site controls of work sites.

(e) Anti-corruption and bribery.

French law provides for strict anti-corruption and bribery rules and sanctions, especially with respect to public projects, which were recently reinforced by the so -called “Sapin 2” law dated 9 December 2016.

These rules include, inter alia, the obligation to organize public tenders for the procurement of public construction contracts (the type of tender will depend on the amount of the project).

As a side note, we currently witness a new trend to provide for express anti-corruption and bribery provisions in contracts for private projects, especially for project involving international investors subject to US or UK regulations.

4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

A wide variety of permits / licenses may apply to a construction project in France. In practice, a case by case verification will be necessary for each specific project to identify the permits / licenses will be required.

Among the most common permits/ licenses (this list not being exhaustive), we can quote:

- Town planning authorizations: building permit (applicable for most construction projects), prior declaration of work for small projects involving limited works, etc. For large projects, a public inquiry may have to be carry out as a preliminary step prior to the filing of the building permit application;
- Environmental authorizations: ICPE authorizations and other specific authorizations as the case may be;
- Premises receiving public (Etablissements Recevant du Public or ERP): specific authorizations are necessary for projects including premises which will be opened to the public;
- Retail: a specific authorization is required for projects involving the creation of retail surface areas exceeding certain thresholds;
- Ile de France region (agrément pour creation de bureaux, commerces et entrepôts en Ile de France): a specific authorisation is necessary in order to create or expand offices, commercial areas or warehouse surface areas within the Ile de France region exceeding certain thresholds;
- Residential: specific authorizations are necessary in order to change residential surface areas into another type of use (offices, hotels etc.) in certain Cities in France;
- Work site: specific permits have to be obtained if it is necessary to occupy part of public land (such as walkways / roads) or to install a crane for the purpose of the carrying out of the works.

Non-compliance can constitute a criminal offense, subject to criminal law sanctions (fines, and in some cases, imprisonment). Other sanctions can also apply, including for instance the obligation to stop the operation of the building and/or the potential demolition of the building in some limited cases, or the impossibility to obtain a new permit to proceed with other works or to rebuild in case of a destruction of the construction for a casualty. Also, in case of a damage caused to a third party by a non-compliance, such third party can also request an indemnification from the responsible party in order to compensate such damages.

In addition to the permit/licenses, numerous declarations / statements will have to be filed within the authorities during the project by the different parties to the construction project, for the employment of workers, the start and the completion of

the works, taxes, etc.

The authorization of a third party is also often necessary, depending on the specific constraints of the project (authorization of the landlord if the site is leased by the project owner, authorization from the neighbours / co-ownership, authorization of the architect of the existing building in case of a renovation project, etc.).

5. **Is tort law or a law of extra contractual obligations recognised in your jurisdiction?**

Yes, tort law has its equivalent in the French legal system and extra contractual claims are possible.

6. **Who are the typical parties to a construction and engineering project?**

A large construction / engineering project will typically involve:

- the project owner (maître d'ouvrage) who is the owner of the project works. The project owner is sometimes assisted by a project manager, who will have either an advisory role (assistant maître d'ouvrage) or a role to actually represent the project owners towards the consultants / contractors (maître d'ouvrage délégué);
- the design team, which will typically include an architect in charge of the architectural studies, engineers (bureaux d'études techniques) in charge of the technical studies, an economist who will be in charge of the control of the financial aspects of the project, a prime contractor (maître d'oeuvre d'exécution) who will be in charge of the supervision of the works performed by the contractor;
- one or more contractors, who will be in charge of the performance of the works;
- a health & safety coordinator (coordonnateur SPS);
- a technical controller (bureau de contrôle) who will be in charge of verifying compliance of the design and of the works performed with the applicable technical regulations;
- other types of consultants / advisors, depending on the project (BIM manager,

environmental expert, geotechnical expert, chartered surveyor, legal counsel, notary, etc.).

7. What are the most popular methods of procurement?

Procurement for public contract is strictly regulated. The applicable rules will depend on the public legal entity involved in the project and on the contemplated costs of the contract. For large project, an open tender has to be carried out at the national or European level.

In relation to private contracts, the project owner is free to choose the applicable method of procurement. Competitive tender process is commonly used, but it is often opened only to a limited number of pre-selected bidders.

8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

For public contracts, the public authority often refers to official standard general terms (called Cahiers des Clauses Administratives Générales or CCAG) which are official forms regularly updated by the French authorities. The parties will complete these general terms and amend them through the specific terms of their agreement (generally called the Cahier des Clauses Administratives Particulières or CCAP).

For private contracts, AFNOR, the French national organization for standardization, issued and updates from time to time a specific norm (the NF P 03-001 Norm) applicable to contractor agreement for private works. This norm, which was recently updated, is often used as general terms for the basis of contractor agreements. Here again the parties will complete and amend these general terms in the specific terms of their agreement.

For large infrastructure or industrial projects involving international investors, the standard forms of contracts issued by the FIDIC organization are also sometimes used.

However, considering the important number of specific and mandatory rules provided by French law, the use of these international template requires numerous adaptations.

9. **Are there any restrictions or legislative regimes affecting procurement?**

For public contracts, non-compliance with the mandatory tendering procedure may result in the cancellation of the contract. Criminal law sanctions may also apply.

For private contracts, the tender process is not mandatory but, if the project owner uses such process, it will have to comply with the rules set by the bidding documents. In case of non-compliance, the project owner may face potential claims for damages by evicted bidders.

10. **Do parties typically engage consultants? What forms are used?**

Yes, in France, several consultants will be engaged for a construction project, including the project managers (if any), the members of the design team, the health and safety coordinator, the technical controller, etc. (see answer to question 6 above).

Some forms of consultants contracts exist (for instance the French order of the architect issued several forms of architect contracts), but their use is not systematic.

With respect to the health and safety coordinator and the technical controller, their contracts are generally standard form provided by the consultant, with little room for amendments.

11. **Is subcontracting permitted?**

For public contracts, the subcontracting of the entire scope of the contractor

agreement is prohibited, and the partial subcontracting of the essential parts of contractor agreement can be prohibited by the public authorities;

For private contract, the project owner can freely prohibit or authorize subcontracting by the contractor.

Subcontracting is in any case subject to a strict and mandatory body of rules laid down inter alia by a law dated 31st December 1975, aiming to protect subcontractors.

These rules provide notably for the obligation for the main contractor to have the names and the payment terms of the subcontractors approved by the project owner and to provide a guarantee of payment to the subcontractors.

These rules bind the main contractor but are also a source of obligations and of potential liabilities for the project owner towards the subcontractors. For instance, under certain conditions, the subcontractors will benefit from a direct right of payment by the project owner in case of a default by the main contractor.

12. **How are projects typically financed?**

This will depend on the type of project and on the project owner. Most common sources of financing for construction project are equity, bank loans or financial leases.

13. **What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?**

This is left to the negotiation of each project, but project owners usually request a performance bond issued by a bank, which will be held until completion of the works.

An advance payment bond, issued by a bank or a parent company, are fairly common



for contractor agreements. They are usually held up until a certain level of advancement of the works.

Retention on the price of the contractor agreement is also very common in contractor agreements, but is strictly regulated under French law (see our answer to question 16 below for more details on such retention).

14. **Is there any specific legislation relating to payment in the industry?**

Payments of construction contracts are generally performed in several instalments, which will depend on the advancement of the project.

For private contractor agreements, payment terms are regulated by general commercial rules which provide for a payment no later than 60 days from the issuance date of the invoice. By derogation, the parties can agree on a payment no later than 45 days end of the month following the issuance of the invoice. The project owner has also, in most cases, the obligation to provide a guarantee of payment to the contractor for the price of the contractor agreement (article 1799-1 of the French Civil Code).

15. **Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?**

These clauses are not common and their validity is in our view questionable under French law.

16. **Do your contracts contain retention provisions and, if so, how do**

they operate?

Contractors' agreements usually contain retention provisions for the benefit of the project owner, who can retain the payment of a part of the price of the contractor agreement in order to guarantee that the contractor will proceed with the lifting of the snagging items after the acceptance of the works.

These retention provisions are regulated under French law: they are capped to 5% of the price of contractor agreement, and the contractor has the right to replace at any time this retention by a bank guarantee.

17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?

It is very common for a construction contract to contain penalties in case of late performance of the works.

The Courts upheld these penalties, but they can revise their amount if they deem it patently excessive or derisory.

18. Are the parties able to exclude or limit liability?

Between professionals, it is possible for the parties to exclude or limit liability, but subject to certain conditions, including, inter alia the following:

- limitation or exclusion of liability is prohibited in certain field. This is the case for the mandatory contractors' guarantees, which cannot be excluded or limited by the parties;
- the limitation or exclusion of liability shall not deprive the essential obligation of a party of its substance;
- no limitation or exclusion of liability can be applied in case of a gross fault or of a wilful misrepresentation.

19. **Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?**

The parties are free to provide and regulate termination rights in the contractor agreement.

Termination for fault clauses are very common in contractor agreements. Termination for convenience can be provided in the agreement as well (generally for the benefit of the project owner), but usually these clauses provide for the payment of a compensation by the project owner to the other party.

Termination for force majeure or unforeseen circumstances (imprévision) is also provided by French law. Provisions aiming to limit or exclude these cases are usual in contractor agreements.

20. **What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?**

It is not common to provide for direct specific third parties rights in contractor agreements benefitting to funders, purchasers or renters, except for performance bonds, which may be provided for the benefit, as second rank beneficiaries, of such third parties in addition to the project owner.

21. **Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?**

Yes, these types of provisions are common and are upheld by the French Courts.

22. **What insurances are the parties required to hold? And how long for?**

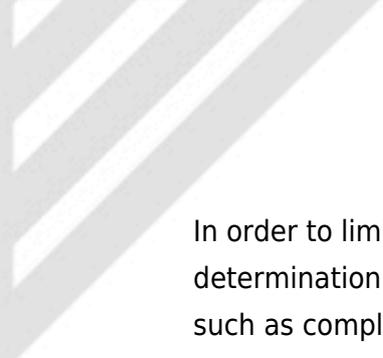
The following insurance coverage is generally applicable (for private contracts):

- an owners' all risk liability (multirisque propriétaire) to be subscribed by the project owner. This coverage shall be maintained at all time by the project owner, as long as it will own the building;
- an "all risks work site" (tous risques chantiers) policy to be subscribed by the project owner. This policy will last for the duration of the construction works;
- a dommage-ouvrage insurance policy to be subscribed by the project owner (to pre-finance repairs in case of damage covered by the decennial guarantee). This policy will cover damages for a period of ten years following the acceptance of the works;
- decennial liability insurance policies (responsabilité civile décennale), to be subscribed by the project owner and all the parties (contractors and consultants) whose liability can be triggered under the decennial guarantee mechanism, for a period of ten years following the acceptance of the works;
- for large projects, a collective contract of decennial liability (contrat collectif de responsabilité décennale), in order to provide a general top-up insurance coverage above the cap of the individual decennial liability insurance policies of the parties (this policy as the same duration as the decennial liability insurance policies);
- a professional liability insurance (responsabilité civile professionnelle), to be subscribed and maintained by all the contractors and consultants for the duration of their agreements.

23. **How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?**

Litigation in front of local Courts is the traditional way to resolve disputes relating to construction.

Arbitration can be provided for in private contracts, but, considering its costs, is not common.



In order to limit the risk of litigation, it is common to provide for an expert determination in the contractor agreement for disputes relating to technical issues such as completion of the works.

Alternative dispute resolution mechanism (such as conciliation or mediation) are also possible if the parties agree to it.

24. **How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?**

Arbitration is recognized and arbitration awards are upheld under French law. However, the French Courts have a limited right to control and review the awards. The timing for the enforcement will depend on each specific cases.

25. **Are there any limitation periods for commencing disputes in your jurisdiction?**

Yes, French law provides for statute of limitation regulations, which will on the nature and on the legal basis of the claim.

26. **How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a “fair and reasonable” proportion of the innocent party’s losses), and are these commonly used?**

Multi-party disputes are very common, especially in the construction sector considering

the number of parties involved.

Liability will be allocated by the Courts between the responsible parties. To do so, the Courts will generally appoint a technical expert, who will give a technical opinion as to the allocation of liability between the parties.

Net contribution clauses are not common under French law.

In some cases, a joint liability can also be applied by the Courts, according to which the innocent party can request an indemnification for its entire damage against one of the defaulting parties, who will thereafter have a claim against the other defaulting to request the reimbursement of their own share of the damage. Such joint liability can be provided for in the contractor agreement if such agreement is granted to two or more contractors.

27. **What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?**

In our view, some the biggest challenges facing the construction sector in France are:

- the lack of available buildable land in large cities and especially in the Paris region, which limit the potential for construction, while there is a deficit of construction, especially of residential projects, in these areas. This supports a current trend to increase the density of projects in large Cities;
- the necessity to improve the environmental performance of buildings, which is considered as a priority by the French government given the important share of the buildings in the total consumption of energy in the country.

Among the opportunities, we can list:

- the strong development of the e-commerce industry has led to growing needs for new logistic projects across the country;
- new actors, with specific construction standards and needs have emerged to provide services adapted to recent changes in society and in work organization, such as co-

working companies and co-living residential projects for young adults.

28. **What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?**

Traditionally, offices have been one the most attractive assets for investors on the French real estate market. Demand is still strong today, especially for prime buildings located in the Paris area and in other large Cities.

Apart from this traditional sector, the development of e-commerce has generated a strong need for logistic projects, which currently attract a strong interest from national and international investors.

29. **How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?**

Technology is playing an increasingly important role in construction projects. Especially, we have witnessed a growing trend for the use of "Building Information Modeling" (BIM) system on French construction projects. In our view, this type of system will become a norm for large construction projects in France.