

# Global

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## investor guide

### The sky's the limit

NORWAY GIVES THE GREEN LIGHT TO INWARD INVESTMENT

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## 5 things you need to know about development dust-ups from around the world

### 1 UK RIGHTS OF LIGHT

Rights of light are a perennial issue when developing land in England and Wales. A typical development site will be surrounded by neighbouring buildings. If 20 years old or more, they can acquire a right to receive light over the site and obtain an injunction to prevent or demolish any new development interfering with that light. Neighbours can demand a share of the developers' profits before allowing them to proceed.

Good news comes for developers in the form of recent court decisions suggesting that injunctions should not be awarded in all cases, with an important consideration being the public interest in the development proceeding. But engagement with neighbours remains key: deliberately ignoring rights of light and building anyway will make the courts more inclined to intervene.

### 2 US TEMPORARY ACCESS EASEMENTS

Increased urbanisation presents wide-ranging challenges to developers. One noteworthy challenge is the inability to complete construction efforts without using neighbouring land. Developers faced with this challenge commonly request access easements allowing for temporary use of the neighbouring land.

A well-crafted temporary access easement agreement can be used as a tool to avoid, or diminish, potential development disputes. "Must-have" provisions include indemnification by the developer, non-interference obligations and strict limits regarding permissible construction activities. Less obvious, but equally important, provisions require prompt damage reimbursement or repair, advance notice of work commencement, a suitable form of security and appropriate insurance coverage.

### 3 GERMANY ADDITIONAL BUILDING COSTS AND THE ARCHITECT'S FEE

Additional building costs and the consequential increase of the architect's fee is a common reason for disputes when developing real estate in Germany.

The architect's fee is governed by binding German price law which links the architect's fee directly to the overall building costs. Thus, the architect does not necessarily have an interest in keeping costs low and adhering to the planned budget.

Since building costs can easily increase due to planning changes, delays or unexpected circumstances, the contract with the architect needs to be carefully drafted in order to (1) avoid an uncontrolled rise in costs from which the architect would benefit and (2) agree on a fixed fee as opposed to the statutory provisions.

### 4 FRANCE NEIGHBOURHOOD DISRUPTION DURING CONSTRUCTION WORKS

Litigation on the basis of excessive neighbourhood disruption is becoming more frequent in France. Where construction works are undertaken in an urban environment, neighbours frequently complain about the impact of the works on the locality (noise, dust, etc) or on their homes (for example, cracks caused by vibrations).

It is therefore recommended that project managers, prior to commencing construction, apply to the civil judge, acting in summary proceedings, for the appointment of an expert whose task would be to record, in the presence of the neighbours, the state of the surrounding buildings prior to the commencement of the works and also to provide an opinion on the relevance of the measures proposed by the project manager to limit the risk of disruption.

### 5 SPAIN DEVELOPER'S REPAIR OBLIGATIONS AND INSURANCE COVERAGE

Under the Spanish Development Act, developers are jointly and severally responsible with other entities involved (designers, contractors) to repair: (a) finishing/minor defects detected within one year; (b) defects affecting installations that impede the use of the property and detected within three years; and (c) structural defects detected within 10 years, all these terms as from handover of the construction works.

These obligations may be insured or a bank guarantee agreed by contract. However, the insurance coverage for structural defects is only mandatory for residential developments. Consequently, indemnity obligations and potential coverage from the different construction team members should be carefully negotiated and drafted when entering into contracts with architects, project designers, land planners and construction contractors.

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## 5 INVESTMENT TRENDS TO WATCH IN LISBON

### 1 Down by the river

The azure blue River Tagus is one of the city's most stunning attributes, but major riverside development has been held back by swathes of port-owned land. Now the tide is turning, making this a district ripe for investment. One catalyst for change will be the new Museum of Art, Architecture and Technology, set to open on the waterfront in October.

### 2 Restoration, restoration, restoration

At first glance, it does not look like finding office space in Lisbon should be a problem. The city has plenty of commercial buildings – up to 2.2m sq ft of available space in certain zones. But the majority of these vacant offices are old, so need refurbishment. Office space that is fit for purpose is almost non-existent.

### 3 International influx

Around 90% of the record €2bn (\$2.2bn) of investment into the city in 2015 was made up of international money. And Lisbon is on track to attract even more this year. In the first half of 2016, 120,000sq ft of property was transacted, more than 80% of which was funded by overseas investors.

### 4 Retail or leisure?

In central Lisbon, as with the commercial and residential sectors, there is a huge focus on restoring and modernising existing stock. This is likely to see old shops being redeveloped and refurbished to make way for more leisure assets such as food markets, bars and restaurant quarters. This trend will exacerbate an already scarce supply of retail.

### 5 Logistics for the long term

Growth in Lisbon's logistics and industrial sectors has not been on a par with the rest of the city's commercial growth so far. Take up fell in 2015 by around 504,000 sq ft. But American investors have been busy acquiring industrial portfolios previously held by Portuguese financial institutions and the hope is that this could result in an adjustment upwards of rents.

Spotlight on Lisbon, p32