ARTICLE

THE LAW ON THE SIMPLIFICATION OF ECONOMIC LIFE AND ITS IMPACT ON COMMERCIAL LEASES

Real Estate and Construction | 24/04/26 | Guillaume Aubatier Malvina Dahan

REAL ESTATE - CONSTRUCTION

Following two years of consultation, the "Law on the Simplification of Economic Life" (the "**SEL Law**") was adopted on April 18, 2026. This law introduces several changes that may have a direct impact on your leases. Below is a summary of the key developments.

Please note that, as of today:

- The final version of the text has not yet been published. However, it has been confirmed that the SEL Law was adopted in the form resulting from the last joint committee (*commission mixte paritaire*) held in January 2026 (the "**CMP**"). Accordingly, our analysis below is based on the text produced by this committee. It should be noted that the CMP version differs significantly from the version adopted at the final reading by the National Assembly on June 17, 2025, and contains numerous drafting gaps that raise several issues of interpretation. It will therefore take time for legal doctrine and market practice to develop a consistent interpretation of the text. The risk of litigation arising from these interpretative difficulties should not be underestimated.
- The SEL Law has not yet been promulgated. As of today, the National Assembly has no visibility on the exact date of promulgation, and the Constitutional Council was seized on April 21, 2026 to review the SEL Law, which will inevitably delay its promulgation by several weeks. We are closely monitoring this matter and will keep you informed.

The Real Estate and Construction team at August Debouzy remains at your disposal should you wish to discuss these new measures.

I. Rebilling of land tax to tenants (Article 8 ter of the SEL Act)

The final version of the SEL Law did not retain the proposed measure to prohibit the rebilling of land tax to tenants.

Therefore, the land tax may still be invoiced to tenants.

However, it should be noted that another draft law aimed at limiting such rebilling to 50 percent was introduced on January 13, 2026. This draft law is to be reviewed by the Economic Affairs Committee of the National Assembly. Accordingly, the issue is not entirely settled, and mitigation mechanisms discussed in certain negotiations (side letters, etc.) may still be necessary.

II. Definition of premises eligible for the Pinel right of first refusal (Article 24 A of the SEL Act)

Until now, Article L.145-46-1 of the French Commercial Code, which establishes the "Pinel" right of first refusal for tenants, referred to premises "for commercial or artisanal use" without precisely defining these terms. As a result, the application of this right to office and warehouse premises remained uncertain, and market practice was divided on the issue.

The SEL Law now defines the premises eligible for the Pinel right of first refusal as follows:

"A commercial premises (…) shall mean any premises primarily intended for the conduct of a retail or wholesale business activity, or for the provision of services of a commercial nature, including storage areas and adjacent spaces allocated to such activities or services, ***excluding premises used exclusively as offices and warehouses****.*

An artisanal premises (…) shall mean any premises primarily intended for the conduct of an independent professional activity involving production, transformation, repair, or the provision of services listed by decree of the Conseil d'État, including storage areas and adjacent spaces allocated to such activity, ***excluding warehouses****."*

- ***Premises used exclusively as offices and warehouses*** *are now* ***expressly excluded*** *from the scope of the right of first refusal.*
- *This new provision applies to transfers* ***occurring after the promulgation date of the SEL Law.***

III. Right to monthly rent payments (Article 24, I, 2° of the SEL Act)

The new Article L.145-32-1 of the French Commercial Code, introduced by the SEL Law, grants tenants engaged in "retail or wholesale commercial activities" or in "the provision of services of a commercial or artisanal nature" the right to pay rent on a monthly basis, upon request. This right is subject to the condition that there are no outstanding unpaid

amounts for rent and charges that have not been previously disputed.

The tenant's request takes effect from the next scheduled payment date under the lease.

- *This provision clearly applies to leases for strictly commercial use (i.e., for retail), as well as to artisanal activities, for example, hair salons. By contrast, the concept of services of a commercial nature remains unclear. It is likely to cover leases relating to intellectual service activities that are considered commercial acts within the meaning of Article L.110-1 of the French Commercial Code, such as real estate agencies, banks, and transport companies. It should also encompass leases for single-purpose premises, such as hotels, cinemas, private clinics, and certain serviced residences. The issue may also arise for coworking operators whose primary activity consists of providing services of a commercial nature. However, since coworking arrangements are generally structured as leases for premises used exclusively as offices, they should, in principle, fall outside the scope of this right to monthly payments.*

  > *The concept of services of a commercial nature, which mirrors that set out in Article 231 ter, III, 2° of the French General Tax Code to distinguish commercial premises from office premises for the purposes of the annual tax in the Île-de-France region, **should therefore exclude leases relating exclusively to office premises and warehouses**. That said, disputes regarding the interpretation of this concept are likely.*

- *This provision is a matter of **public policy**, meaning that tenants cannot validly waive its benefit.*
- *It applies to **leases in force as of the date of promulgation** of the SEL Law, and therefore also, a fortiori, to leases entered into or renewed after its promulgation.*
- *In practice, we recommend taking no proactive steps and waiting for informed tenants to submit requests. If the statutory conditions are met, the landlord will not be able to refuse.*
- *With respect to lease drafting, since the SEL Law establishes a right subject to (i) a prior request and (ii) the absence of arrears, rather than an automatic mechanism, we believe it remains possible to provide for quarterly advance payments, while bearing in mind that this may later be modified at the tenant's request.*

IV. Validity of "tunnel" clauses governing ILC indexation (Article 24, I, 2° bis of the SEL Act)

The new Article L.145-38-1 of the French Commercial Code confirms the validity of so-called "tunnel" indexation clauses, which limit rent adjustments by capping the impact of variations in the Commercial Rent Index (ILC), **symmetrically both upward and downward (for example, -2 percent / +2 percent)**.

- *Conversely, a tunnel clause providing for a variation that is not strictly symmetrical would be invalid (for example, +3 percent / -1 percent).*
- *This validation applies only to "commercial premises," for which leases are, in principle, indexed to the Commercial Rent Index (ILC); **it therefore excludes leases relating exclusively to office premises and warehouses, which are indexed to the Tertiary Activities Rent Index (ILAT)**.*
- *This provision is a matter of **public policy**.*
- *The SEL Law does not provide for any transitional provisions for this new article. Symmetrical tunnel clauses may therefore be included in leases entered into or renewed after the promulgation of the SEL Law and, naturally, in leases currently in force, through an amendment, provided that the parties agree.*

V. Limitation of rental guarantees (Article 24, I, 3° of the SEL Act)

Amounts paid as security may not exceed the equivalent of one quarter's rent (presumably excluding taxes).
The SEL Law further provides that the same limit applies to commitments and guarantees of any kind required to ensure proper performance of the lease (bank guarantees, first demand guarantees, etc.).
By express derogation from Article L.145-40 of the French Commercial Code, such amounts do not bear interest in favor of the tenant when rent is payable monthly.

- *This limitation applies only to premises in which "retail or wholesale commercial activities" or "services of a commercial or artisanal nature" are carried out. It therefore applies to leases whose tenants are eligible for monthly rent payments, which appears, in principle, **to exclude leases relating exclusively to office premises and warehouses** (see Section III above).*
- *This provision is a matter of **public policy**.*
- *It applies to **leases entered into or renewed as from the promulgation of the SEL Law, and not to leases currently in force**, unlike earlier versions of the draft law, which provided for immediate application to existing leases.*
- *The landlord will have six months to return any excess security to the tenant, or to release the corresponding guarantees. The wording of the text does not specify whether the landlord must act on its own initiative or only upon the tenant's request. In any event, the law does not provide for any specific penalty in the event of non-compliance by the landlord. The tenant will therefore likely need to apply to the court to obtain an order, potentially subject to a penalty, requiring the return of the sums or the release of the guarantees in the event of non-performance by the landlord. The tenant may also seek default interest at the statutory rate until full performance.*
- *In its earlier versions, the draft law provided as follows: "Amounts paid as security by a tenant under a lease relating to premises referred to in Article L.145-33 A, whether paid directly or provided by third parties, may not exceed the amount of rent due for one quarter. (…) Where the landlord holds guarantees of any kind whose aggregate amount exceeds the rent due for one quarter, the landlord shall have a period of six months to return the excess amounts to the tenant or to*

waive the guarantees covering such excess (…)." Under that formulation, the cap applied to all tenant-provided guarantees taken together, which could not exceed three months' rent, excluding taxes and charges.

However, the wording of the statute has been revised on this point and is no longer clear as to whether the cap applies to each guarantee taken individually (in which case the landlord could combine a security deposit equal to three months' rent excluding taxes and charges with a first demand guarantee and/or a surety covering an additional three months' rent), or whether it applies to all tenant-provided guarantees taken together (in which case the landlord would be limited to an overall package capped at three months' rent excluding taxes and charges, across all forms of security). In our view, the first interpretation is preferable in light of the revised wording of the law, although this remains uncertain at this stage, and it will be advisable to await guidance from legal commentators and market practice to confirm this point.

In any event, an issue arises in the context of pre-completion leases (BEFA), where tenants are very often required to provide a no-show guarantee, typically exceeding three months, in addition to the lease security applicable during the term of the lease.
In our opinion, a no-show guarantee is not, strictly speaking, intended to "ensure the proper performance of the lease," as contemplated by the SEL Law, but rather to secure the tenant's taking possession of the premises. As such, it could be considered to fall outside the scope of the above-mentioned cap. An alternative approach would be to structure the transaction through two separate agreements: one covering the construction phase, and a second constituting the lease, which would take effect upon completion as certified under the first agreement. The first agreement, being a sui generis contract rather than a lease, could then be secured by an uncapped bank guarantee covering the tenant's taking possession.That said, discussions with tenants on this issue are likely to arise.

VI. Transfer of the obligation to return the security deposit upon sale of the premises (Article 24, I, 3° of the SEL Act)

The SEL Law specifies that, in the event of a sale of leased premises, the obligation to return the security deposit is automatically transferred to the new landlord (which was already the case in practice). Other guarantees (bank guarantees, first demand guarantees, etc.) automatically lapse, and the landlord must return the relevant documents to the tenant and release the guarantees within six months.

- *The wording of the law is unclear as to whether this measure applies to all asset classes or only to premises in which "retail or wholesale commercial activities" or "services of a commercial or artisanal nature" are carried out (see Section III above), which would exclude leases relating exclusively to office premises and warehouses. In our view, however, this provision should apply to all asset classes without exception.*
- *Moreover, one may question the very meaning of this provision, which is a matter of **public policy**. Did the legislature simply intend, somewhat clumsily, to restate the principle that, in the absence of any contrary provision, guarantees, as personal undertakings of the guarantor, do not transfer to the purchaser and must therefore be returned to the tenant? Or, on the contrary, did it intend to establish a new rule whereby all guarantees, including those expressly providing for automatic transfer to the purchaser, as is frequently the case with first demand guarantees, would automatically lapse as a matter of law upon transfer of ownership?*
  Such an interpretation would effectively mean accepting that the effects of a first demand guarantee would be automatically extinguished by an event arising from the underlying contract, which would be contrary to the principle of the autonomy of the guarantee. Moreover, it would fundamentally alter the approach to the transfer of guarantees in the event of a transfer of ownership of the asset.

In practice, this would require revising the drafting of:

- ***(i) commercial leases,** to provide that in the event of a transfer of the leased premises, the tenant undertakes to provide the new owner with security equivalent to the original no later than the date of completion. The landlord would therefore need to notify the tenant in advance of any transfer to enable the tenant to comply with this obligation; and*
- ***(ii) sale agreements or preliminary sale agreements,** to include, as a condition precedent, the provision by the tenant of new security equivalent to the original no later than completion.*
- *It will therefore be important to monitor how legal doctrine and market practice evolve on this issue and, in particular, to await the first court decisions in this area.*
- *This provision applies **to sales occurring after a period of three months following the promulgation of the SEL Law**.*

VII. Deadline for returning the security deposit (Article 24, I, 3° of the SEL Act)

The security deposit must now be returned within a maximum period of three months from the handover of the keys. For other guarantees (bank guarantees, first demand guarantees, etc.), the landlord has six months to return them to the tenant.

- *The wording of the statute is unclear as to whether this measure applies to all asset classes or only to premises in which "retail or wholesale commercial activities" or "services of a commercial or artisanal nature" are carried out (see Section III above), which would exclude leases relating exclusively to office premises and warehouses. In our view, however, this provision should apply to all asset classes without exception.*
- *These provisions are a matter of **public policy**.*
- *They apply to leases in force as of the date of promulgation of the SEL Law where the handover of the leased premises occurs more than three months after that date. Accordingly, they apply **to existing leases subject to a three-month grace period**.*
- *They require greater anticipation with respect to the return of the premises and the final reconciliation of service charges.*