

Mortgaging your French Property

The ability to pledge your property is an essential element of credit.

Under French law, the *privilege de prêteur de deniers* and the *Hypothèque conventionnelle* are the typical securities available. However implementing these in a cross border environment is not straightforward and the costs involved are nothing like those you incur when you mortgage (or remortgage) your English property.

Registration of the charge

Privilège de prêteur de deniers (PPD)

This “money lender’s precedence” or “lender’s lien” results from article 2374 2° of the French Civil Code:

Creditors having precedence over immovables are:

[.....]

2° Even in the absence of subrogation, those who have procured the funds for the purchase of an immovable, provided it was authentically established, by the instrument of loan, that the sum was intended for that use, and by the receipt of the seller, that the payment was made out of the funds borrowed.

The cost of registration of the *PPD* against your property is roughly 0.36% of the amount secured (amount borrowed + estimated cost of enforcement of the so-called *Accessoires*). The *PPD* is typically registered for a duration expiring one year after the end of the underlying debt, and is automatically struck off at such time.

Typically, the registration of a *PPD* to secure a €1,000,000 loan amounts to about €4,200, i.e. approx 0.40% (plus disbursements).

PPD costs estimate *	
Land Registry fee	0.05%
Land Registry tax	N/A
Notaire’s fee	0.275%
VAT	0.05%
Disbursements	Fixed
TOTAL (rounded)	0.40%

* Please note that the above figures are subject to amendment by the French Government, and increased costs apply to professional loans/mortgage charges.

The *PPD* is not subject to the 0.715% *Taxe de Publicité Foncière* (Land Registry charge) which make it the cheapest type of charge available in France.

The registration is a straightforward process and the *PPD* will take rank on completion date retroactively.

However, the registration of the *PPD* is only possible on purchase of an existing property and is not available to finance properties bought off-plan or remortgaged.

Equally, to be enforceable in France, the *PPD* must not only be governed by the law of the property *situs* (which is established when a French property is purchased) but also be recognised by the law of the secured debt i.e. the governing law of the loan agreement.

The *PPD* being a typical institution of French civil law which has no equivalent even in other civil law countries only applies in practice where the loan agreement is governed by French law. The *PPD* is therefore not available when the loan agreement is governed by English law.

Hypothèque conventionnelle

In an international environment the *Hypothèque* is in practice the only guarantee available to lenders.

To be valid, the *Hypothèque* agreement will require a specific French *Notaire's* deed. The *Notaire* may act on the basis of a power of attorney signed in England but this will require your signature to be witnessed by a Notary Public in England and Wales and legalised by the Foreign & Commonwealth Office (the so-called "*Apostille*").

The registration procedure is quite a cumbersome process. The *Notaire's* application form or *Bordereau* can take up to two months to be considered by the *Conservation des Hypothèques* which leaves a period of uncertainty for the lender.

It is only when recognised as formally valid that registration and rank will be granted at the date of reception of the *Bordereau* by the Land Registry. Unlike in England there is no priority period granted to the applicant and another creditor may well register his own *Hypothèque* in the meantime.

The cost of the *Hypothèque* agreement is roughly 1.10% of the amount secured (amount borrowed + *Accessoires*) – the same cost as a *PPD* but with the additional application of a Land Registry charge of 0.715%.

Hypothèque *	
Land Registry fee	0.05%
Land Registry tax	0.715%
Notaire's fee	0.275%
VAT	0.05%
Disbursements	Fixed
TOTAL (rounded)	1.10%

* Please note that the above figures are subject to amendment by the French Government, and increased costs apply to professional loans/mortgage charges.

Typically the registration of a *Hypothèque* to secure a €1,000,000 loan amounts to about 12,000 Euros (3 times the cost of a PPD!).

Release of the charge / remortgage

General framework

The PPD or the *Hypothèque* will automatically be struck off at the end of the registered duration, i.e. one year after the end of the underlying debt.

However, if you decide to repay your loan in anticipation and register a new charge (remortgage) you will have to 1) release the initial charge and 2) register a new charge.

The cost of release of a *Hypothèque* or PPD is as follows:

Release *	
Land Registry fee	0.05%
Land Registry tax	N/A
Notaire's fees	0.1375%
VAT	0.03%
Disbursements	Fixed
TOTAL (rounded)	0.25%

* Please note that the above figures are subject to amendment by the French Government, and increased costs apply to professional loans/mortgage charges.

Typically the release of a €1,000,000 mortgage charge will cost about €2,600.

By way of summary:

	UK loan	Date of rank	registration (€1M)	release (€1M)
<i>PPD</i>	No	Completion date (retroactive)	€4,200	€2,600
<i>Hypothèque</i>	Yes	Date of <i>bordereau</i> (<u>not</u> retroactive)	€12,000	€2,600

“Reloadable” Hypothèque

A *Hypothèque rechargeable* (“Reloadable *Hypothèque*”) has been available since 23 March 2006 and now allows the remortgage of your property by way of “reloads” of your initial *Hypothèque* without the cost of a new registration. The “reloads” (which can be granted by another bank) are however limited to the amount initially registered.

Example:

Initial loan on purchase: €1,000,000

Hypothèque (rechargeable) registered: €1,000,000

Amount repaid: €200,000

Maximum reload: €200,000

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