Global Corporate Real Estate Guide - France

Leases

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# What are the usual forms of leases?

Ground leases

A ground lease grants an immovable property right (Droit Immobilier) to the tenant. Therefore, it must be drawn up by a French notary and published at the Land Registry. During a ground lease term, the tenant will remain the owner of the construction. Upon termination, the landlord will become the owner of the construction and improvements.

A ground lease (Bail à Construction) is a lease under which the tenant undertakes to construct buildings on the landlord’s plots of land and to maintain these buildings in a good state of repair. The term of the ground lease will be between 18 years and 99 years.

Commercial leases

This security of tenure is granted to tenants who are duly registered at the relevant Commercial and Companies Registry.

The French Commercial Code governs the duration, renewal and termination of commercial leases, rent review, use of the premises, subletting, assignment of the lease and, to some extent, service charges and works.

Other general terms of commercial leases, which are not regulated by specific provisions of the French Commercial Code, are governed by the general provisions of the French Civil Code applicable to lease agreements.

French regulations on commercial leases apply to leases of premises in which a business is carried out by an individual or a company. This business shall be duly registered at the relevant Commercial and Companies Registry.

The duration of commercial leases cannot be less than nine years. However, the landlord and tenant can agree on a longer term. In most cases, institutional investors now enter into commercial leases for a period of 12 years with the lessee waiving the right to give leave before the expiry of a period of 6 years or 9 years.

The French Commercial Code allows short-term leases not exceeding three years (Baux Dérogatoires). These short-term leases, which are outside the scope of regulations on commercial leases, are governed only by the general provisions of the French Civil Code applicable to lease agreements.

Unless specific conditions are met, the landlord cannot terminate commercial leases during this nine-year period. On the other hand, the tenant benefits from a triennial right of termination from which the parties cannot derogate, unless in case of commercial leases for offices spaces, storage premises, single-use premises or for a duration of more than nine years. In these cases, the tenant may contract out of such triennial right of termination. Notice to quit must be delivered by process-server (Huissier de justice) six months in advance.

Security of tenure is an essential aspect of French regulations on commercial leases. Security of tenure is the right of the tenant to obtain renewal of the commercial lease upon its expiry and the landlord cannot refuse to grant such renewal without paying the tenant compensation for eviction (Indemnité d’éviction).

Residential leases

As a matter of general principle, a residential lease is entered into for six years if the landlord is a company, or for three years if the landlord is an individual. The tenant may terminate a residential lease at any time with three months’ prior written notice.

Residential leases are regulated by specific French regulations. Most of these provisions are mandatory and cannot be contracted out by parties.

# Are lease provisions regulated or freely negotiable?

Legal provisions applicable to commercial leases concerning the duration and right of renewal to the benefit of the tenant and to service charges and work that can no longer be recharged to tenants are mandatory and cannot be contracted out by parties. Other legal provisions, which are not covered by the French Commercial Code but by the French Civil Code, are negotiable by parties.

Most of the legal provisions applicable to residential leases are mandatory and cannot be contracted out by parties.

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

The duration of commercial leases cannot be less than nine years. Parties, however, can provide for a longer term.

If the term of a lease agreement is more than 12 years, it must be drawn up by French notaries and must be published with the Land Registry, thus triggering specific costs (notary fees, registration duties and Land Registry fees).

# What are the usual lease terms?

Most commercial leases are entered into for a nine-year term with a break option at the end of every triennial period to the benefit of the tenant.

Most commercial leases for commercial centers are entered into for a ten-year term with partial waiver of the triennial right to terminate the lease for tenant.

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

No.

# On what grounds may a lease be terminated?

As a matter of general principle, the landlord is entitled to terminate leases (either commercial or residential leases) when the tenant breaches the terms and conditions of the lease.

The landlord can terminate a commercial lease if the tenant remains in breach for one month after having received a notice served by court process-server. The court may also allow the tenant more time to cure the breach.

# Must rents be paid in local currency?

As a matter of general principle, foreign currencies cannot be used in agreements in France as it may be considered as a prohibited indexation, except if the currency is in relation with the object of the contract or with the activity of one of the parties to the contract. This prohibition is strictly construed by French courts.

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

For commercial leases, rent is usually paid quarterly in advance.

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

Parties to commercial leases are free to stipulate that rent shall be indexed on an annual basis. However, under French law, an index is only valid if it is directly related to the object of the contract or to the activity of one of the parties.

For commercial leases, the option is between the Commercial Rents Index (Indice des Loyers Commerciaux or ILC) for commercial activities and the Index of Rents for Services Activities (Indice des Loyers des Activités Tertiaries or ILAT) for services activities. These indexes are published by the French State Statistical Institute (INSEE).

Under French law, rent of commercial leases may also be reviewed by the landlord or the tenant three years after the date of entry into force of the rented premises or the date of commencement of the renewed lease. Upon renewal of commercial leases (Renouvellement), increase in rent may be capped or rent may be fixed at market value. The rent increase upon rent review and renewal is limited to 10% per year.

# What are the basic obligations of landlords and tenants?

The following must be borne by landlords:

Repairing and maintaining the structure of the rented premises, identified as major repairs in Article 606 of the French Civil Code

Specific service charges and work listed under Article R 145-35 of the French Commercial Code

The following is usually required of landlords:

Insure the rented premises

Provide tenants with valid notice of termination

The following is usually required of tenants:

Pay rent and service charges on time

Keep the rented premises in good maintenance and repair order

Insure its belongings, merchandise and goods within the rented premises

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

Commercial leases

The prohibition of the right to assign a commercial lease is void if it prevents the tenant from assigning the lease to a purchaser of its business. As a consequence, a provision prohibiting the right to assign will only be valid when the assignee purchases the right to the lease.

Commercial leases usually provide that, in case of assignment, the tenant will remain jointly and severally liable with the assignee for the tenant’s obligations under the lease, in particular, for the payment of rent and service charges.

Unless provided otherwise, subletting of all or part of the rented premises is prohibited. However, in practice, tenants are granted right to sublet to companies of their group.

Specific preemption rights benefiting towns may apply in case of assignment of the business carried out in the rented premises or in case of assignment of the sole right to the lease when the rented premises are located within a protection perimeter of local stores and craft industries.

The tenant benefits from the right of first refusal in the event landlord wishes to sell the rented premises, with respect to retail or craft-industry premises (Locaux à usage commercial ou artisanal). Such right, however, can be contracted out by parties.

Residential leases

The tenant may not assign or sublet without prior consent of the landlord.

Specific preemption right benefiting to the tenant may apply in case of sale of the rented premises.

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

Unless otherwise agreed upon between parties, specific provisions of the French Civil Code will apply in the event of destruction of rented premises.

Pursuant to these provisions, where during the term of the lease, rented premises are wholly destroyed by a fortuitous event, the lease is terminated as of right. Where the rented premises are destroyed only in part, the tenant may, according to the circumstances, apply for rent reduction or termination of the lease. In either case, no compensation is owed.

These legal provisions, however, are not mandatory and parties can agree upon other terms and conditions.

# Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the rented premises and usually recovers the cost of insurance premiums from the tenant through service charges. The tenant insures its merchandise, goods and belongings within the rented premises. In such case, a mutual waiver or recourse between the tenant and the landlord is usually provided for in the lease agreement.

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

In general, leases are continued in the event of the transfer of the leased building to a third party. Registration of leases with the tax authorities will give leases a fixed date (Date certaine) and will give rank to the landlord’s special charge over the tenant’s assets in respect of unpaid rent. In addition, this will make the lease binding against the landlord’s successors in title.

Pursuant to French regulations applicable to residential leases and when specific conditions are met, tenants benefit from a right of preemption when the landlord intends to sell the rented premises.

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

Registration of the lease with the tax authorities will give the lease a fixed date. This will also make the lease enforceable against a secured creditor of a landlord who carries out a seizure procedure after this date.

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