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AIDV Conference

Vineyard acquisitions in France: SAFER regulatory aspects

Lausanne, 22 July 2019

1. Recent background on vineyards transactions in France (1/3)

- It goes without saying that France has historically been an **attractive market for worldwide investors** in vineyards. These investors usually fall into 2 main different categories:
 - **Patrimonial investors**, interested in securing their assets over a long period and often interested in the most-renowned *châteaux* even though they are more and more also interested in the mid-level market;
 - **Industrial players**, who look for industrial synergies (large properties) and economies of scale through their distribution networks.

- Most noticeable trends in the last years in notable vineyards M&A are:
 - The interest from **Chinese investors** was strong over the last decade. According to professionals in the sectors, over 100 Bordeaux *châteaux* bought out by Chinese groups or wealthy individuals; some for pure patrimonial stake, others with a commercial view;
 - The long-lasting interest from **high-net worth individuals** and **closely-held/family groups**, whether French (LVMH, Pinault Family, Bouygues Family, etc.) but also non-French (see above re Chinese investors but also from all around);
 - The constant increase in prices for exceptional properties (See Clos de Tart, Clos des Lambrays, Château Petrus) but also in other regions (*e.g.* Provence).

1. Recent background on vineyards transactions in France (2/3)

- According to statistics published by SAFERs for 2018:
 - There have been **8,750 transactions** regarding vineyards in France, corresponding to **16,800 hectares** and a total value of **844m€**
 - The average price for vineyard *Appellation d'Origine Contrôlée* is **147,300€ per hectare** (+2.4% compared to 2017 on average, and +6.8% specifically for Bordeaux-Aquitaine).
- The French Agriculture Ministry publishes statistics on average market value of vines in metropolitan France (price per hectare by region and by AOP on its online portal called “Agreste” (<http://agreste.agriculture.gouv.fr/donnees-de-synthese/prix-des-terres/>)).

1. Recent background on vineyards transactions in France (3/3)

- **Market sales.** Most of the time the sale process is very **confidential** and based on **personal relationships and reputation**, especially when transactions are made in the context of anticipated or unexpected inheritance situation. Some intercessors often prove to be useful, such as:
 - Professional intermediaries (specialized M&A boutiques or Wine & Spirits teams in certain investment banks), often used for private auctions on mid-market to high-end market and when looking for international potential buyers;
 - Local *notaires* and lawyers, especially in the context of succession and estate planning, often tax-driven given the need for successors to pay inheritance rights and real estate wealth tax (even though legal tools exist to significantly reduce such tax costs, for example in the context of family holdings);
 - Local wine-growers, traders and other professionals (word of mouth).
- Acquisitions through the **SAFER process**.
- ∅ **Overall, the local context region by region has a strong influence on the chances to source and secure a transaction, and should therefore be carefully taken into account.**

2. Regulatory aspects: the SAFER (1/6)

General presentation

- Created initially in the 1960s by the general Agriculture Orientation law passed that year, the *Sociétés d'Aménagement Foncier et d'Etablissement Rural* (Companies of Land Development and Rural Establishment) (“SAFER”) are not-for-profit agencies (under the form of a corporation - *société anonyme*) under the control of the Agriculture Ministry.
- The SAFER have a general statutory mission to ensure the **development and rationalization of the French rural territory**: improve land structures by setting up farms or forestry, or maintaining existing ones by increasing their area (land unity), by land development and, eventually, by parcel landscaping and redesign.
- One of the reason of their creation was to facilitate young farmer’s establishment.
- There are 26 regional SAFERs (20 in mainland France and 3 in the French territories), each covering a specific region (which is not necessarily covering the same geographical scope of French regions) plus one federal coordination body (which is a not-for-profit association).
- They have in the aggregate more than 1000 employees and are the largest agriculture land purchaser in France.

2. Regulatory aspects: the SAFER (2/6)

In order to do so the SAFER have several powers among which:

- First, pursuant to French law, the relevant local SAFER is systematically informed by *notaires* of pending sales of land in agricultural zones and has a **pre-emptive purchase right** (subject to certain limited exceptions) on all sales of agricultural land (and hence vineyards). Such pre-emptive right derives from the Rural Code (Art.143-1 et seq).
- Such SAFER also has two alternative powers (which the parties tend to accept to avoid a pre-emption):
 - **Amicable sales** (either in the context of bankruptcy proceedings or in a private sale).
 - **Substitution right**, involving a 3-way agreement between the seller, the purchaser and the SAFER, whereby the SAFER imposes commitments (*cahier des charges*), including at the minimum a 10-year commitment to (i) maintain the agricultural use of the property and (ii) obtain the prior consent of SAFER for any subsequent transfer of the property.
- On average over the recent years, only c. 7-8% of sales of agricultural real estate were bought by SAFER (no official figures for vineyards specifically).
- A property targeted by SAFER is most of the time **sold to whoever is judged by the SAFER to have a project in line the public interest**, either after SAFER acquired it (pre-emption or amicable sale) or through the substitution procedure.

2. Regulatory aspects: the SAFER (3/6)

Pre-emption procedure

- SAFER preempts only after a detailed process:
 - Following the **advice from its "technical committee"**, a panel of local experts including representatives of chambers of agriculture, banks, agricultural insurers and unions, local councils and the State;
 - by a **decision** of its board of directors;
 - and with the **approval from the State** (acting through local representatives *commissaires du gouvernement*).
- SAFER notifies its decision **within 2 months of receipt of the notification** from the *notaire*.
- SAFER will usually buy at the **asking price**, but it should be a reasonable market price. Where SAFER makes its own, lower, price offer, the seller can **refuse the counter-offer and withdraw the sale**. It may also lodge a complaint with the tribunal in order to fix the price.
- **Exceptions**. The pre-emption right cannot be exercised on purchases made by the farmer in place on the land, land to build (*terrain à bâtir*) with a construction commitment and more generally on purchases made by members of the family of the owner.

2. Regulatory aspects: the SAFER (4/6)

- ∅ The legal purpose for which a SAFER may exercise its pre-emption rights are the following:**
 - Always for the purpose of public interest;
 - To maintain the agricultural vocation of a property;
 - To avoid price overbidding;
 - To promote local development;
 - To protect the environment.

- ∅ The purchaser and its advisors can contact in advance SAFER directly, in order to “test the waters” and avoid or control the pre-emption procedure to the extent possible.**

2. Regulatory aspects: the SAFER (5/6)

Other specificities

- **Share deals.** Since 2014, SAFER also have powers to pre-empt on the sale of a property held through a company (a method previously used to get around acquisition by SAFER).
 - SAFER only entitled to pre-empt on the shares of a company whose primary purpose is agriculture.
 - SAFER must also buy the totality of the shares of the company, and pre-emption can only take place where the purpose is to install a farmer on the property.
- **Partial purchase.** SAFER is now entitled to buy only part of the property, with no obligation to pre-empt on all of it, as was previously the case.
 - This power enables the agency to limit its intervention to those parts of the property of greatest interest, and, in the case of those being sold at substantial value, will enable it to act where otherwise the sheer cost of the aggregate acquisition made this impossible.
 - The owner can ask that SAFER pre-empt on all the property, failing which it can demand that SAFER compensates it for the loss of value on the remainder of the property.

2. Regulatory aspects: the SAFER (6/6)

Buying through SAFER?

- After having acquired a property (through the exercise its preemption right or through amicable sales), SAFER looks for candidates by advertising in two local papers, at the local City Hall and on its own website.
- If a purchaser sees a property of interest on its site, it can fill out a form describing what it would do with it. In some cases it is asked to pay a deposit, which would be refunded if the property is not sold to it.
- SAFER chooses the best candidate to sell the vineyard after applications are closely studied and debated by its “technical committee”.
- Buying through SAFER involves fees based on a percentage of deal value; however, there is a tax benefit as the purchaser is exempted from land registration duties (usually around 5%) if it promises to maintain agricultural use.

In a nutshell

- Ø Potential intervention of SAFER is often seen as a **sword of Damocles** for the purchaser (notably the foreign buyers not used to this regulation), with the idea that it may lead to timing disruption and deal uncertainty...
- Ø ... but **SAFERs pre-emption are very rare** and in practice, the vast majority of rural property sales go through without SAFER showing any interest, but the vineyard sector (especially its upscale segment and its most visible transactions) has become a sensitive area for the SAFER, in particular under the influence of local family wine-growers and syndicates wary of the interest of industrial players and HNWI/foreign investors.

Such potential “local influence” and more generally the overall process was highly criticized in a report in 2014 by the French *Cour des Comptes*.

- Ø The specificities of vineyard transactions in France command **thorough preparation** and a **tailor-made approach**, both in terms of structuring and process in order to deal with the relevant SAFER in the most efficient manner and to ensure a smooth transaction process.