Global Corporate Real Estate Guide - Poland

Leases

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# What are the usual forms of leases?

Ground leases

One form of lease is a long-term ground lease under which a tenant leases vacant land for development. Once the development is completed, the ground tenant will sublet space to retail, office, or industrial tenants, depending on the type of the development. This structure is rarely used because the ground leasehold interests cannot be bought and sold in a manner similar to freehold property interests.

Commercial leases

A commercial lease is used for most commercial office and retail space and some standard industrial space. Most commercial lease transactions commence with an offer to lease, which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements. Commercial leases are typically on a net/net rental basis, which requires a tenant to pay basic rent plus additional charges (additional rent) for a proportionate share of realty taxes, insurance, utility, and common area maintenance charges. In a retail lease, a tenant may also be required to pay rent based on a percentage of its annual sales.

Residential leases

Residential leases are regulated in more detail by the special Tenant Protection Law, which overrides any contrary terms of the lease contract, regardless of the intention of the parties. This law imposes limits on the rent increase and limits the ability to terminate the lease.

# Are lease provisions regulated or freely negotiable?

Lease provisions are regulated in the Civil Code. However, to a large extent, they are freely negotiable. The Civil Code provisions on leases have a semi-imperative character, which means that the legal provisions can be changed but only in favor of the tenant. However, residential leases are fully regulated and the ability to negotiate different terms are limited.

# Is there a maximum term for leases? Can these be extended?

The maximum term for a lease with an individual is 10 years. The maximum term for a lease with a company or for a ground lease is 30 years. The maximum term of the leases cannot be extended. In order to extend the term, a new lease needs to be concluded after the expiration of the maximum term of the lease.

# What are the usual lease terms?

The usual terms of the lease are three, five or 10 years. These terms can be extended up to the maximum lease term under Polish law.

# Are there instances where tenants may demand an extension of the lease?

A tenant may request an extension of the lease only if they have a right to do so under the lease agreement.

# On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the terms of the lease. The typical tenant breaches include the late payment of rent for more than two rent periods, use of the premises in a manner that is contrary to the agreed use, assignment or sublease of the property without the consent of the landlord, or the tenant becomes insolvent (subject to statutory restrictions).

# Must rents be paid in local currency?

No. Rent can be paid in a foreign currency. However, rent is typically paid in euros in an amount equivalent to the local currency.

# Is rent paid on a monthly basis? Is it required to be paid in advance?

Typically, rent is paid in advance on a monthly basis. However, this may change depending on the agreement of the parties.

# How is rent reviewed? Are there limits to the increase in rent?

Rent is usually fixed for an initial term and subject to yearly indexation. Rent for renewals or extensions may also be fixed or may be adjusted to reflect the market value at the time of such renewal or extension.

The Tenant Protection Law sets an allowable annual percentage increase in rent for residential leases.

# What are the basic obligations of landlords and tenants?

The following are usually required of landlords:

Repair and maintain the structure of the property

Provide standard services relating to the functioning of the property

Insure the property

The following are usually required of tenants:

Pay rent on time

Keep the property in good order

Inform the landlord if repairs are needed and give the landlord access to the property to carry out repairs

Give the landlord access (often by appointment) to the property for inspections and to perform landlord’s work

# What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

The tenant is required to obtain the landlord’s consent to assign or sublet the premises.

# What happens in the event of destruction of the leased premises?

If the premises are substantially damaged or destroyed, the lease will expire. If the damages are less than substantial, rent is generally reduced according to the extent of the damage or destruction.

If the premises are damaged or destroyed due to causes attributed to the tenant, the tenant may be liable for repairs or replacement.

# Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises. The tenant is responsible for insuring the property it brings into the premises.

# Will the lease survive if the owner sells the leased premises?

Yes. However, the new owner may terminate the lease. The former owner will be liable to the tenant for damage caused by an earlier termination.

However, the new owner will not be able to terminate the lease if the lease is for a fixed time with an authenticated date (e.g., signed in front of a public notary) and the tenant has taken possession of the premises.

# Will the lease survive if the leased premises are foreclosed?

Yes. However, the new owner may terminate the lease unless the lease is for a fixed time with an authenticated date (e.g., signed in front of a public notary) and the tenant has taken possession of the (subject to further termination rights of the new owner).

Additionally, the lease may be terminated if the lease agreement was concluded after the commencement of foreclosure proceedings concerning the real property.

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