Global Corporate Real Estate Guide - Mexico

Leases

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# What are the usual forms of leases?

Mexican applicable law recognizes these forms of leases:

Civil

Commercial

Administrative

Financial

The civil leases may be determined by exclusion, meaning, when a lease is not commercial, administrative or financial. According to Mexican laws, commercial transactions are all the acquisitions, transfers and leases executed with the intent of commercial speculation.

Commercial leasing of real estate is not recognized, even if there is intent to obtain profit, due to the lack of recognition from Mexican laws and the provisions of the Mexican Supreme Court, which holds that real estate leases are always of a civil nature.

A lease is administrative if the leased premises belong to the Mexican federation, states or municipalities and is regulated by the applicable administrative law.

Financial leases are regulated in the General Law of Auxiliary Credit Organizations and Auxiliary Activities of Credit.

# Are lease provisions regulated or freely negotiable?

Most of the provisions governing lease agreements are included by statute in Mexican civil codes (each state has its own applicable civil code).

However, the parties may freely discuss and determine other different terms to regulate the lease and all its legal consequences, and such provisions agreed by the parties will prevail if these are not specifically determined by each of the civil codes as a provision that should not be changed by the parties.

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

Most state codes provide that a lease term will not exceed a certain term specific depending upon the types of use; generally 10 years for residential use and 20-50 years for commercial and industrial use, depending on the location of the premises. When the parties do not stipulate the term of the lease, the lease may be terminated generally upon two months’ prior written notice from one party to the other if the property is urban; one year’s notice is required if the property is in the countryside.

In addition, the landlord and the tenant may freely agree in the lease agreement the extension options that they may deem mutually agreeable.

# What are the usual lease terms?

Residential leases commonly have a term of one year, while commercial and office leases can range between two to five years (however, for larger retail anchor leases, there are usually longer terms). Industrial leases can go from five through 15 years. Extension options are feasible and standard.

In most states, the relevant State Civil Code provides for maximum terms depending on the use of the leased property, i.e., a maximum of 10 years for residential leases, 15-40 years for commercial leases and 15-50 years for industrial leases.

Lease contracts typically include provisions for delivering and surrendering the premises, yearly rent increases, maintenance and repair obligations, security deposits, labor liability, insurance and, most recently, language related to domain extinction, anti-money laundering, and compliance with environmental, social and governance obligations.

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

Most civil codes provide a one-year statutory extension right for the tenant, if the tenant is up to date with rent payments. Moreover, if upon the termination of the lease term and renewal, if any, the tenant continues with the use and enjoyment of the leased premises without opposition from the landlord, the lease will be deemed to continue for an indefinite time as a month-to-month lease. In leases where the tenant has had possession of the premises for a term of three to five years, and in some cases if tenant has made significant improvements to the premises, the tenant will have the right to be preferred, under equal conditions, over any other interested party for a new lease, if the tenant has fulfilled all of its obligations and paid rent on time.

# On what grounds may a lease be terminated?

A lease may be terminated for any of the following reasons:

Termination or expiration of the term provided in the contract or in law or for satisfying the purpose for which the premises were leased

Express agreement

Nullity

Rescission (termination by default)

Confusion (when the landlord and tenant become the same)

Total loss or destruction of the leased premises

Expropriation of the leased premises

Eviction of the leased premises

A landlord may generally terminate the lease due to the following:

Lack of rent payment

Use of the premises in contravention to the provided nature and purpose

Sublease of the leased premises without consent of the landlord

Damages to the leased premises attributable to the tenant

Alteration of the leased premises without the consent of the landlord

A tenant may generally terminate the lease due to the following:

Lack of maintenance of the leased premises [if the landlord was obliged per the lease to provide maintenance to the leased premises] Total or partial loss of the leased premises

Hidden defects in the leased premises

# Must rents be paid in local currency?

Leases may provide for rent payments in foreign currencies, provided, however, that a Mexican tenant has the legal right to choose to pay such rent in Mexican pesos at the then prevailing official exchange rate, published in the federal official gazette on the payment date in accordance with Article 8 of the Mexican Monetary Law.

For urban properties for residential purposes, the Federal Civil Code provides that the payment of rent must be in local currency.

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

Parties may freely agree on the amounts, interest and terms related to rent payments. If there are no terms of payment, payment for urban property is due monthly and semiannually for rural property.

Under Mexican laws, rent generally must be paid once the leased property is delivered to the tenant. Nevertheless, there is an advance payment to the landlord as a security deposit. This deposit generally is the equivalent of one- or two-months’ rent, which may be subject to annual increase. At the end of the lease, the deposit is returned to the tenant, if the tenant has no outstanding obligations to the landlord or any payments due for services and utilities related to the leased property.

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

The only important rent control statute in Mexico is the one that applies in the federal district and a few other states, which provides that in certain leases, rent may only be increased annually.

Another case where the landlord may increase the rent, even up to 10% compared to the previous rent, is when a tenant renews its lease agreement for one year.

Contractually, it is very typical that lease agreement rents are adjusted annually by the increase presented under a given consumer price index (CPI) identified by the parties, typically referenced to the increase in the CPI of the US if the rent is in dollars, or of the Indice Nacional de Precios al Consumidor if the rent is set in Mexican pesos.

# What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

Transfer the use or temporary enjoyment of the leased premises to the tenant

Deliver the leased premises in good condition to the tenant

Maintain the leased premises in the same conditions throughout the term of the lease

Perform necessary repairs

Not to disturb the use and enjoyment of the leased premises by the tenant, except in the event of emergency repairs

Guarantee the peaceful use and enjoyment of the leased premises

Be liable for damages and losses in the case of hidden defects of the leased premises

Be liable for damages and losses in the case of eviction

Return the balance of the security deposit if there are no outstanding obligations of the tenant due to the landlord

The following is usually required of tenants:

Pay the rent in the form, place and time set forth in the agreement

Be liable for damages to the leased premises due to the tenant’s fault or negligence, or as a result of negligence on the part of its assignees, employees or subtenants

Use the leased premises only according to its nature and purpose

Notify the landlord of the need for repairs; otherwise, the tenant will be liable for the damages caused by lack of notification

Make repairs resulting from minor damage or normal wear and tear

Obtain the required permits for the operation of the premises

Provide ordinary maintenance to the premises and to the equipment and personal property of the tenant

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

The tenant cannot sublet the leased premises nor assign its rights from the lease without the express written consent of the landlord. If the tenant sublets or assigns its rights without the consent of the landlord, the tenant will be jointly responsible with the subtenant or assignee for all damages caused to the landlord and the leased premises and this could be a cause of rescission of the lease agreement.

If the sublease agreement is entered into as a result of the general authorization from the landlord granted in the original lease agreement, the tenant will remain responsible before the landlord for the liabilities derived from the use and enjoyment of the leased premises by a subtenant. If the landlord expressly approves the sublease agreement through a separate document of the lease agreement, the subtenant will subrogate all the rights and obligations of the tenant, unless otherwise agreed by the parties.

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

In the event of damage or destruction of the leased premises by acts of God or force majeure, totally preventing the use or enjoyment of the leased property for more than two months in most cases, the parties can terminate the lease. The party responsible for causing damage to the leased premises will be responsible to the other party for the damages and losses incurred as a result thereof.

# Who is usually responsible for insuring the leased premises?

Usually, the landlord will obtain the insurance policies covering any fire, damage or casualty to the property and, in certain cases, rental interruption insurance. The tenant will obtain insurance policies covering its personal property and equipment, which is not covered by the insurance policies obtained by the landlord. Typically, the tenant also obtains a civil liability policy and will reimburse the premium cost incurred by the landlord in the purchase of the corresponding insurance policy in the case of a triple net lease.

The tenant is typically responsible for insuring its personnel and personal property to be placed within the leased premises during the term of the lease agreement.

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

If during the term of the lease agreement, title to the leased premises is transferred, the lease agreement will survive under the same terms. In connection with the rental payment, the tenant will continue to have the obligation to pay to the new owner the stipulated rent under the lease agreement, as of the judicial or extrajudicial notification date or the date such transfer was delivered.

If the ownership transfer is for public purposes, the lease agreement will be terminated, but the landlord and the tenant will be indemnified by the expropriating authority, in accordance with the law.

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

Yes. Leases are senior and totally independent from mortgages or foreclosures. The rights and obligations acquired during the lease agreement will prevail and remain effective in the event of a foreclosure. Once a foreclosure occurs, the new owner has the obligation to notify the tenant of the transfer of ownership to legally collect the rent.

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