In Good Company

Solicitor MICHAEL BULA explains the ins and outs of Australian companies buying French property.

Is it possible for my Australian Company to buy French property?

Under the principles of mutuality, Australian companies, just like Australian individuals or private parties, have the right to purchase property in France without restriction. But Australian companies have to be accepted as lawfully established and existing in Australia at French law. This involves examination of constitutions, ASIC company extracts, authorities of directors or shareholders to acquire French property, fiscal and accounting considerations, and above all, translation of all documentation to French by officially recognised NAATI translators. Notarial acts or deeds accompany these processes.

Disclosure procedures must also be respected so that any penalty tax provisions for non disclosure are avoided.

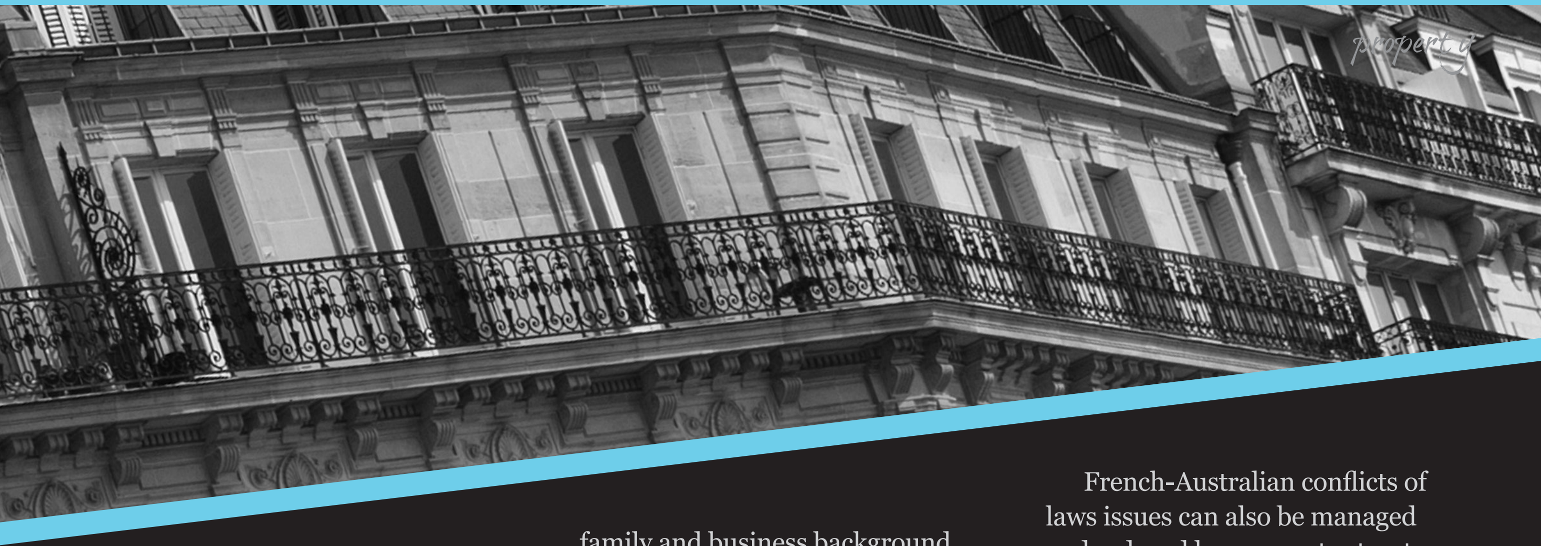
When an Australian company is fully recognised by the French system – specifically the notary and the Tax Office – it can act more or less like a French company in its capacity to acquire, manage, exploit and dispose of French property.

Of course, it is imperative that you seek international tax advice as to the ramifications. There is no restriction upon an Australian company to purchase French property. The recognition process involves costs, such as translation of the constitution, or memorandum and articles of association, translation summary of a recent company search extract and the certificate of incorporation and any previous change of company name certificates, as a non-exhaustive list.

Also, a certificate as to foreign law, best prepared in French by an expert French-speaking Australian notary public, may be requested by the *notaire* or other professional authorised to incorporate companies in France. Other documents, such as resolutions, are usually required. Expert legal, accounting and tax advice is obviously recommended.

What French companies are available for Australians to incorporate for this purpose?

The French company regime presents many more types of companies than are available in the Australian system. This



abundance can cause confusion and presupposes prior sound legal advice in the choice of company type.

The most popular is the SCI (*société civile immobilière*), which is a type of special purpose property holding company with unlimited liability and no commercial activity functions. The advantage of this vehicle is transparency, low or individual tax rates for shareholders, and relative ease for tax and accounting compliance. It is not suitable for running commercial businesses and activities but simply for its special purpose of property holding. Remember, specific advice on the purchaser's profile must be sought.

Such advice and analysis, as between an Australian or a French company, must cover which entity is the more appropriate. An assessment is usually made of the purchaser's family and business background and needs and application at French law. Non-residents of France can incorporate a French company. Also available is a *société à responsabilité limitée* [SARL] – a more general commercial-style company, similar to our proprietary limited companies in Australia. Furnished letting is deemed a commercial activity, whilst unfurnished letting is not. This affects the choice of French company vehicle available and its fiscal regime. Amongst matters for consideration are the purpose for which the property will be used and if let furnished or unfurnished.

What is the advantage of a French or Australian company?

Estate planning and efficient management in the presence of multiple parties or shareholders would be the principal benefits.

French-Australian conflicts of laws issues can also be managed and reduced by corporate structures or intermediaries in certain cases, dependent on a case by case analysis of Australian purchaser objectives.

Legal, tax, and accounting compliance work, let alone additional translation costs, add up to a greater outlay than purchase of French property as individuals. The decision is triggered by other considerations, such as asset and beneficiary protection, facility of change in or additional shareholders and directors/managers, to name just a few. Syndicates interested in acquiring property in France should also consider use of a corporate vehicle and a shareholders' agreement to set up a clear road map of rules governing the property holding. ⚜