

Companies intending to establish a commercial presence in France (whether this is a subsidiary, a branch or a representation office), and are unwilling to invest in the acquisition of commercial premises, have the following options: leasing real estate or hiring a virtual office.



## The Virtual office (also called domiciliation)

### Principle

The virtual office will provide a business address, which often also functions as a PO Box. This is generally a purely administrative address, which the company can use on all legal and fiscal documents. This address is different from the place of business activity (i.e. where the employees work).

The virtual office can be declared as a company's headquarters or as a branch office on its certificate of incorporation (K-Bis), thereby exonerating the company/branch from the obligation of purchasing or leasing physical premises. The virtual office address may also be displayed on business cards, invoices, headed paper, etc.

The company may also decide to use the home address of one of its directors or managers as its business address.

### In practice

Companies offering virtual office services are widely available throughout France (your accounting firm may probably offer such services). Further to the signature of a domiciliation

agreement, and in return for a rental payment, the domiciliary company will host the virtual head office of the lessee. In any case, the domiciliary company must be authorized and approved by the French Administration prior to the domiciliation. Every quarter, the domiciliary company will report to the French Administration the domiciliation agreements that are currently effective.

Whenever a company is domiciled at an individual's personal premises (whether this individual happens to be a director, a manager...), the landlord must have granted his prior consent for domiciliation agreements, in the lease contract signed with the individual.

## Leasing real estate

### Principle

The company will lease a property depending on its specific needs (surface area, type of premises, location, etc.) for a limited period, defined by the lease signed between the company (lessee) and the landlord (lessor).

### Seasonal lease

This type of rental agreement may be preferable if the lessee only requires use of the premises for the duration of a tourist season, in particular in seaside and ski resorts.

### The short-term lease

This type of lease may refer to either a single fixed-term tenancy or a periodic tenancy, as long as the total rental period is inferior to 24 months. The advantage of this type of lease is that neither the lessee nor the lessor will be subject to the restrictive legislation of a commercial lease, if the lessee's activity is not profitable during the duration of the lease and falls through. The short term lease does not provide for the renewal of the tenancy agreement. If the tenant wishes to remain beyond the maximum 24 month period, the short-term lease will be transformed into a commercial lease.

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## The commercial lease

It is a lease with a minimum term of nine years, but which may be terminated at the end of each three-year period (sufficient notice must be given), which explains its French name: «bail 3-6-9 ».

The commercial lease signed between the tenant and the landlord defines, as per French Commercial Law, the rights and obligations of each of the parties.

The company (lessee) must be vigilant regarding the following clauses (non-exhaustive list):

- **The rent:** the lease determines its amount. Please note that some lessors may not be subject to VAT and will invoice the rent without any VAT.
- **Rent revision:** The rent is usually revised on an annual basis, on the anniversary of the lease signature. The method used to calculate the new rent must be explicitly mentioned in the lease. It is often indexed to the National Index for Construction Costs (ICC) (“indice du coût de la construction” in French), which is calculated by French authorities and is published quarterly by the National Institute of Statistics (INSEE). It can also be indexed on the “Commercial Leases Index”.

The rent consequently is revised on a yearly basis depending on the variation between the index stated in the contract (the latest index published before the day of the lease signature is used) and the new index, as per the following formula :

$$\text{rent} \times \text{new index} / \text{previous index} = \text{new rent}$$

- **The rental charges:** Rental charges correspond to the payment of various services and supplies provided to the tenant (water, heating, etc.) that are paid by the owner who in turn passes them on to the tenant. They may include the *service charges*, which are the maintenance costs for the common parts of the building (reception desk, lift, etc.). Moreover, rental charges may include *taxes*, such as the property tax: although it is issued in the

landlord’s name, some leases stipulate the invoicing of this tax to the tenant. It is also recommended to verify whether the commercial premises tax and the waste collection tax are to be paid by the lessee.

Two different methods are used to bill rental charges: “effective” charges and “inclusive” charges :

### - *Effective charges*

The tenant refunds the owner the charges based on the effective cost of invoices. During the year, the tenant pays provisional charges. At the end of the year, the amount of provisional charges is compared to the effective cost of expenses. This year-end adjustment is in fact often made several months after the year-end. If the amount of provision charges exceeds the effective cost of expenses, the owner refunds the tenant the difference. If the provision charges are insufficient, the tenant must pay the difference, in which case the provision charges are reassessed.

### - *Inclusive charges*

In this case, charges are a fixed amount that does not vary whatever the effective charges amount to. This lump amount is indexed once a year only, just like the rent, when stipulated by the lease. This method has the merit of being simple.

- **Subletting:** the contract may or may not forbid subletting the premises. It can be an item to be negotiated.

In the event that a lease is transferred from one tenant to another (subject to certain additional terms and conditions), the terms of the original lease will be maintained and conserved.

A decrease in rental payments can also be requested if the tenant carries out renovation work.

The acquisition of a virtual office or real estate lease doesn’t automatically imply the creation of a permanent establishment for the foreign company, but the economic, accountancy and fiscal implications should be carefully evaluated.