

COUNTRY BY COUNTRY GUIDE of commercial leases



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1. Introduction

1.1 Commercial Lease across Europe

Real Estate owners, investors, Asset and Property Managers today have a global and European focus when it comes to real estate investments. At the heart of this investment is the value that (commercial) leases are representing. It is, therefore, key to any real estate investment to know about the real value of lease agreements. Vital for that is the legal valuation. Therefore, this guide tries to give an overview of the legal aspects of commercial leases in Europe.

This guide is intended to provide the reader with a short practical overview of the different specialities regarding the lease of commercial property in the legal systems across Europe. Whilst the terminology is often radically different, the principles are generally very similar, but with important specific characteristics. The participating TELFA partners have provided a brief overview on 11 major topics which are relevant in every lease agreement. This country by county guide makes it possible to determine the most important differences on commercial leases between the different jurisdictions and the one that are most akin to those in one's own jurisdiction.

Civil law topics covered are:

1. Legal regulation
2. Form
3. Object of the lease
4. Duration
5. Maintenance / Reparations
6. Rent
7. New ownership
8. Lease termination
9. Compensation
10. Jurisdiction

In addition to aspects of civil law, it will always be necessary to consider issues of tax. These readily digestible summaries are intended to give the reader a first flavour of another jurisdiction and should not be treated as a complete exposition of the relevant law.

Specific advice will always be required. This document sets out the law and practice as it stands on 17 May 2018.

1.2 About TELFA

Trans-European Law Firm Alliance (TELFA) was founded in 1989 and born out of the need to serve clients doing business across the jurisdictions of Europe.

TELFA member firms now have more than 1,000 lawyers throughout Europe. Through the sustained commitment of its members, TELFA has become one of the strongest alliances of independent law firms in Europe.

The fact that the member firms of TELFA are independent offers clients a flexible alternative to the global law firm model, in which internal pressures sometimes compete with the needs of client service. TELFA's focus is on client service through the provision of quality legal advice, which can be managed by the member firm in the client's jurisdiction, or the client can go directly to the member firm in the foreign jurisdiction(s) in which the client has the need for advice.

TELFA's vision is to create and maintain a network of independent law firms that share a similar ethos. TELFA member firms do not "sell products"; rather we build relationships with our clients so as to become trusted advisers allowing us to serve our clients more effectively.

Just as the foundation of good service for our clients is built on strong personal relationships, so it is among the lawyers that make up the membership of TELFA. The lawyers in TELFA get to know one another both professionally, through working together on client assignments.

Also flexibility - either clients can have a single point of contact through which to engage lawyers throughout Europe, or a personal introduction to law firms in foreign jurisdictions, so that clients can feel comfortable with and assured in the service that they are to receive.

All the member firms offer a partner led - not necessarily "partner does" - service; the firms ensure that clients have continuity of contact and are not passed from one lawyer to another.

TELFA members are sensitive to cultural differences and work hard to frame their advice in a way that is understandable, practical and "digestible" by their clients.

The member firms share resources, knowhow and best practice whilst respecting the different requirements made of each firm by its local "bar rules".

For TELFA clients this means that TELFA is not just a referrals network that operates like a brokerage clearing house; rather the TELFA brand stands for personal service, facilitating clients' needs for advice in what may be unfamiliar jurisdictions, so as to ensure the client feels safe in the knowledge that the firm is respected (and respectable) within their local jurisdiction.

TELFA firms can draw on and leverage the expertise and experience of its members so as to respond effectively and flexibly to the demands made by clients.

More information about TELFA and its wider international associations can be found following the link below:

<http://www.telfa.law/>

TELFA firms benefit from a strong relationship with USLAW Network, Inc., with firms across most of the United States, and other parts of North and South America. More information about USLAW Network, Inc. can be found following the link below:

<https://web.uslaw.org/>

1.3 This document

This document has been prepared by TELFA lawyers drawn from a broad range of firms. In time, it will be expanded to address all TELFA jurisdictions and other key affiliated jurisdictions.

The document analyses corporate forms across 25 European jurisdictions, listed alphabetically.

1.4 Jurisdictions Covered

Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

Hamburg / Arnhem, 17 may 2018

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2. Austria

Legal regulation

The Austrian Civil Code (ABGB) contains provisions generally applicable to tenancy agreements, if the Austrian Rent Act is not applicable. The provisions of the ABGB are mainly not mandatory and grant a large party autonomy when drafting lease agreements.

The mandatory special provisions of the Austrian Rent Act (MRG) apply to several commercial premises (eg offices, workrooms, stockrooms).

Agreements concerning stand-alone units (leased objects in buildings with not more than 2 independent business premises), short term lease contracts with a duration of not more than 6 months and certain other lease agreements do not fall within the scope of the MRG.

The MRG also lists agreements that fall within the partial scope, such as contracts of lease objects in so called “new buildings” (buildings built on the basis of a building permits granted after 30.5.1953), leased premises under condominium ownership in buildings built on the basis of a permit after 8.5.1945 or lease agreements of loft conversion objects after 2001.

This distinction is important since in the partial scope of the MRG only some of the mandatory provisions apply, such as those concerning duration of the lease, termination, notice of termination and eviction, whereas in the full scope of the MRG, additional rules apply, e.g. concerning the maximum rent.

Form

In general the conclusion of a lease agreement does not require specific formalities. Thus, even oral agreements are valid.

However, certain clauses require a specific form. E.g., a fixed term lease can only be agreed in writing. A violation of this rule renders the lease as unlimited. It does not affect the validity of the remaining agreement.

A written lease agreement is subject to a stamp duty at a rate of 1% of all rental payments (including service charges, operating costs and VAT) that must be paid by the tenant to the landlord during the term of the lease. For indefinite contracts, the stamp duty is calculated on the basis of three annual rental payments. For fixed term contracts, stamp duty is calculated on the basis of the rental payments for the whole term, up to a maximum of 18 years (or three years for apartments).

OBJECT OF THE LEASE

Every Building in Austria has a special purpose. If this purpose is commercial use, you can use it for commercial lease.

Duration

The length of a lease is defined in the contract between the landlord and the tenant and is usually for an indefinite or fixed term. If the Tenancy Act applies to the lease, indefinite contracts can only be terminated by the landlord for the specific reasons listed in the Tenancy Act. Therefore, contracts for commercial and residential property are usually for a fixed term.

If the time period is not agreed, the lease is deemed to be negotiated for an indefinite time period.

Maintenance / Reparations

The provisions of the ABGB, which also apply in the partial scope of the MRG, state a general maintenance duty of the landlord who has to hand over the leased object in a condition of use according to the contractual

agreement and the customary common use at the time of the conclusion of contract. These provisions of the ABGB are not mandatory.

In the full scope of the MRG the maintenance duty of the landlord is limited but mandatory. The landlord has to remove serious damages of the building itself and of the common parts of the building.

Rent

If the provisions of the ABGB apply, the rent can be mutually agreed, within the general borders of civil-law such as unconscionability. The same applies in the range of the MRG to contracts for retail space in “new buildings”, which are subject to the partial scope of the MRG.

Within the full scope of the MRG, which means retail space in “old buildings”, an “adequate rent” has to be agreed upon. This adequate rent is determined according to criteria such as location, type, and maintenance condition of the leased object. It regularly does not correspond to the respective market rent.

New ownership

The provisions of the ABGB provide for an automatic transfer of the lease agreement. However, if the lease contract is not registered in the land register, the third party has the right to terminate the lease agreement in accordance with the legal or, if more favorable, the contractual deadlines. The third party is not bound by contractually agreed deadlines which are stricter than the legal provisions. Therefore, it is important to register the lease agreement with the land register.

In the scope of the MRG an automatic transfer of the lease contract takes place as well. The third party acquiring a leased real estate is bound by the provisions of the lease contract except for those collateral agreements of unusual content of which he did not know or did not have to know. The third party has no right to terminate the lease agreement when acquiring a leased real estate, irrespective of the registration of the lease in the land register.

Lease termination

In case of fixed term lease, the lease relationship ends with expiry of the period agreed upon. An early termination is only possible if provided for in the contract.

An indefinite lease contract is ended by way of termination notice. In the scope of the MRG, the lessor can only end the contractual relationship for good cause (such as default of payment). The lessee can terminate the lease agreement respecting the contractually agreed period or, in absence thereof, under observance of the legal period (termination dates: 31.3., 30.6., 30.9. or 31.12. respecting a notice period of 3 months).

Break clauses allowing the tenant to terminate the lease at a given date subject to certain penalty payments are common practice.

A termination by mutual consent is always possible.

Compensation

The provisions of the ABGB, which also apply in the partial scope of the MRG, do not state any restrictions in regard to compensation payments if a new tenant takes over the lease agreement.

Within the full scope of the MRG such compensation payments are forbidden.

3. Belgium

Legal regulation

Civil code, section II bis – articles 1-36 (legislation of 30/04/1951). Legislation of 30/04/1951 is imperative and highly technical.

Form

There is no formal legal requirement, although in practice commercial leases are executed in writing (which is also highly recommended).

Object of the lease

A commercial lease is used for the rental of properties in which is made a retail trade or an artisan activity directly in contact with the public. This last standard “contact with the public” is the most important in Belgian law. For example: commercial leases are not valid for lawyer’s offices or others liberal professions.

Duration

A commercial lease must have a term of at least 9 years. The aim is to allow commercial stability.

The tenant is entitled (by the law) to terminate the lease on the expiry of each 3-years period, giving an official six months’ notice.

The landlord can be entitled (by the contract) to terminate the lease on the expiry of each 3-years period giving an official one year notice, for a personal occupation. In that case, an indemnity can be due to the tenant.

Commercial lease automatically terminate at the end of the 9 years period.

The tenant can request a renewal of the lease for a same period time. This extremely formal request has to be sent to the landlord between the 18th and the 15th month before the end of the lease.

If the tenant doesn’t request a renewal but keeps occupying the property after the term, there is a new lease for an “undetermined period”. The landlord can terminate this new lease giving an official 18 months’ notice. This notice “reopen” the possibility for the tenant to ask a renewal.

Maintenance / Reparations

The landlord is responsible for major repairs.

The landlord is responsible for maintenance.

The tenant can undertake installation works who are required for his business. Those works cannot exceed the amount of three years of renting. The tenant must beforehand notify the landlord. Those works are made at the tenant’s risk.

Rent

The rent is freely negotiated and set by the parties.

It is usual that the lease provides for an annual indexation clause whereby the rent is automatically reviewed every year based on the variation of an index. Rents can also be reviewed at market value at the request of either party 3 years after the entry into possession of the premises by the tenant. This particular request can only be made by the judge.

New ownership

The lease agreement may contain a specific clause to permit the new owner to terminate the lease and to remove the tenant.

This clause might be conform to article 12 of the commercial lease legislation. This article provides to the owner to terminate the lease giving within three months after acquisition an official one year notice and giving the tenant the specific reasons of this notice. In that case, an indemnity can be due to the tenant.

If there is no clause, the owner will only be able to terminate the lease at the same conditions as the first landlord.

Lease termination

In default of renewal, the lease terminate at the end of the initial contractual term.

The tenant is always able to terminate the lease before his term giving a six months' notice on the expiry of each 3-years period.

The landlord can be entitled (by the contract) to terminate the lease on the expiry of each 3-years period giving an official one year notice for a personal occupation. In that case, an indemnity can be due to the tenant.

Parties can also agree to terminate the lease. In this case, the agreement must be made before a notary or by the judge.

Compensation

If the tenant asks for a renewal and doesn't obtain it, he can be entitled to claim a compensation amounting from one to 3 years of rent depending to the circumstances.

Tax

There is no VAT on the leases in Belgium law.

Jurisdiction

« Juge de paix » (local magistrate) of the city where the property is located.

4. Czech Republic

Legal regulation

Civil Code (sections 2201-2234,2302-2315)

The respective sections of the Civil Code dealing with lease of the non-residential premises shall apply to the lease of business premises (shops, offices, warehouses, production premises).

The law confers a broad contractual freedom on the parties, especially when it comes to entrepreneurs when none of them enjoys protection reserved for the so-called „weaker party“.

Form

Written form of lease agreement (“LA”) is not compulsory, however, in practice, the vast majority of LAs are concluded in writing.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity. Building designation is a secondary criterion, the primary/decisive fact is the purpose of the lease. The lease can also be arranged in respect of premises which have to be created, provided that the subject of the lease can be sufficiently identified. The fact that the property is leased can be registered in the public register - the Cadastral Register, at the initiative of the owner / landlord or with his consent.

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period. If lease is agreed for a period of more than 50 years, then the lease may be terminated only for specified reasons in the the first 50 years.

If the lessee uses the leased premises even after elapse of the agreed lease period and the lessor does not call for the space to be cleared within one month, the lease is renewed for a max. period of time one year (in case that the initial time period was longer than 1 year).

Maintenance / Reparatons

Routine maintenance - lessee’s responsibility, other maintenance and repairs - Lessor’s responsibility unless the parties agree otherwise. The lessee is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the lessor. In the case of defects, the tenant has the right to ask the lessor a discount on rent, which he is obliged to claim at the landlord up to 6 months from the moment when the defect was discovered or could be ascertained.

Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way. However, if the amount of the rent is not agreed, the lessee is obliged to pay the usual rent (“market price”). The Lessor has the right of detention of the lessee’s movables placed in the subject of the lease to secure the lessor’s payable receivables.

Rent indexation is mostly attributed to official inflation.

New ownership

Transfer of ownership does not automatically mean the termination of the lease, but in particular case the new owner has the right to terminate the lease. The new owner is not bound by the obligations that are negotiated beyond the scope of the law in the lease unless, they knew about such arrangements. LAs often contain an obligation for the landlord to inform potential future owner of the full content of the lease.

Lease termination

The Contracting Parties are entitled to negotiate the reasons for termination of LA and the termination time period, otherwise the statutory provisions shall apply, i.e.:

- lease for indefinite time period: in principle, termination notice without giving reasons with 6-month notice period, if there is a serious reason for termination, then the notice period is shortened to 3 months, but if the lease has been lasted for at least 5 years, the notice period is always 6 months,
- lease for definite time period: only for a specified reasons (under sanction of invalidity of termination notice) with 3 months' notice period.

Compensation

The lessee is entitled to receive the compensation for the takeover of the customer base by the lessor or the new tenant (unless the lease is terminated for a serious breach of duty on the side of the lessee). The law does not specify the amount of compensation, which will probably result from established (and judicial) practice.

Lease agreements usually exclude the tenant from this claim.

Tax

The rent is subject of the VAT if the lessor is registered to such tax.

Jurisdiction

For internal cases the Czech law entrusts the competence to the Court of the location of the real estate forming subject of the lease.

In international cases the Regulation Brussels I bis applies. According to its Article 24 the exclusive jurisdiction shall have the Court of the Member State in which the property is situated (except for temporary private use).

5. Estonia

Legal regulation

Law of Obligations Act (chapter 15).

The law confers a broad contractual freedom on the parties.

Form

Written form of lease agreement is not compulsory. In practice, the vast majority of lease agreements are concluded in writing.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the business activity.

The lessee of an immovable may demand that a notation regarding the lease contract be made in the land register.

Duration

The contracting parties may agree the lease for a specified term or for an unspecified term.

Either party may cancel a lease contract entered into for longer than 30 years after 30 years by giving at least three months' notice.

If the lessee continues to use the leased premises after expiry of the term of a lease contract, the lease contract is deemed to have become a lease contract for an unspecified term unless the lessor or lessee expresses otherwise within two weeks.

Maintenance / Repairs

Removal of minor defects - lessee's responsibility, other maintenance and repairs - lessor's responsibility. The parties may agree otherwise.

Lessee has to notify the lessor of the lack of conformity of the thing to the contract unless the lessee is required to eliminate it. If the lessor delays removal of the defect, the lessee may remove a defect and demand reimbursement of the necessary expenses incurred therefor.

A lessee may make improvements and alterations to a leased premises only with the lessor's consent which must be submitted in a format which can be reproduced in writing.

If the work and effects are not unfairly burdensome, a lessee has to tolerate improvements and alterations made by the lessor.

Rent

The amount of the rent is agreed by the parties. All taxes and duties related to a thing shall be borne by the lessor unless agreed otherwise.

It is presumed that the lessor may raise the rent in the case of a lease contract for unspecified term after each six months as of entry into the contract. The lessor has to notify the lessee not later than 30 days before the increase and provide reasons.

The lessor of an immovable has the right of security over movables placed in the subject of the lease in order to secure claims arising from a lease contract.

New ownership

If the owner of a leased thing changes, the rights and obligations of the lessor are transferred to the acquirer of the thing (also upon compulsory execution or in bankruptcy proceedings). The acquirer may cancel a lease contract only if the acquirer urgently needs the leased premises.

The previous lessor is liable as a surety for three years for damage caused to the lessee due to violation of the obligation.

Lease termination

Unless the parties have expressly agreed otherwise the statutory provisions shall apply, i.e.:

- a lease contract for an unspecified term – by giving at least three months' notice;
- with good reason parties may cancel lease contract for a specified term or for an unspecified term (a good reason – taking into account all the circumstances and considering the interests of both parties it cannot be presumed to continue performing the contract);
- a lease contract for a specified term may be canceled earlier only based on good reason or reasons stated in law or contract.

Compensation

If there is an obstacle to the contractual use of the thing, the lessee may demand compensation for the damage.

If a lessee violates an obligation to notify lessor about situations stated in law, the lessee shall compensate the lessor for loss.

Usually lease agreements specify possible claims between parties.

6. Finland

Legal regulation

The Act on Commercial Leases (laki liikehuoneiston vuokrauksesta, 482/1995), hereinafter “AoCL” is the most essential law governing the lease of business premises. The Contracts Act (laki varallisuus oikeudellisista oikeustoimista, 228/1929) contains supplementing regulation.

Form

The AoCL states that the lease agreement must be made in written form. Despite the wording, verbal or tacit agreements are valid as well. As a matter of fact, the absence of formal requirements is a general principle in the Finnish law. Therefore, a contract may come into being in writing, verbally or tacitly. In principle, the probative force of them all is equal. However, it is strongly recommended to conclude an agreement in writing for the avoidance of disputes.

A verbal agreement is considered valid until further notice. In other words, if the parties wish to enter a fixed-term lease, the agreement must be done in writing.

Due to the absence of formal requirements, the form of amendments to the terms of the lease is also up to the parties to decide.

Object of the lease

The AoCL applies to an agreement whereby a building or a part of it is leased for use for purposes other than housing. The line between the application of the AoCL and the Act on Residential Leases (laki asuinhuoneiston vuokrauksesta 481/1995) is drawn by the primary purpose of use of the property/premises.

For example, if the object of the lease comprises both business and residential premises, the main use of the premises is the decisive factor (which can be determined e.g. by a comparison between the areas).

The object of lease may also contain real property to be used in conjunction with the leased premises.

Duration

The lease can be for a definite or indefinite period. The AoCL has no provisions on the maximum or minimum length of a fixed-term lease. Neither has the amount of consecutive fixed-term leases been limited.

Maintenance / Reparations

The lessor and the lessee can quite freely agree on the division of responsibilities concerning the maintenance of the leased premises.

If not otherwise agreed, the lessor retains the right to perform repairs or alterations to the premises. Thus, the lessee has no right to perform any repairs or alterations without the lessor’s permission, save for to remedy a deficiency (as defined in AoCL Section 18, Paragraph 2). The lessee, however, always has the right to act to prevent or restrict immediate damage to the premises.

The lessee must look after the premises with due care. The lessee shall not be liable for ordinary wear and tear caused by use of the premises for the purpose specified in the lease agreement, provided that the lessor is responsible for the upkeep and maintenance of the premises.

The lessee shall be liable for compensation to the lessor for any damage to the premises caused by the lessee wilfully or through negligence or other carelessness.

In addition, the lessee shall be liable for damages caused by a possible sublessee.

Rent

The amount of the rent shall be determined based on what is agreed.

The lease agreement may include a stipulation on adjusting the rent at intervals, thus allowing the change of the amount of rent, for example based on different indexes and their combinations.

However, the interests of both parties are protected by the provision on the reasonableness of the rent (AoCL, Section 25). According to the said Section, the lessor or the lessee may submit the reasonableness of the rent or of a stipulation on determining the rent for the consideration of a court.

New ownership

As a general rule, the change of ownership does not affect the lease. In other words, the new owner can only terminate the lease under certain conditions.

If the change of ownership is of voluntary nature, the lease can be terminated only by observing to the term of notice.

In case the ownership changes due to enforcement proceedings (an auction conducted by the bailiff): the buyer shall have the right to terminate the lease.

Lease termination

If notice is given on an indefinite lease agreement, it shall be terminated upon the expiry of the notice period. The notice period for a lease agreement shall be calculated from the last day of the calendar month in which notice was given.

Notice on a fixed-term agreement can be given in the event of the lessee's death. A fixed-term agreement may also be terminated in conjunction with the restructuring of the lessee's debts.

Unless otherwise agreed, the notice period is three months if the lessor terminates the lease, and one month if the lessee terminates the lease.

Compensation

Fixed-term agreements: if the lessee has carried out repairs or alterations that have increased the value of the premises, he/she shall be entitled to a reimbursement at the end of the lease.

Indefinite agreements: if the termination initiated by the lessor is considered a breach of 'fair rental practices', the lessee is entitled to compensation for repairs and alterations, removal and finding new premises.

In addition, a lessee who has been engaged in business for a period of at least two years, has a right to a reasonable remuneration for the reduction in the clientele caused by the move, provided that the next lessee engages in substantially similar activities.

Tax

The rent is subject to VAT if the lessor is liable to value added tax and the landlord is duly VAT registered for a letting out the leasable premises in accordance with the Value Added Tax Act (1501/1993).

Jurisdiction

Unless the parties have agreed on a venue, disputes concerning commercial leases fall within the jurisdiction of ordinary/general courts, the first instance thus being a district court. The competent district court is determined by the Code of Judicial Procedure (oikeudenkäymiskaari 4/1734).

7. France

Legal regulation

Commercial Code (Articles L.145-1 *et seq.* and R.145-1 *et seq.* as well as the non codified provisions of the decree 53-960 of 30 September 1953).

Several provisions of the Commercial Code governing commercial leases are mandatory and cannot therefore be subject to exceptions.

It is also noted that the general principle of freedom of contract applies to commercial leases. Thus, any agreement in which the provisions are not freely negotiated between the parties but are defined in advance will be considered an adhesion contract, which clauses will be deemed to be “unwritten” if they create an imbalance between the parties’ obligations.

Form

There is no formal legal requirement, although in practice commercial leases are executed in writing (which is also highly recommended).

However, commercial leases entered into for a term exceeding 12 years (and long-term leases such as construction leases) must be authenticated by a notary and published in the local land registry. Those leases trigger the application of a transfer tax based on the aggregate amount of rents to be due throughout the entire duration of the lease.

Object of the lease

A commercial lease is used for the rental of premises in which a business as a going concern is operated. This includes commercial premises, offices and warehouses.

As a general rule, the parties can also always decide to have the lease governed by the commercial lease legal regime as long as it does not conflict with another mandatory legal regime such as the one applying to residential leases or professional leases (i.e. those entered into by professionals such as doctors and lawyers).

Duration

A commercial lease must have a term of at least 9 years. A longer term is possible, but the lease is subject to publication if its term exceeds 12 years (see above).

The tenant is entitled to terminate the lease on the expiry of each 3-year period.

Since the law reform of 18 June 2014 (known as the Pinel law), the tenant can no longer waive its triennial break option right and accept a fixed term, except under certain conditions such as a lease entered into for a term exceeding 9 years, or for single-use premises (e.g. theatres, cinemas, hotels, hospitals) or for premises used exclusively as offices or storage premises.

Maintenance / Repairs

The tenant must bear all rental repairs, except the cost of major structural repairs as defined under Article 606 of the Civil Code and by case law.

Since the 2014 Pinel law, the landlord can no longer have the cost of the works resulting from wear and tear and the cost of compliance works borne by the tenant, if those works equal to major structural repairs as defined under Article 606 of the Civil Code.

A commercial lease usually includes an accession clause whereby, at the end of the lease, all improvements, embellishments and works made by the tenant during the term of the lease will become the landlord’s property without indemnity.

Rent

The rent is freely negotiated and set by the parties.

It is usual that the lease provides for an annual indexation clause whereby the rent is automatically reviewed every year based on the variation of an index published quarterly by the National Institute for Statistical and Economic Studies (INSEE), i.e. the commercial rents index (ILC index) for commercial premises and the tertiary activities rent index (ILAT index) for other non commercial premises.

Indexed rents can also be reviewed at any time if the rent has increased or decreased as a result of the application of the indexation clause by more than 25% since the last date the rent was set (Article L.145-39 of the Commercial Code).

Rents can also be reviewed at market value at the request of either party 3 years after the entry into possession of the premises by the tenant. Subsequent rent review requests can be made every 3 years from the date the new rent has become effective (Article L.145-38 of the Commercial Code). Since the 2014 Pinel law, the rent review cannot result in an increase exceeding, each year, 10% of the rent paid over the preceding year.

Upon renewal, if the term of the lease does not exceed 9 years, and unless there has been a substantial change in the criteria used to set the market value, the rent of the renewed lease will be capped based on the variation of the index chosen by the parties which has occurred since the initial setting of the rent of the expired lease (Article L.145-34 of the Commercial Code). Therefore, the rent of the renewed lease can be uncapped and set at market value if the expired lease was entered into for term exceeding 9 years or there has been a substantial change in the criteria used to set the market value. The uncap rule also applies to leases in relation to office and single-use premises as well as to leases providing for a rent based on the tenant's turnover. When the rent of the renewed lease may be uncapped, the resulting rent variation cannot, here again, result in an increase exceeding, each year, 10% of the rent paid over the preceding year.

New ownership

When the ownership of the premises is transferred to a third party, the lease is also transferred to the new owner becoming the new landlord. That new landlord will be bound by the terms and conditions of the lease. Since the 2014 Pinel law, the tenant benefits from a pre-emption right in case of sale of the premises by the landlord.

Lease termination

The landlord cannot terminate the lease before the end of the initial contractual term (9 years minimum). If the landlord decides not to renew the lease, a termination notice must be served on the tenant at least 6 months in advance. However, the lease can be terminated by the landlord before the end of the initial term in the specific situation where it intends to build or rebuild the property, or to raise it.

Except where a fixed period has been agreed between the parties (under certain conditions), the tenant can terminate the lease at the end of each 3-year period, subject to 6-month prior notice.

Commercial leases also usually contain a termination clause whereby the lease can be terminated by the landlord 1 month after a formal notice served on the tenant by a bailiff to comply with its obligations under the lease (i.e. payment of the rents and service charges and performance of all other substantial obligations). All the breaches which may lead to termination must be specifically stated in the lease. Without such a termination clause, the landlord can still bring an action on the merits to obtain the judicial termination of the lease.

Compensation

If the landlord decides not to renew the lease at end of the initial contractual term, the tenant is entitled to an indemnity (known as eviction indemnity) aimed at compensating the loss of business as a going concern. If the parties do not agree on the amount of the eviction indemnity, it can be set the judge based on the findings of a court-appointed expert.

Tax

Except for furnished premises, rents are not automatically subject to VAT.

However, the landlord can elect to charge VAT on rents when the property is of a commercial/professional use, so as to:

- offset collected VAT against input VAT it has incurred;
- avoid the 2.5% tax on certain rental income from real estate assets completed more than 15 years ago (rents subject to VAT being exempt from such tax).

If the tenant is subject to VAT, it can deduct it from the VAT it has incurred.

Jurisdiction

French courts of the place of location of the leased premises have exclusive jurisdiction.

8. Germany

Legal regulation

The letting of business premises (shops, offices, warehouses, production premises etc) is covered by the respective sections (Sec. 535-597) of the German Civil Code (Bürgerliches Gesetzbuch). In General, the regulations of the German Civil Code only apply if the parties have not agreed on individual terms of their Lease Agreement. If standard contract forms are used for a Lease Agreement, the regulations regarding Unfair Contract Terms (Sec. 305-310 of the German Civil Code) also apply.

Form

Written form of Lease Agreement is compulsory for fixed term leases lasting more than 1 year (Sec. 550 German Civil Code). If the Lease Agreement does not fulfill the requirements of written form, the lease is not fixed and can be terminated effectively within 2 calendar quarters (Sec. 580 a ss. 2 German Civil Code).

Object of the lease

Any building or part of it may be subject of a lease if it is used (and usable) for commercial use in accordance with the relevant Building Code (Baugesetzbuch). There is no public (or other) register of commercial (or housing) lease agreements in Germany.

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period; maximum 30 years.

If the lessee uses the leased premises even after the end of the agreed lease period and the lessor does not call for the premises to be cleared immediately, the lease continues indefinitely for up to 30 years until terminated.

Maintenance / Reparations

According to the German Civil Code, the landlord is responsible for all maintenance and repairs of the property. However, the following terms are customary:

- Lease of the whole building – external, internal and structural repair is the tenants responsibility
- Lease of parts of a building: internal repairs are tenants responsibility; external repairs are landlords obligation

The lessee is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the lessor. In the case of defects, the tenant has the right to ask the lessor for a discount on rent until the defect is fixed or until he fixes it. In that case, he can deduct the repair costs from the agreed rent.

Rent

The amount of the rent is agreed by the parties. However, if the amount of the rent is not agreed, the lessee is obliged to pay the usual rent ("market price"). Rent indexation is mostly attributed to (consumer or retail price) inflation. For the indexation of the rent, a (overall) term of the lease of 10 years is required. For some retail and hotel leases there may be turnover rent provisions.

New ownership

Transfer of ownership does not lead to the termination of the lease unless otherwise agreed upon by the parties.

Lease termination

The termination provisions can be negotiated freely by the parties. However, the German Civil Code states that a lease agreement always can be terminated with cause (e.g. non payment of rent).

The German Civil Code further states that a lease for a fixed period can only be terminated with cause before its fixed period elapses.

A non-fixed commercial lease can be terminated without cause effectively within 2 calendar quarters.

The same applies if the Lease Agreement of a fixed term lease does not fulfill the requirements of written form.

Compensation

German Law does not provide for compensation of e.g. the customer base of a retail tenant when the lease is terminated.

A landlord would have to compensate a tenant for installations and fixtures left at the premises after the termination of a lease if agreed upon by the parties in advance.

Tax

The rent of business premises is subject to VAT if the lessee conducts a business that is subject to VAT (e.g. retail). However, during the building of a commercial property, the landlord can decide to exempt the premises from VAT (i.e. in case of mixed-use properties). As a consequence, he will not be able to claim the VAT he has to pay for the building of the property.

Jurisdiction

For disputes regarding property located in Germany, the German Civil Procedure Code (Zivilprozessordnung) stipulates the competence of the local court at the location of the premises.

In international cases the Regulation Brussels I applies. According to its Article 24 the exclusive jurisdiction shall have the Court of the Member State in which the property is situated (except for temporary private use).

9. Greece

Legal regulation

Greek business leases are rental agreements concerning properties that will be used by the tenant for the practice of his professional occupation. Presidential Decree 34/1995 as amended by law 4242/2014 regulates Greek business/commercial leases, for the safety of operation of business and professions, as specifically provided for by the law. Thus, Greek law provides to such lease agreements additional security. In addition the respective provisions on leases of the Greek Civil Code apply.

The stipulation of the Greek business lease agreement is effected through the execution of a document/private agreement by virtue of which the terms of the lease are agreed between the parties. In cases of leases of Greek real estate properties, it is provided for by the law that the lease agreement should be executed under the form of a private agreement and registered with tax authorities.

The law 4242/2014 applicable as of 28.02.2014 effected major modifications to the previous legislation. The main principle of the leases is the freedom of will of the contracting parties.

Form

According to article 158 of the Greek Civil Code, the written form of lease agreement is not compulsory, therefore it can be concluded orally even tacitly. However, in practice, the vast majority of lease agreements are concluded in writing.

Object of the lease

According to the Presidential decree 34/1995, as in force, business/professional lease of premises are those real estate properties destined to either business use or professional use. In order to qualify as professional use the lease contract must have the following characteristics :

- It must define the concrete use of the premises and
- The lessee must conduct commercial acts or civil acts that are subordinate to a main commercial act, as defined according to the Greek law.

Duration

The duration depends on the signature date of the lease contract. If the leasing contract is signed before the 28.2.2014 (date of enactment of the new law) it is considered as within the previous legal framework and therefore has a duration of a 12 years period given by the law even if the parties have agreed upon a shorter duration.

For the leases signed after the 28.2.2014 the duration period is set by the law for 3 years even the parties have agreed otherwise, a shorter period or indefinitely.

Regarding the prolongation, the parties can agree to prolong the lease (articles 15, 44 of the presidential decree 34/1995 and Greek Civil Code 361) by modifying the termination date. The agreement of prolongation must be concluded before the end of the lease.

Maintenance / Reparations

There is no specific law about maintenance of a commercial lease; the general provisions of the Greek Civil Code apply. The parties are free to agree on their responsibilities and their split regarding maintenance of the leased property. Usually everyday maintenance is of lessee's responsibility. Change and modifications that affect the property (object of the lease) normally require the prior consent of the lessor who should also bear the respective cost.

Rent Amount

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way. However, if the amount of the rent is not agreed, the lessee is obliged to pay the usual rent ("market price"). However as a fundamental element of the lease, the rent amount must be defined or at least definable. In practice the rent can be defined as a percentage of the turnover of the lessee's business. The rent amount is re-adapted once, after two years from the beginning of the lease at a percentage of 6% of the objective value of the property and is automatically readjusted yearly at a percentage of 75% of the Index of Consumer Prices. The same applies to all leases either before or after the law 4242/2014.

New ownership

Under the condition that the lease is valid, following to a sale or other transfer of the property, the new owner enters into the lease contract ex lege, and takes the place of the previous lessor, unless otherwise agreed in the initial lease contract.

He does not however obtain automatically the privileges that were born before his entering the lease contract. This can be only through concession from the previous owner.

Lease Termination

The lease is terminated either upon mutual agreement or according to the term of the contract.

In case of cause/specific reason as provided by the law or according to court decisions on the matter, the lease may be terminated by a termination notice from one party to the other.

Indicative Causes for Termination from the lessor:

- delaying rent payments
- improper use of the premises
- expiration of a concrete time limit
- termination notice an indefinite rent contract
- violation of a term of the lease contract

Indicative causes of Termination from the lessee:

- expiration of a concrete time limit
- termination notice for an indefinite rent contract
- unexpected change of circumstances
- health endangerment of the lessee

According to new law the possibility of termination notice of the lease, in order for the lessor to use the property for and by himself is no longer valid or applicable.

Nevertheless there is a distinction between the deadline for the notice to quit of the leases before and those after the law 4242/2014.

The termination of the lease contract by either party after the expiration of the contractual term or the 3 years period provided by the law is done in writing and the termination is effective as of 3 months after receipt of the relevant notice without any compensation due to the other party.

Compensation

The lessee may issue legal proceeding for compensation if the lessor takes over the property for his proper use and/or in order to build further. In such case the compensation can vary as follows:

For proper use compensation 8 to 15 monthly rents, for opening a business of same activity 15 to 20 monthly rents and for building 6 to 9 monthly rents.

In any case the amount of compensation is examined in concreto.

10. Hungary

Legal regulation

Civil Code (Sections 6:331-341) and Act LXXVIII of 1993 on the Lease of Residential and Non-residential Premises (Lease Act).

General rules of the Civil Code on lease agreements and a separate chapter of the Lease Act shall apply to the lease of business premises.

Both the Civil Code and the Lease Act allows diversion from most rules of the law in a contract. However, in the absence of contractual agreement the rules of the Civil Code and the Lease Act shall apply, both acts favoring basically the tenant.

Form

Written form of lease agreement (“LA”) is not compulsory, however, in practice, the vast majority of LAs are concluded in writing.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used for the performance of a certain business activity. The lease can also be agreed in respect of premises which shall be created in future or the landlord shall obtain the right of disposal of in future, provided that the subject of the lease can be sufficiently identified. The fact that the property is leased cannot be registered in any public register.

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the term is not agreed, the lease is regarded as concluded for indefinite term.

Maintenance / Reparations

Routine maintenance – tenant’s responsibility, other maintenance and repairs - landlord’s responsibility unless the parties agree otherwise. Tenant is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the landlord.

Rent

The amount and payment of the rent is subject to free agreement of the parties. There is no legislation that would stipulate the amount of the rent in any way. However, if the amount of the rent is not agreed, tenant is obliged to pay the usual rent (“market price”). Landlord has a mortgage right on tenant’s movables placed in the subject of the lease to secure landlord’s rental claims.

Rent indexation is mostly attributed to consumer price index.

New ownership

Transfer of ownership does not terminate the lease. The new owner automatically takes over the contractual rights and obligations of the landlord as defined in the LA. New owner and former landlord are jointly liable for the obligations of landlord according to the LA.

Lease termination

Parties to the LA can freely define the terms of termination

In the absence of contractual stipulations the quite complicated rules of the Civil Code and the Lease Act shall apply for the reasons and notice periods of termination.

Basically an indefinite term lease agreement can be terminated without any reason by ordinary termination with a notice period according to the law, while a definite term lease agreement can only be terminated by extraordinary termination in case of breach of contract, according to the different notice periods defined by the law.

Compensation

The lessee is entitled to receive the compensation for the takeover of the customer base by the lessor or the new tenant only according to the general rules of compensation in the Civil Code – no specific regulation exists for compensation of the lessee in Hungary

Tax

The rent is subject of the VAT.

Jurisdiction

In local lease disputes without international element the local court of the address/seat of the defendant shall have competence. In international cases the Regulation Brussels I. applies. According to its Article 24 the exclusive jurisdiction shall have the Court of the Member State in which the property is situated (except for temporary private use).

11. Ireland

(excluding Northern Ireland)

Legal regulation

In general terms the law of landlord and tenant is governed by common law and by statute law. The latter operates to impede the freedom of both landlord and tenant to contract as they might wish in certain circumstances, e.g. statute provides that a lease which contains an absolute prohibition against alienation and the carrying out of improvements are subject to the proviso that a landlord cannot unreasonably withhold consent to a request by a tenant to do so.

Form

Statute requires leases to be in writing if they are to create the legal relationship of landlord and tenant. In addition, implied and oral tenancies are also recognised.

Object of the lease

The object of the lease is to reflect in writing the commercial terms of the letting negotiated between a landlord and tenant, subject to compliance with statute law. Under Irish Law a lease is founded on contract rather than tenure. The tenant has an interest in property which entitles it to exclusive possession for the period of its tenancy, a right it may assert against third parties as well as the landlord. Also, a tenant may dispose of or deal with its interest for example by assignment or a subletting subject to the terms of the lease.

Different forms of lease are used for residential and business premises.

Duration

Under statute, a lease must have a definite duration either in years, months or weeks. A business tenant is entitled to a new tenancy commencing on the termination of its previous tenancy provided it can prove business equity or long possession equity or improvements equity. Business equity is established after five years of continuous occupation of the property for the purpose of carrying on a business. The tenant can contract out of its right to a new tenancy by executing a renunciation of its entitlement to a new tenancy and by obtaining independent legal advice in relation to the renunciation.

In general, when a landlord grants a business lease of between five to ten years it requires a tenant to renounce its right to a new tenancy.

Maintenance / reparations

- With a single letting of an entire building, the tenant is liable for all repairs and outgoings, unless the parties agree otherwise. Parties sometimes agreed to append a Schedule of Condition to the lease which records the condition of the property at the date of the granting of the lease which limits the tenant's repairing obligations to the condition of the property as detailed in the Schedule of Condition;
- In the case of a letting of part of a building, the landlord usually covenants to maintain the structure and common areas but passes on the cost to the tenant through a service charge. The tenant is responsible for all internal repairs;
- In the case of a short term letting of an entire building, i.e. one for less than five years, the repairing obligation will normally apply to the interior only with the landlord being responsible for the exterior including the structure.

Rent

The rent of a business lease is negotiated between the parties.

The normal business lease in Ireland contains a rent review clause which provides that the rent payable under the lease will be reviewed every five years on the basis of the market rent which might reasonably be expected to be achieved for the property at the time of the review. Prior to 28 February 2010, a rent review clause provided that the rent could never fall below the rent payable immediately before the review. These clauses were referred to as “upwards only” rent review clauses.

As a result of legislation, in any business lease entered into after 28 February 2010, any rent review clause must provide that the rent payable following a review will be fixed at an amount that is less than, greater than, or the same as the amount of rent payable immediately prior to the date on which the rent falls to be reviewed. This, in effect, prevents the operation of an “upwards only” rent review clause. The objective is that any reviewed rent must reflect the market conditions prevailing at the time of the review.

New ownership

A tenant can, subject to obtaining landlord’s consent (not to be unreasonably withheld) transfer/assign its lease to a new “owner”. The tenant must, under the terms of the lease, obtain the landlord’s consent to such transfer/assignment and provide the landlord with details of the new “owner” together with evidence of its financial standing. The new “owner” will be bound by the obligations on the part of the tenant contained in the lease.

Lease termination

The terms of the lease will contain the basis on which a lease can be terminated e.g. breach by a tenant of the covenants and conditions such as non-payment of rent.

The parties can negotiate a “break date” by either party during the term of the lease and the notice period for such intended “break”.

In general, a landlord has no right to forfeit a lease unless the tenant has been in breach of one or more of its terms.

Compensation

There are various statutory reliefs which entitle a tenant to compensation e.g. for carrying out improvements, for disturbance and where a tenant is entitled to a new tenancy and the landlord refuses to grant same on the basis of redevelopment of the property.

Very often, a landlord can be entitled to compensation from a tenant for failure by the tenant to repair the property in accordance with the terms of its lease. Compensation payable to the Landlord cannot exceed the value of the property.

Tax

VAT may be payable on rental income where a landlord opts to charge VAT.

Jurisdiction

The Irish Courts have jurisdiction over all matters relating to Irish property.

12. Latvia

Legal regulation

Civil Law (articles 2112-2177)

The respective sections of the Civil Law dealing with lease of the non-residential premises shall apply to the lease of business premises.

The law confers a broad contractual freedom on the parties. The lessor of property does not have to be its owner; moreover, any person who has the right of use may lease.

Form

Written form of lease agreement ("LA") is not compulsory, however, in practice, the vast majority of LAs are concluded in writing. It is obligatory needed in case the parties have the intent to register the LA in the Land register at the initiative of the lessee and the lessor, with the consent of the owner.

The process the LA is registered in the Land register is governed by the Land register law.

Object of the lease

Any real estate or part of it may be an object of a lease if it is used (and usable) for the performance of a business / business activity. Building designation is a secondary criterion, the primary/decisive fact is the purpose of the lease – gaining profit from the lease object.

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period. A LA regarding immovable property, entered into for an indefinite period of time, shall terminate, unless otherwise agreed, only after six months prior notice that may be given by either party of its own volition. If the subject-matter of the agreement is a rural farm, such notice shall be given six months prior to the end of the farming year. A farming year shall begin and end on 23 April.

Maintenance / Reparations

The right of the lessee to compensation for losses (Article 2132) shall cease, if the lessor provides him or her with similar and not less useful property in place of the previous property; it shall be assumed, however, that the lessor of the property acted in good faith when entering into the agreement. The lessor shall transfer the property to the lessee together with all its appurtenances and in such state that the latter can obtain from it all the benefits that he or she had the right to expect. If such defects are discovered in the property that should have been noticed by a careful lessor, then he or she shall fully compensate the lessee for the losses caused thereby. If a restriction or hindrance regarding the use of property has occurred accidentally, through no fault of the lessor, he or she shall not be required to compensate the other party for losses caused, however, the lease payments shall be commensurately reduced (Article 2147 and subsequent articles). However, if the restrictions or hindrances regarding the use of property are short-term and were caused by making necessary repairs to the property, the lessor shall be released even from the aforementioned reduction of the lease payments. Necessary and useful expenditures that a lessee has made for a property, shall be reimbursed by the lessor in accordance with the general provisions regarding reimbursement of expenditures (Article 866 and subsequent Articles).

Lease payment

The lease payment may be provided in cash, as well as in other fungible property. The lease payment must be actual compensation for the use of property, and therefore it may not be set fictitiously. A transaction concluded contrary to this provision, with the purpose of evading the law or deceiving a third person, shall not be valid; but if the purpose of a transaction is to show goodwill to an apparent lessee, it shall be deemed to be a gift. A transaction upon the conclusion of which an adequate lease payment was initially agreed upon, shall retain the character of a LA, even though such payment might later be cancelled altogether. Both lease payments shall be specifically set, and the same provisions shall thereupon be complied with as provided for regarding purchase price in Section 2017 and subsequent Sections.

New ownership

LA shall also terminate automatically, before the expiration of the term upon termination of the right the lessor had to the subject-matter of the lease, but if he or she has concealed the fact that he or she had the right to act with the property only for a certain period, he or she shall be liable to the lessee, who has acted in good faith, for fraud. When a lessor alienates the subject-matter of a LA, the acquirer must comply with the LA only if it has been registered in the Land Register (Section 2126). If the acquirer cancels an agreement which has not been registered in the Land Register, the lessor shall compensate the lessee for all the losses caused by early termination of the agreement; in such case the acquirer shall give the lessee sufficient time for the return of the subject-matter of the LA. If the new acquirer wishes to keep the agreement in effect, the alienation (Section 2174) does not give the lessee the right to withdraw from it.

Lease termination

The Contracting Parties are entitled to negotiate the reasons for termination of LA and the termination time period, otherwise the statutory provisions shall apply.

LA shall also terminate automatically, before the expiration of the term:

- 1) upon the leased property being destroyed;
- 2) upon termination of the right the lessor had to the subject-matter of the lease, but if he or she has concealed the fact that he or she had the right to act with the property only for a certain period, he or she shall be liable to the lessee, who has acted in good faith, for fraud; or
- 3) where confusion of rights takes place, i.e., if a lessee obtains the ownership of the leased property.

Each contracting party may unilaterally withdraw from an agreement, if excessive losses have been incurred; in such case, the same provisions shall apply as for a purchase agreement.

A lessor may require revocation of a agreement without the consent of the other party if:

- 1) the lease payment has not been paid within the term in the agreement, or, if such term has not been specified, within the term set by law; the consequences of such delay, however, can be prevented by offering the payment before an action for setting aside the agreement has been made;
- 2) the lessor has an unforeseen need to use the property himself or herself;
- 3) the lessee damages the property by using it improperly or contrary to the agreement;
- 4) the leased property requires immediate and such extensive repairs that render it impossible to continue the agreement; moreover, the lessee may not in such case claim any compensation for losses; but if the repairs were not necessary, the lessee has the right to claim compensation for all the losses; or
- 5) the lessee has sub-leased the leased immovable property without the consent of the lessor (Section 2115).

A lessee may require revocation of the agreement without the consent of the other party if:

- 1) the lessor delays the transfer of the property for so long that the lessee is no more interested in acquiring it for use;
- 2) if the lessor does not make the necessary repairs to the property, or if the property is discovered to have such faults or defects as prevent from its full use or at least to a significant extent hinder its use, and as cannot be remedied;
- 3) [...]; or
- 4) characteristics of the subject-matter of the agreement are harmful to health.

Tax

The lease is subject of the VAT if the lessor is registered to such tax.

Jurisdiction

For internal cases the legislative acts of the Republic of Latvia entrusts the competence to the Court of the location of the Defendant.

In international cases the Regulation Brussels I bis applies. According to its Article 24 the exclusive jurisdiction shall have the Court of the Member State in which the property is situated (except for temporary private use).

13. Lithuania

Legal regulation

The Civil Code (chapter XXVIII).

The law confers a broad contractual freedom on the parties.

Form

The lease agreement exceeding 1-year term shall be written and shall be registered at the Real Estate Register of the Republic of Lithuania.

The lease agreement of buildings, constructions or equipment shall be concluded in writing despite the term and shall be registered at the Real Estate Register of the Republic of Lithuania.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the business activity.

Duration

The contracting parties may agree the lease for a specified term or for an unspecified term, however in any event the term of lease shall not exceed 100 years.

Maintenance / Reparatons

Removal of minor defects - lessee's responsibility, other maintenance and repairs - lessor's responsibility. The parties may agree otherwise.

The lessor shall be liable for defects of the thing leased out which wholly or partially obstruct the use thereof for its designation even in those instances where the lessor was not aware of those defects at the time of concluding the lease agreement. The lessee shall have the right at his choice to ask for the following remedies: (i) demand from the lessor either elimination of those defects without compensation or a reduction of the rent, or compensation of the expenses of the lessee incurred in the elimination of the defects; (ii) withhold the amount of expenses incurred for the elimination of defects from the lease payment if the lessor was informed of this in advance; (iii) demand termination of the lease agreement before its expiry. The lessor however shall not be liable for those defects of the leased thing which were stipulated by him when entering into the lease agreement or which should have been known to the lessee, or which should have been noticed by the lessee without any additional inspection when entering into the lease agreement or delivering the thing, but which were not discovered through his own gross negligence.

The lessee shall have right for compensation of improvements costs only subject to the prior lessor's consent unless otherwise provided in the laws or the lease agreement.

In the event where the improvements made by the lessee without the consent of the lessor are separable without harm to the leased thing, and where the lessor does not agree to compensate for them, they may be taken out by the lessee.

The value of improvements which are not separable without harm to the leased thing made by the lessee without the permission of the lessor shall not be subject to obligatory compensation.

Rent

The rent and its increases thereof shall be agreed by the parties. In practice parties of commercial lease agreements agree on increases of the rent applying certain criteria (e.g. Harmonized Indices of Consumer Prices).

According to the tax law of the Republic of Lithuania in the event where the lessor is a person and the lessee is the legal entity the lessee legal entity shall be responsible for deduction of income tax and its payment to the tax department as well as for payment of real estate tax. The parties shall agree on special regulations regarding taxes and other duties inclusivity into the rent and its payment if the law does not restrict it.

New ownership

If the owner of a leased thing changes, the rights and obligations of the lessor are transferred to the acquirer of the thing if the lease agreement was registered at the Register of the Real Estate of the Republic of Lithuania.

Transfer of the title to the leased thing shall be the ground for lease agreement termination by initiative of the Lessee.

Lease termination

The lease agreement terminates upon expiry of its term.

If the lessee continues to use the leased premises after expiry of the term of a lease agreement for more than 10 days and the lessor does not object this, the lease agreement is deemed to have become a lease contract for an unspecified term.

Unless the parties have expressly agreed otherwise the following statutory provisions on terms and prior notices of lease termination shall apply:

- a lease agreement for an unspecified term may be terminated by 3-month prior written notice;
- the aggrieved party can terminate a lease agreement unilaterally without lodging the claim before the court because of material breach of the agreement;

the aggrieved party can terminate a lease agreement by lodging the claim before the court on grounds of termination of leases specified in the Civil Code (e.g. the lessee uses the thing not in accordance to the agreement and its purpose, the lessee fails to pay the rent, the lessee worsens condition of the thing, the lessor does not do reparation that he is obliged to, the lessor hinders use of the thing). The law provides that the Lessor can terminate the lease only with prior written warning specifying the breach and the term for its remedy and the lessee failed to remedy the breach within the term set by the lessor.

In practice to avoid lease agreement`s termination through litigation procedures we strongly advice our clients to specify termination part of the lease agreements in detail and provide for the grounds and procedures of termination of lease, especially unilateral termination without lodging the claim before the court.

Compensation

If there is an obstacle to the contractual use of the thing, the lessee may demand compensation for the damage.

If a lessee violates an obligation to notify lessor about situations stated in law, the lessee shall compensate the lessor for loss.

Usually lease agreements specify possible claims between parties.

14. Luxembourg

Legal regulation

Art. 1762-3 to 1762-13 Civil Code (law of 3 February 2018 on commercial lease amending certain provisions of the Civil Code) – not applicable to lease agreements with a term equal or less than 1 year; suppletive rules of art. 1714 sqq Civil Code.

Form

Oral or written (art. 1714 Civil Code) - in the latter case to be registered.

Object of the lease

Is commercial any lease of an immovable property that is intended for the exercise of a commercial, industrial or craft activity (art. 1762-3 Civil Code).

Duration

Fixed or indefinite term. If no term is indicated, the agreement is deemed concluded for an indefinite period (art. 1762-4 Civil Code).

At the end of the term, the lessee can ask for renewal of the lease by registered letter with acknowledgement of receipt at least 6 months before the term.

When the agreement ends for any cause (without any termination notice), it is tacitly renewed for an indefinite period (art. 1762-7 Civil Code).

Maintenance / Reparations

The lessor shall make all necessary repairs other than rental repairs (art. 1720 Civil Code – suppletive rule, express exemption clause possible but restrictive interpretation). Stipulations regarding rental repairs / minor maintenance work can be different from legal provisions (art. 1754 Civil Code). Rental repairs due to use or force majeure are due by the lessor (art. 1755 Civil Code).

Rent

Freely set by the parties. Usual indexation clause.

New ownership

The agreement binds the new owner (art. 1762-4 Civil Code) who cannot evict the lessee having a notarial agreement / having registered his lease to enable a specific date to be established (cf. above), unless provided for to the contrary in the lease agreement (art. 1743 Civil Code).

Lease termination

Not less than 6 months termination period (for lease agreements of more than 1 year) notified by registered letter with acknowledgement of receipt (art. 1762-7 of the Civil Code).

The lessor can terminate the lease with immediate effect in case the lessee does not fulfill its contractual obligations.

Moreover, the lessor can terminate the lease applying the agreed period of notice, or refuse to renew it, in case of personal occupation / end of any leasing activity for similar purposes / reconstruction or transformation of the building (art. 1762-11 Civil Code).

After the termination period has elapsed, the lessor can request the justice of the peace to order the eviction of the lessee. The justice of the peace can decide to suspend the eviction for not more than 9 months provided certain conditions are met (art. 1762-9 Civil Code).

After a 9-year renting period, the lessor can at any time terminate the lease or refuse to renew it without reason in exchange for an eviction indemnity (art. 1762-12 Civil Code).

Compensation

Any extra rent paid to the lessor or the intermediary by reason of the conclusion of the agreement is automatically void (art. 1762-5 (1) Civil Code).

The lessee may in certain cases get an eviction indemnity (cf. above). In the absence of any stipulation in the lease agreement regarding the determination of the amount of the said indemnity, the parties can request the justice of the peace to determine it on the basis of the market value of the business goodwill.

15. Malta

Legal regulation

Civil Code – Chapter 16 of the Laws of Malta (sections 1525-1622A)

Reletting of (Urban) Property Regulation Ordinance - Chapter 69 of the Laws of Malta

Chapter 69 deals with reletting at the time of termination of a lease in relation to leases that are already in force.

The Civil Code confers a broad contractual freedom on the parties, especially when it comes to entrepreneurs when none of them enjoys protection reserved for the so-called „weaker party“. Sub-letting of immovable property is also allowed unless specifically prohibited in the contract of lease, however a sub-lessee may not claim against the lessor any of the rights competent to the lessee.

Form

Written form of lease contract is compulsory as from the the 1st January, 2010, and shall stipulate on pain of nullity:

- (a) the property to be leased;
- (b) the agreed use of the property let;
- (c) the period for which that property will be let;
- (d) whether such lease may be extended and in what manner;
- (e) and also the amount of rent to be paid and the manner in which such payment is to be made. Rent may be either in money or in kind, or even in a portion of the fruits produced by the thing.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity. This activity must be included in the contract. Building designation is a secondary criterion, the primary/decisive fact is the purpose of the lease. The lease can also be arranged in respect of premises which have to be built, provided that the subject of the lease can be sufficiently identified. The fact that the property is leased cannot be registered in the public register as the contract of lease is a private agreement entered into between the parties.

Duration

The contracting parties must, on pain of nullity, agree the lease for a fixed term (for definite time period).

Maintenance / Reparations

Maintenance and repairs- this is agreed to in the contract. If nothing is stipulated, maintenance and ordinary repairs (unless not due to force majeure or the fault of the lessee) shall be the responsibility of the lessee whilst extraordinary repairs (usually of a structural nature) are the responsibility of the lessor.

The lessor is bound to deliver the property in a good state in every way. In case of latent defects, the lessee may cancel the contract of lease or demand an abatement of the rent paid.

Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way. Rent indexation is mostly attributed to a percentage increase every so many years or to the official cost of living increase.

New ownership

Transfer of ownership does not bring about the termination of the lease, unless otherwise is stipulated in the lease agreement. Following the change of ownership, the lease shall continue under the same terms and conditions as stipulated in the original contract. The new owner will then receive the rent under the contract entered into between the lessor and the original lessee.

Enjoyment of property

The lessor is not bound to warrant the lessee against the molestations which third parties may, by mere acts, cause to him in the enjoyment of the thing let, where such third parties do not claim any right thereon, saving the right of the lessee to proceed against them in his own name.

Where, on the contrary, the lessee is disturbed in the enjoyment of the thing in consequence of an action touching a right on the thing let, he may, subject to certain conditions, maintain an action for damages against the lessor, if he is entirely deprived of the thing, or for a proportionate abatement of the rent, if he is deprived of only a part of the thing, or if a diminution of the enjoyment of the thing or an inconvenience is caused to him.

It shall, however, be competent to the lessee, even in the latter case, to sue for the dissolution of the contract and for damages, if the part of the thing which is left to him does not serve the purpose for which he had taken the whole thing on lease.

Lease termination

The Contracting Parties shall agree to the reasons for termination of the lease and the term of the lease.

Compensation

Unless otherwise agreed to in the contract of lease -

- i. The lessee may not, during the continuance of the lease, make any alteration in the thing let without the consent of the lessor, and he is not entitled to claim the value, whatever it may be, of any improvement made without such consent.
- ii. The lessee may, however, remove such improvements, restoring the thing to the condition in which it was before they were made, provided as regards improvements existing at the termination of the lease, he shows that he can obtain some profit by taking them away, and provided the lessor does not elect to keep them and pay to the lessee a sum equal to the profit which, by taking them away, the latter would obtain.

If, in consequence of latent faults or defects existing in the thing let at the time of the contract, the lessee suffers any damage, the lessor, if he knew of such faults or defects, or had a reasonable suspicion thereof, shall be liable in damages unless he shall have made known to the lessee the existence, or his suspicion of the existence, of such faults or defects.

Tax

VAT treatment

The VAT implications depend on a number of factors:

- 1) Property rental in general is exempt without credit however there are exceptions;
- 2) If the lessee is a business registered under article 10 and the rented place is being used for such business then the rent is taxable at 18%;
- 3) If the property is one which requires an MTA licence (whether it has the licence or not), then the lease is taxable at 7%;
- 4) Taxable letting:
 - a. - premises / sites for parking vehicles;
 - b. - permanently installed equipment & machinery and safes;
 - c. - immovable property for not more than 30 days by a taxable person in the course of his economic activity except for:
 - i. Letting of premises outlined in note 2, 3, 4a & 4b above;
 - ii. Letting of space for artistic and cultural activities;
 - iii. Letting of premises for habitation not requiring MTA licence;
 - iv. Letting of premises used or intended to be used as garages, stores or similar uses.

TAX treatment

Active Rental (Trading)

Immovable property rented on a short-term basis (for less than 6 months) when there are frequent transactions is considered as a trading activity. For tax purposes 35% is charged on the rental income less administrative expenses incurred in the production of the rental income

Passive Rental

Immovable property rented on a long-term basis (e.g. for one year) when there are not frequent transactions is considered as a passive trade. For tax purposes only the following deductions are allowed:

- Gross Rental Income
- less ground rents less rents payable less MTA license;
- less 20% maintenance allowances on the net of gross rental income less expenses in (a);
- less interest on loan used to finance the immovable property in question

15% Flat Rate

Income tax act provides for another option for tax on rental income where immovable property rented both on short term or long term basis can be taxed at 15% flat rate on gross rental income. No deductions are allowed.

Jurisdiction

Contracts of lease are subject to the jurisdiction of the Maltese Courts.

16. The Netherlands

Legal regulation

General provisions for rent are included in article 7: 201-231 of the Civil Code and in principle apply to all rental agreements, including residential and non-residential premises.

Dutch rental law distinguishes two types of business premises:

Shop accommodation / retail (article 7:290 – 310 of the Civil Code);

Office premises and other business premises (article 7:230a of the Civil Code).

Dutch law confers a broad contractual freedom on the parties when dealing with lease agreements of business premises. Tenants of office premises are only protected by law against eviction orders. Tenants of shop accommodation do have some basic protection by law, especially during the first rental period of 5 years and after the second rental period of 10 years. However, parties can ask the court for approval of deviating stipulations.

Form

Written form of lease agreement (“LA”) is not compulsory, however, in practice, the vast majority of LAs are concluded in writing.

Object of the lease

- i. Shop accommodation includes retail space and the hospitality industry.
- ii. Offices premises includes other business premises, such as office buildings, factories, storage, etc.

Duration

- i. Shop accommodation: mandatory fixed rental periods of 5 + 5 years. After this period, parties have a broad contractual freedom.
- ii. Office premises: full freedom of contract.

Maintenance / Reparations

Full freedom of contract. If there is a so-called „defect“ to the leased property, the landlord is obliged to repair this defect at the tenant’s request at his expense. In the lease agreement a “defect” can be redefined.

Rent

The amount of the rent is agreed by the parties. In the case of shop accommodation, tenant and landlord both have the possibility to institute legal proceedings to adjust the rent to the rental price of comparable shop accommodations on site at the end of a rental period. This legal action can be made at times regulated by law. This regulation does not apply for lease of office premises.

Contract freedom applies to rent indexation, but in practice rent indexation is mostly related to official inflation.

New ownership

Lease agreements do not terminate automatically by change of ownership. The new owner is always bound to the key obligations of the lease agreement. The previous landlord is only liable with respect to defects that have revealed before the transfer of ownership.

Lease termination

- i. Shop accommodation: the period of notice for termination is 1 year. The lease can only be terminated on the grounds of exhaustive statutory cancellation grounds.
- ii. Office premises: the contracting parties are entitled to negotiate the reasons for termination of the LA and the termination time period, otherwise the statutory provisions shall apply. Lease agreements of office premises with an indefinite rental period can be terminated without giving reasons and with a notice period equal to the period for payment of the rent.

Extrajudicial termination is never permitted with rental agreement for real estate. Legal action for setting aside of the lease on the grounds of a shortcoming can take place at all times provided the shortcoming is serious enough to justify dissolution.

Compensation

The lessee of office premises is - under certain circumstances - entitled to receive compensation for the takeover of the customer base by the lessor or the new tenant (unless the lease is terminated for a serious breach of duty on the side of the lessee). Dutch law does not specify the amount of compensation, which will probably result from established (and judicial) practice. Lease agreements usually exclude the tenant from this claim.

Tax

In the Netherlands and in other countries of the European Union sales tax is levied according to the VAT system. The rental of business premises is usually exempt from VAT. The lessor can not deduct the VAT directly related to the business premises. However, parties can opt for VAT-taxed lease provided that the tenant uses the premises for at least 90% for VAT-related business activities. The landlord can deduct the VAT. The tenant can usually deduct this VAT himself.

Jurisdiction

For internal cases the Dutch law entrusts the competence to the Court of the location of the real estate forming subject of the lease.

In international cases the Regulation Brussels I bis applies. According to its Article 24 the exclusive jurisdiction shall have the Court of the Member State in which the property is situated (except for temporary private use).

17. Norway

Legal regulation

L16.06.2017 Tenancy Act

The Norwegian Tenancy Act applies to

- a) leases for residential premises; and
- b) leases for commercial premises

Unlike the leases for residential premises, the law confers a broad contractual freedom on leases for commercial premises.

Form

Written form of lease agreement ("LA") is not compulsory, however, in practice, all LAs are concluded in writing.

The LAs are often based on a standard LA prepared by the National Federation of House Owners, the Norwegian Property Federation and Forum for Commercial Real Estate Agents.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity. The use of the leased object must not be in violation of public law requirements.

Duration

Commercial leases are almost solely entered into a fixed term basis, typically for 3 -10 years.

Leases will often include rights of renewal for the Lessee.

If the lessee is using the leased object even after elapse of the agreed lease period and the lessor does not call for the space to be cleared within a fixed time, the lease is renewed for an indefinite period of time.

Maintenance / Reparatons

Routine maintenance - lessee's responsibility, other maintenance and repairs - Lessor's responsibility unless the parties agree otherwise. The lessee is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the lessor.

Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way. However, if the amount of the rent is not agreed, the lessee is obliged to pay the usual rent ("market price").

To furnish an ordinary guarantee from a financial institution or a deposit is common practice.

New ownership

The LA is not affected by changes in ownership of the premises.

Assignment of the lease, in full or in part, is normally not permitted without a prior written consent of the Lessor. Transfer of no less than 50 % of the shares, units or ownership interests is normally considered as an assignment of the lease.

Lease termination

Commercial leases for a fixed term cannot ordinarily be terminated throughout the duration of the fixed term, unless a walk-away clause or premature termination clause is agreed upon. Commercial leases for an indefinite period of time (not common), include a termination right for both parties. The Tenancy Act does not provide any pre-conditions that the Lessor or Lessee must adhere to in order to terminate an indefinite lease. Generally speaking, the termination period will be three months, unless otherwise agreed.

In exceptional circumstances, commercial leases can be terminated immediately if either party materially breaches its obligations under the lease.

Compensation

The Act does not specify the amount of compensation, which will probably result from established (and judicial) practice.

Tax

Rental payments are, on the whole, exempt from VAT. A Lessor of commercial premises can in many cases elect to charge VAT (25%) on rents payable by registering in the Norwegian VAT Register.

Jurisdiction

Undertakings registered in the Register of Business Enterprises have their ordinary venue at the place where the head office of the undertaking is located according to such registration, unless otherwise agreed. Foreign business undertakings that have a branch, agency or similar place of business in Norway have an ordinary venue at the place where such business is located if the action relates to activities at that place, unless otherwise agreed.

It is common to agree that any dispute relating to the lease shall be resolved before the courts in the jurisdiction of the property.

International cases: The Lugano Convention is ratified by Norway: “ ... in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the State bound by this Convention in which the property is situated“ (art 22)

18. Poland

Legal regulation

Poland is a civil law jurisdiction. Regulations regarding lease are provided for in the Civil Code. The Civil Code (articles 659-692) refers to lease in general and articles 680-692, refer to lease of real estate specifically, and these shall apply to lease of business premises (shops, offices, warehouses, production premises) as well.

The law confers a broad contractual freedom on the parties, especially when it comes to entrepreneurs when none of them enjoys protection reserved for the so-called „weaker party“.

Form

Written form of lease agreement (“LA”) is not compulsory, still a lease agreement of real property for a time period longer than one year shall be made in writing. In practice, the vast majority of LAs are concluded in writing.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity. Building designation is a secondary criterion, the primary/decisive fact is the purpose of the lease. The lease can also be arranged in respect of premises which have to be created, provided that the subject of the lease can be sufficiently identified.

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period. If lease is agreed for a designated period, then the lease may be terminated only for reasons specified in the lease agreement.

Maintenance / Repairs

Routine maintenance - lessee’s responsibility, other maintenance and repairs - Lessor’s responsibility unless the parties agree otherwise. The lessee is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the lessor. Should the premises have defects which constitute hazard to the lessee’s health, the lessee is entitled to immediately terminate the lease agreement.

Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way. The Lessor has the right of detention of the lessee’s movables placed in the subject of the lease to secure the lessor’s payable receivables.

Rent indexation is mostly attributed to official inflation.

New ownership

Transfer of ownership does not automatically mean the termination of the lease, but in particular case the new owner has the right to terminate the lease. LAs often contain an obligation for the landlord to inform potential future owner of the full content of the lease.

Lease termination

The Contracting Parties are entitled to negotiate the reasons for termination of LA and the termination time period, otherwise the statutory provisions shall apply, i.e.:

- lease for indefinite time period: in principle, termination notice without giving reasons with 3-month notice period, should the rent be paid monthly,
- lease for definite time period: only for reasons strictly specified in the LA (under sanction of invalidity of termination notice).

Compensation

Should a new owner terminate the lease agreement, and the lessee be entitled to returned the premises earlier than agreed in the LA, the lessee may seek compensation from the former owner. In such case the lessee should immediately inform the former owner about the fact of the termination of the lease.

19. Portugal

Legal regulation

Civil Code (arts. 1022/1113) - General Lease Provisions; Law 6/2006 - New Urban Lease Regime (NRAU);

The principle of freedom of contract applies to all non-residential leases, which terms are freely regulated between the parties. Standard mandatory rules are only applicable when the parties have not defined the terms of the lease agreement.

The law provides for several protections in case of leased premises classified as of historical, cultural or social interest.

Form

In writing (Civil Code - art.1069)

Object of the lease

Any building unit capable of being used for non-residential purposes

Duration

The contracting parties are free to agree on the duration of the lease, which can be for a fixed period of time (Definite Term Contract) or an unspecified period of time (Indefinite Term Contract). Maximum duration, however, is 30 years (Civil Code - art.1025). There are no statutory limitations to renewals and save otherwise agreed by the parties, a lease shall be automatically renewed for an equivalent term, unless opposed by any of the parties.

When the duration is not fixed by the parties in the lease agreement, the lease is deemed to be valid for a period of five years.

Maintenance / Reparations

The parties may freely agree on maintenance and reparation works. When nothing has been agreed, conservation/renovation works are lessor's responsibility but the lessee is deemed authorized to do the works that may be required by law or by the purpose of the lease.

Rent

The initial amount of the rent and respective increases are freely negotiable between the parties.

Unless otherwise stated in the agreement, the value of the rent may be annually adjusted by the official rent inflation index.

New ownership

Transfer of ownership of leased properties does not affect the tenant's rights and obligations. In the case of sale of the leased premises, the tenant has a legal pre-emption right of purchase if the lease agreement has been in force for more than three years.

Lease termination

The parties are free to agree to the terms of termination of the lease.

In the absence of termination provisions agreed by the parties, general termination provisions set forth in the law for residential leases shall be applicable, in which case tenants (in case of a Definite Term Contract) are entitled, after one third of the lease term, to terminate the lease at any time, at a minimum prior notice of 120 days from the date termination becomes effective, for terms of one year or more, and of 60 days, for terms of less than one year.

In case of Indefinite Term Contracts tenants are entitled to the same right of termination after six months of duration of the contract and landlords may also terminate it in the following circumstances: (i) when they need the premises for their own or their family's use; (ii) in case of demolition or reconstruction of the building and (iii) at two year's notice from the date of intended termination.

Compensation

The principle of freedom of contract applies to any sort of compensation in case of early termination of the lease.

The lessor cannot terminate the lease prior to its respective term.

In the case of Indefinite Term Contracts, termination by the lessor as referred to above, entitles the tenant to a compensation of one year's rent.

20. Serbia

Legal regulation

The Law on Contract and Torts

Part 1

- Chapter 1 (Basic Principles)
- Chapter 2 (The origin of obligation): Section 1 – Contract

Part 2

- Chapter 11 (Lease)

The Law confers a broad contractual freedom within the limits set by the Basic Principles which permeate all Part 1 of the Law.

The Law on Bankruptcy – Article 99

Form

Written form of lease agreement is not compulsory, however, in practice, the vast majority of leasing agreements are concluded in writing.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity.

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period.

For fixed-term leases, there is rule that if after it's termination lessee continues to use the object of lease and the lessor does not oppose, it shall be considered that there is concluded indefinite time period lease, with the same conditions as previous fixed-term lease.

If the duration of lease is not agreed, nor if duration of lease cannot be determined by circumstances or local customs, that lease is considered as indefinite time period with the right of any contractual party to terminate it within the notice period of 8 days.

Maintenance / Repairs

Routine maintenance - lessee's responsibility, other maintenance and repairs - lessor's responsibility unless the parties agree otherwise.

The lessor is entitled to make changes of the subject of the lease which can interfere the use of subject of the lease only with the consent of lessee.

In the case of defects, the lessee has the right to ask the lessor a discount on rent, or in the case that use of the subject of lease is reduced to a significant extent, lessee can terminate the lease agreement.

Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way.

If anything other is agreed, the rent is paid semi annually for the lease with duration of 1 year or more, or if the duration of lease is shorter, after the termination of lease.

New ownership

Transfer of ownership does not automatically mean the termination of the lease, so there are different situations, as follows:

- If the subject of lease is in the possession of lessee in the moment of transfer the ownership, the new owner takes the place of the lessor;
- If the subject of lease is not in the possession of lessee in the moment of transfer the ownership, the new owner takes the place of the lessor if the new owner knew about the existence of lease. Otherwise, if the new owner did not know about the existence of lease, the new owner would not have any further obligations and the lessee shall be entitled to demand the compensation from the lessor.

Lease termination

The contractual parties are entitled to negotiate the reasons for termination of lease agreement and the termination time period, otherwise the statutory provisions shall apply, i.e.:

- lease for indefinite time period: in principle, termination notice without giving reasons with 8 days notice period;
- lease for definite time period: by the expiration, with the possibility to convert in lease for indefinite time period (as it is described in Part "Duration").

In the case of death of the lessor or the lessee, the lease agreement shall be continued with the inheritor, except this rule is excluded.

In the case of bankruptcy, the lease agreement is not being terminated automatically, but Bankruptcy Trustee is entitled to opt whether Bankruptcy Trustee will terminate the agreement (with notice period of 30 days) or she/he will continue lease period.

Compensation

There are no special provisions on compensation for leasing damage, so general provisions of The Law on Contract and Torts relating to compensation for damage apply.

21. Slovakia

Legal regulation

Civil Code (sections 663-723) + Act No. 116/1990, Coll., on lease and sublease of commercial premises (hereinafter only as “**Act No. 116/1990**”)

Between these two, the Act No. 116/1990 is the *lex specialis* in relation to *lex generalis* – the Civil Code which means that the Civil Code can be used for relations resulting from the lease of non-residential premises only in the case which are not governed by the Act No. 116/1990.

The law confers a broad contractual freedom on the parties, especially when it comes to entrepreneurs.

Form

The contract has to be concluded in writing and shall include the subject of the lease, purpose of the lease, the amount and the maturity of the lease, the method of payment and the lease period if there is no rental relationship for an indefinite time

Object of the lease

According to the Act no. 355/2007 on the protection, promotion and development of public health, every entrepreneur is obliged to have the premises in which he / she will conduct business approved from the regional public health office based on the application for the placing of premises in service, which has to be submitted by the entrepreneur to the relevant regional public health authority.

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity.

The lease can be executed in relation to the existing premises if that has a permit for use from the relevant building office. In the case of the premises that does not yet exist, it is possible to conclude a future contract on lease of the non-residential premises.

The contract for the future contract is governed by the Civil Code in Section 50a. For the purposes of this provision, the contracting parties may undertake in writing to enter into a lease contract by the agreed time; they have to, however, agree on its essential elements of the contract,

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period.

If the lessee uses the leased premises even after elapse of the agreed lease period and the lessor does not call for the space to be cleared within 30 days, the lease is renewed on the same terms as it was negotiated originally. Lease agreed for more than a year is renewed for one year, lease agreed for a shorter period is renewed for that time.

Maintenance / Repairs

Routine maintenance - lessee's responsibility, other maintenance and repairs - lessor's responsibility unless the parties agree otherwise.

The lessee is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the lessor. In the case of defects, the lessee has the right to ask the lessor for a discount on rent, which he is obliged to claim with the lessor within 6 months from the moment when the defect was discovered or could be ascertained.

Rent

The amount of the rent is agreed by the contracting parties. There is no legislation that would stipulate the amount of the rent in any way. However, if the amount of the rent is not agreed, the lessee is obliged to pay the usual rent ("market price"). The lessor has the right of detention of the lessee's movables placed in the subject of the lease to secure the lessor's payable receivables on the rent.

Rent indexation is mostly attributed to official inflation.

New ownership

In case of new ownership of the property it is only the lessee that may terminate the lease of the property if the contract was concluded for a certain period of time and the notice period was established by law or lease agreement. A lease of an immovable property (or part of the property) concluded for an indefinite period can not be terminated due to a change of ownership.

Lease termination

If the lease is agreed for an indefinite time, both the lessor and the lessee are entitled to terminate the contract in writing without giving any reason, unless otherwise agreed.

The lease negotiated for a definite time ends with the expiration of the time agreed upon.

The lessor may terminate in writing the contract concluded for a definite time before the expiry of the time only for the reasons stated by the law.

The notice period shall be three months, unless otherwise agreed; it shall be calculated from the first day of the month following the receipt of the notice.

Compensation for the takeover of the customer base by the lessor or the new lessee

Not regulated by the Slovak law

Tax

The rent is subject of the VAT if the lessor is registered to such tax.

Jurisdiction

For internal cases, the competent is the court of the defendant - in case of a natural person is the court in whose jurisdiction the natural person has his permanent address, in case of a legal entity is the court in whose jurisdiction the legal entity has its registered office.

Instead of the defendant's general court, in case of a dispute concerning the right in rem to the real estate the competent court is the court in whose jurisdiction the real estate is.

In international cases the Regulation Brussels I bis applies. According to its Article 24 the exclusive jurisdiction shall have the Court of the Member State in which the property is situated (except for temporary private use).

22. Spain

Legal regulation

Law 29/1994, of November 24th, of Urban Leases, modified by Law 4/2013, of June 4th (Titles I, III).

Subsidiary, Civil Code (sections 1542-1574, 1580-1582).

The respective sections of the Law dealing with lease of the non-residential premises shall apply to the lease of business premises (shops, offices, warehouses, production premises).

The law confers a broad contractual freedom on the parties. The will of the parties will prevail upon Law (except of Titles I and IV that will be binding) and Civil Code, which will only be applied in defect of any contractual agreement.

Form

Written form of lease agreement (“LA”) is not compulsory, however, in practice, the vast majority of LAs are concluded in writing.

LAs can be done through a private document or a public deed. Most of them are done in a private document, but in the event that any party wants or needs to register it at the Land Register, then it is compulsory to execute a public deed or to transform the private contract into a public deed.

Object of the lease

Any real estate or part of it may be the object of a lease “*for a use different from the necessity of living*” if used (and usable) for the performance of a business, professional or commercial activity.

The Law specifies that this kind of contract is applied to any lease of a premise to be used for industrial, commercial, craft, professional, recreational, welfare, cultural or educational activities, whatever the parties are.

The fact that the property is being leased can be registered in the public register - the Land Register - at the initiative of any of the parties.

Duration

The contracting parties may agree on the lease for any fixed term. If the time period is not agreed, the lease is deemed to be negotiated depending on how the rent amount is fixed in the contract (usually yearly).

If the lessee uses the leased premises after the agreed lease period and the lessor does not call for the premise to be cleared before termination or within 15 natural days after it, the lease is renewed for consecutive periods of time equal to the time of how the rent amount is fixed in the contract (usually one year), without maximum time limitation (i.e. renewal year after year).

Maintenance / Reparations

Routine maintenance – According to the contractual agreement.

Subsidiary to the regulations agreed in the contract, the Law regulates the following:
Lessor's responsibility to repair to maintain the premise in useful conditions, excepting damages caused by the lessee or damages that caused destruction of the premise.

The lessor is entitled to make investments and improvement works in the premise in case they can't wait until the termination of the contract. A compensation (lesser rent) is regulated for the lessee if these works last more than 20 natural days. No compensation at all if they last less than that.

Lessee must communicate any damage and any need of repairs to the lessor a.s.a.p.; in case of urgent repairs or preventive works to avoid imminent damages, those can be done directly by the lessee (prior notification to the lessor), and then the paid costs can be requested to the lessor.

Minor repairs must be done and paid by the lessee.

The lessee is entitled to make structural modifications and improvement works in the premise with the consent of the lessor. These works shall not diminish the security and stability of the premise.

In case the repair works or any works ordered by an Administration cause the premise to become uninhabitable, the lessee can suspend the contract (not paying the rent during this time) or rescind it, without a right to any compensation.

Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate or limit the amount of the rent in any way.

Law regulates that the lessee must pay two months of rent to the lessor as a guarantee (bail). Further guarantees are usually agreed between the parties (cash deposit, bank guarantee, guarantor, etc).

Rent indexation is not compulsory by Law, but mostly attributed by contract to official national general inflation ("IPC general nacional") or to another official index ("IGC": Índice de Garantía de la Competitividad: Competitiveness Guarantee Index)

New ownership

Transfer of ownership does not automatically mean the termination of the lease; only in the event that the new owner fulfils the requisites of article 34 of Mortgage Law (a good faith buyer purchases from the registered owner and the charge (the lease) is not registered on the Land Register).

If it doesn't fulfil these requisites, the new owner will be bound to the rights & obligations negotiated in the lease until its end.

LAs often contain an obligation for the landlord to inform potential future owner of the full content of the lease, to destroy the buyer's "good faith" of buying a free and vacant premise.

Lessee has a Preferential Acquisition Right in case the lessor sells the premise, and law regulates it.

Nevertheless LAs usually exclude the lessee from this right.

Legally the lessee can transfer the lease contract or can totally or partially sublease the premise to a third party without consent of the lessor, giving notice within one month since these contracts happened. In these cases, the lessor has the right to increase the rent a 20% and 10% respectively.

Nevertheless LAs usually exclude the lessee from this right of cession and sublease, and hold them subject them to the prior consent of the lessor.

Lease termination

The parties are entitled to negotiate the reasons for termination of LA besides the legal reasons of resolution (article 35 of the Law) or termination (end of lease time agreed).

Parties usually agree on a minimum compulsory period of lease within the total duration of the contract, and after that minimum period, lessee can freely decide to resolve the contract with some months' prior notice period agreed. A compensation is also sometimes agreed on for this right of resolution.

In case the lessee's death, if the premise has been leased for a business or professional activity, the inheritor will have the right to subrogate in the lease contract if he asks so to the lessor in writing within 2 month after the decease date.

Compensation

The lessee is entitled to receive a compensation if the lease has lasted more than 5 years, the activity was related to a commercial activity selling to the public, and the lessee offered the lessor at least 4 months before termination the execution of a new contract for at least 5 more years with a rent "according to the market" (rent fixed by the parties or by an arbitrator in its case). The law specifies the calculation formula of the compensation (in case of conflict, calculated by an arbitrator).

Lease agreements usually exclude the lessee from this right of compensation after termination (article 34 of the Law).

Tax

The rent of business, professional and commercial premises is subject to VAT.

Jurisdiction

Spanish law entrusts the competence to the Civil Court ("Juez de Primera Instancia") of the location of the leased property, unless otherwise agreed in the contract (forum selection).

23. Sweden

Legal regulation

Chapter 12 of the Swedish Land Code (1970:994) deals with lease of building. It covers both residential- and non-residential leases. Mandatory rules to protect the lessee apply to both types. A residential tenant has direct protection against termination and rent increases, whereas a non-residential tenant has indirect protection based on economic compensation. Such compensation applies to termination by lessor without valid cause, or if lessor, for extending the lease, demands rent or other terms in excess of “market level” or “good practice in lease relations”.

Form

A lease agreement does not have to be in written form, but either party has a right to request that.

Object of the lease

The Land Code distinguishes between different kinds of agreements for use of real property. The lease rules in chapter 12 apply only to use of a building or part of a building against consideration. If land is included, the rules apply only if the land is intended for small-scale horticulture or for other than agricultural purposes. All contracts for use of land may be registered by either party in the Cadastral Register. Only building or land leases may be contractually exempted.

Duration

Lease agreements may be for a fixed period of time or for an indefinite period. A lease of a building is not legally binding beyond 50 years, or 25 years if the property is within a detail planned area, unless it runs for someone’s lifetime.

If an agreement is for an indefinite period, notice must be given to terminate. Even if it is for a fixed period, notice is required if the relation has lasted more than nine (9) months. If an agreement for a fixed period is not timely terminated by notice prior to expiry, or if the tenant remains for a month after expiry, without lessor requesting him to vacate, the lease is extended for an indefinite period. Failing notice, fixed term contracts are normally prolonged through a contractual renewal provision.

Maintenance / Reparatons

The responsibility for the initial condition and subsequent maintenance and repairs, is subject to agreement between the Parties. Usually it is contractually divided between the lessor and the lessee. If premises cannot be used for the intended purpose, due to damage to condition or authority decision, lessee is entitled to damages if lessor was negligent. If lessee’s right to contractual condition is infringed through damage to the property, lessee may be entitled to terminate, reduction of rent and, unless lessor exculpates himself, to damages.

Rent

The rent must be agreed in the contract and be a fixed amount (normally an annual figure) or revenue based. Collective bargaining mechanisms are also possible. Heating, hot water, electricity, water and sewer, may be charged based on consumption. The rent can be indexed (often CPI) in contracts that run for minimum three (3) years and can include charges for cooling, property tax e t c. Failing such provisions, the rent will be fixed for the contract term.

New ownership

A lessee is not allowed to unilaterally assign the lease. If premises were leased for business purposes, the lessee may assign the contract to someone who acquires his business, subject to permission by the Regional Rent Tribunal.

A written lease for a building or land will always survive and become binding on a new owner of the property, provided that lessee had taken possession before the transfer.

Lease termination

Termination must be in writing if the lease relation has lasted for three (3) months, except where the lessee terminates to move out, where a written confirmation from lessor is sufficient. For non-residential leases, the notice period for both parties is minimum (9) months, provided the term of the lease exceeds nine (9) months.

Compensation upon termination

If lessor terminates, or refuses to extend the lease, without a valid cause (e. g. serious breach or misconduct on the part of lessee, demolition or reconstruction of the building or other legitimate reason), lessee is entitled to economic compensation under section § 58 b. Compensation shall always amount to one (1) year's rent, or reasonable exceeding amount, if the economic loss is greater (due to approved alterations, loss of goodwill, customers e t c).

The right to be compensated vests when the lease relation has lasted for more than nine (9) months. Prior to that time, the right to be compensated can only be waived by lessee in writing and normally requires approval by the Rent Tribunal.

VAT

Rent is not subject to VAT unless the property is voluntarily registered. The lessor is allowed to deduct and recover VAT only to the extent that his tenant's activities are subject to VAT.

Applicable law and jurisdiction

Where the Land Code allows the parties to deviate from its provisions, it should also be possible to choose applicable law. Mandatory provisions in the Land Code are however not possible to avoid. Under sec. 6 art. 24 of the Bruxelles I Regulation (rev.) Swedish courts have exclusive jurisdiction.

An arbitration clause without possibility to challenge the award will not be upheld against a lessee with regard to his right under § 58 b. Composition- and procedural- rules for the tribunal are not accepted. Instead, the rules of the Swedish Arbitration Act (1999:16) shall apply.

24. Switzerland

Legal regulation

Code of Obligations (art. 253 ff. CO), Ordinance on the Lease and the Ususfructuary Lease of Residential and Business Premises (OLRB).

Form

Written form of lease agreement is not compulsory, however, in practice, the vast majority of lease agreements are concluded in writing.

Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity.

The lease can also be arranged in respect of premises which have to be created, provided that the subject of the lease can be sufficiently identified.

The fact that the property is leased can be entered under priority notice in the land register. The effect of such entry is that every future owner must allow the property to be used in accordance with the lease (art. 261b CO).

Duration

Leases may be concluded for limited or indefinite duration (art. 255 para. 1 CO). If the time period is not agreed, the lease is deemed to be of indefinite duration. If the parties agreed on a time period, the lease ends without notice on expiry of the agreed duration.

Maintenance / Reparations

The lessee must remedy defects which can be dealt with by minor cleaning or repairs as part of regular maintenance and, depending on local custom, must do so at his own expense. Other defects and maintenance, which are not attributable to the lessee and which he is not obliged to remedy at his own expense: Lessor's responsibility.

Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way. However, the amount of the rent should not be unfair. Rents are unfair where they permit the landlord to derive excessive income from the leased property or where they are based on a clearly excessive sale price (art. 269 CO). The law states a few exceptions on when the rents are not generally held to be unfair (e.g. if they fall within the range of rents customary in the locality or district, if they are justified by increases in costs etc.).

Note if the parties agree to link rent to an index, the lease must be contracted for at least five years and the benchmark is the Swiss consumer prices index.

New ownership

Transfer of ownership does not automatically mean the termination of the lease. Where after concluding the contract the landlord alienates the object or is dispossessed of it in debt collection or bankruptcy proceedings, the lease passes to the acquirer together with ownership of the object (art. 261 para. 1 CO). However, in particular case the new owner has the right to terminate the lease. The new owner may serve notice to

terminate a lease as of the next legally admissible termination date if he claims an urgent need of such premises for himself, his close relatives or in-laws (art. 261 para. 2 lit. a CO).

Lease termination

A party may terminate the lease of a commercial property by giving 6 months' notice expiring on a date fixed by local custom or, in the absence of such custom, at the end of a three-month period of the lease (art. 266d CO). However, the parties may negotiate a longer notice period; a shorter notice period than 6 months is not allowed.

Compensation

Any compensation for the takeover of the customer base by the lessor or the new tenant is subject to negotiations.

Tax

The rent is subject of the VAT if the lessor chooses to voluntarily opt to register the property for VAT (option). The consequence of the option is that persons entitled can deduct the input tax and transfer the tax incurred in connection with their supplies to customers (see art. 22 VAT Law).

Jurisdiction

For internal cases the Swiss law entrusts the competence to the Court of the location of the real estate forming subject of the lease. In Switzerland, litigation is usually preceded by an attempt at conciliation before a conciliation authority. In disputes relating to the tenancy and lease of residential and business property, the conciliation authority comprises a chairperson and an equal number of representatives of each of the parties.

25. Turkey

Legal regulation

The Code of Obligations (§§ 299–379)

The respective sections of the Code of Obligations shall apply to both the lease of the private and the business premises.

The law does not confer a broad contractual freedom on the parties, in particular regarding legal relationships of the parties considered unequal. On the other hand, enforcement of a group of those kinds of provisions (“postponed provision/s”) have been postponed until 01.07.2020 for the leaseholders that are a merchant or a legal entity.

Form

Written form of lease agreement (“LA”) is not compulsory, however, in practice, the vast majority of LAs are concluded in writing as a consequence of evidentiary reasons.

Object of the lease

Any real estate or part of it that may be usable either as a residence or a closed shop may be subject of a lease. The fact that the property is leased can be expounded in the public register - the Land Registrations, at the initiative of the owner / landlord or with his consent.

Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period.

Maintenance / Reparations

Routine maintenance and cleanliness - leaseholder’s responsibility, other maintenance and repairs - landlord’s responsibility. The leaseholder is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the landlord. In the case of major defects, (besides the right to terminate the LA) the leaseholder has the right to apply the provisions regarding defect of debtor (§§ 117–126) or liability arising from the fact that subject of the lease has subsequently become defective (§§ 305-308). In the case of minor defects, the leaseholder has the right to apply the provisions regarding liability arising from the fact that subject of the lease has subsequently become defective. If the subject of the lease has subsequently become defective, the leaseholder has the right to ask the landlord either rectification or a discount on the amount of the lease. In any case the leaseholder’s right to compensation is reserved.

Rent

The amount of the lease is agreed by the parties. There is no legislation that would stipulate the amount of the lease in any way. However, if the amount of the lease is not agreed, the leaseholder is obliged to pay the usual lease cost (“market price”). The amount of lease can be annually increased and *Producer Price Index* is the maximum amount rate of increase. LAs concluded in foreign currencies shall have a fixed rent for five years (Yet this is a postponed provision).

The landlord has the right of detention of the leaseholder’s movables placed in the subject of the lease to

secure the landlord's payable receivables. Provisions regarding the amount of deposit as well as its deposit in a bank account are in line with European examples (Yet this is a postponed provision). Agreements on the payment of the amounts, differ from the rental and ancillary costs (in particular penalties on default of lease payment or call for payment of future leases) are invalid (Yet this is a postponed provision).

New ownership

Transfer of ownership does not automatically mean the termination of the lease, but if the new owner needs to use the premises for its own residential purposes or commercial activities then has the right to terminate the LAs either with a notification in a month following transfer (but in this case leaseholder shall file an eviction action after six months following transfer) or filing an eviction action in a month following the anniversary of LAs. If the LA expounded to the Land Registrations then the new landlords have to obey the terms and conditions of the LA and this risk will be prevented.

Lease termination

The Contracting Parties are entitled to negotiate the reasons for termination of LA and the termination time period, otherwise the statutory provisions shall apply, i.e.:

The leaseholder may unilaterally terminate the LA without a reason, provided that a notice served 15 days before the anniversary of LAs.

Fixed term LAs are extended automatically and the landlord can first terminate the contract after eleven years extension period provided that the landlord has notified the leaseholder in writing at least three (3) months prior to the anniversary of LAs. In unlimited LAs, the landlord may terminate the contract only ten years after its conclusion

The Code of Obligations contains numerous detailed provisions on the cancellation of the LAs.

The landlord may terminate the lease as a result of (a) breach by the leaseholder, (b) lack of payment of the lease amount, (c) the need of a new owner (d) the need of the owner (e) the need to reconstruct or repair the subject, (f) the bankruptcy of the leaseholder, (g) the extraordinary circumstances. The leaseholder can also terminate the lease as a result of (a) breach by the landlord, (b) extraordinary circumstances.

Compensation

The Code of Obligations contains numerous detailed provisions on the compensation in connection with the LAs.

26. United Kingdom

This summary is based on the laws of England and Wales.

Legal Regulation

The law confers a broad contractual freedom on the parties however certain landlord and tenant business protection legislation applies (unless specifically agreed to be excluded) to business tenants which means they have a right to a new lease on similar terms at the end of the contractual term and pending agreement of that new lease they can continue to occupy on the basis of the existing lease.

Form

The general rule is that to take effect at law, a lease must be made as a deed. Statute prescribes the formalities for creation of a deed and so the lease must be in writing and executed in the appropriate manner to the particular legal entity. Exceptions include a lease for a term of less than three years when a written form of lease is not compulsory.

Object of the lease

To be a valid lease the tenant must have exclusive possession and the extent of the land contained in the lease must be properly identifiable. This is generally done by way of a plan and for leases to be registered there is a compulsory form of plan which is Land Registry compliant and must be adhered to. The lease creates an estate in land as well as a contract between the parties.

Different forms of lease are used for residential and business premises.

Duration

To be a valid lease the term must be certain i.e. fixed. If the lease falls within the business protection legislation it continues indefinitely at the end of the contractual term if the business tenant remains in occupation until the landlord successfully opposes the grant of a new lease (see „Lease Termination“ below) or until a new lease is entered into (or the tenant vacates).

All leases granted for a term in excess of 7 years or assignments of leases with more than 7 years to run are registrable. Registration is voluntary but legal title does not pass to the tenant unless the lease is registered.

Maintenance/Reparations

Lease of whole building – external, internal and structural repair is generally the tenant’s responsibility unless the parties agree otherwise. The parties sometimes contractually agree that a schedule of condition is appended to the lease recording the state and condition at the beginning of their lease which will limit the repairing obligations to that state and condition.

Lease of part – internal repair is generally the tenant’s responsibility. Structural and external repair and common areas is usually the landlord’s responsibility but the landlord can recover the cost from all tenants in the building via service charge. In the case of defects if there is „full“ repairing obligation the tenant will be liable to make good although the parties are free to negotiate that these are excluded from the repairing obligation or the obligation to pay service charge. The tenant may also be offered the benefit of warranties from any third party contractor or professional where the building has recently been built or refurbished.

Rent

The amount of the rent is agreed by the parties. There is currently no legislation that stipulates the amount of the rent in any way. Generally the parties agree in the lease that the rent is reviewed on a five yearly upwards only basis to open market value calculated on the basis of the number of negotiated assumptions and disregards. For some types of properties (for example care homes, hospitals, cinemas and casinos) it is more usual to see rent increase annually by indexation (mostly attributed to retail or consumer prices inflation) or on a five year compounded basis. For some retail leases there may also be turnover rent provisions.

New ownership

Transfer of ownership („assignment“) does not mean the termination of the lease and the new tenant and the landlord will be bound by the negotiated obligations in the lease. It is usual in the market for the outgoing tenant to guarantee the incoming tenant's obligations until the lease is subsequently assigned.

Lease Termination

The termination provisions are freely negotiated between the parties. The parties can agree a specific or rolling „break date“ during the term and the notice period. If a landlord exercises its contractual right to terminate during the term it cannot validly do so unless it also can prove one of the facts in the business protection legislation exists (e.g. that the landlord intends to redevelop or occupy the property itself). If the lease is not „excluded“ from that legislation the tenant can remain in occupation at the end of the term as if the lease is continuing pending agreement of the new lease. The landlord can only determine the tenant's rights for the old lease to continue if it can prove one of the grounds for termination contained in the business protection legislation referred to above (i.e. redevelopment or occupation by the landlord).

Compensation

If the landlord does exercise its statutory rights to oppose the grant of a new tenancy referred to above the tenant is entitled to receive compensation. Although called ‚compensation‘ in the legislation the sum payable does not reflect the tenant's actual losses instead it entitles the tenant to be paid a sum amounting to a multiple of the rateable value of the premises.



Tax




The general principle is that commercial property is not subject to VAT unless the landlord waives the exemption (i.e. exempt)

Jurisdiction

Jurisdiction follows the location of the property forming the subject of the lease. To avoid any conflict of laws, the lease will specify that it is governed by the law of England and Wales and the parties will be subject to the jurisdiction of the courts of England and Wales in the event of any dispute.³

APPENDIX key contacts

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