Global Corporate Real Estate Guide - Philippines

Leases

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# What are the usual forms of leases?

Private land leases

Public land leases

Office/retail space leases

Residential leases

# Are lease provisions regulated or freely negotiable?

Except for (i) leases of public land and (ii) leases of land by foreign investors under the Investors’ Lease Act, lease provisions are generally not regulated and are freely negotiable.

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

Lease of private land to Philippine citizens and corporations that are at least 60% owned by Philippine citizens, as well as lease of any other type of real property (except public land) to Philippine citizens, foreigners and foreign-owned corporations, can have a term of as long as 99 years.

As a rule, lease of private land to foreigners and foreign-owned corporations can have a maximum term of only 25 years, renewable for another 25 years upon mutual agreement of the landlord and tenant. However, a lease under the Investors’ Lease Act may have a period of 50 years, extendible once for a period of not more than 25 years. A lease under this law must be registered with the Department of Trade and Industry’s (DTI) Board of Investments and is subject to the following conditions:

A stipulation as to the purpose of the investment for which the long-term lease agreement is being entered into

A stipulation by the parties recognizing the unequivocal authority of the secretary of the DTI to terminate or cancel the long-term lease agreement:

if the investment project is not initiated within three years from the signing of the lease agreement;

in case of withdrawal of approved investment;

in case of use of the leased area for purposes other than that authorized by the DTI; or

in case of violation by the parties of any of the provisions of the Investors’ Lease Act and its implementing rules and regulations.

# What are the usual lease terms?

Lease terms generally vary depending on the type of property involved.

Generally, the maximum term for a lease of private land to foreigners and foreign-owned entities is 25 years, renewable for another period of 25 years upon the parties' agreement, for an aggregate of 50 years. However, by way of exception, the Investors' Lease Act allows foreign investors to lease private land for industrial or commercial purposes for a term not exceeding 50 years, which is renewable once for another 25 years upon the parties' agreement, for a maximum aggregate term of 75 years. Land leases under the Investors' Lease Act require the Board of Investments' prior approval.

Leases of commercial and retail space are normally for a shorter term, such as three, five or 10 years.

Leases of residential properties are normally for even shorter periods, such as one or two years.

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

No. However, an implied new lease will set in for the periods provided under the Civil Code when the following requisites are found to exist: (a) the term of the original contract of lease has expired; (b) the landlord has not given the lessee a notice to vacate; and (c) the tenant continued enjoying the thing leased for fifteen days with the acquiescence of the landlord.

# On what grounds may a lease be terminated?

Lease provisions (including the ground for termination) are generally not regulated and are freely negotiable. A lease agreement would typically provide the following grounds for the landlord’s termination of the lease:

Tenant’s breach of the terms of the lease agreement

Tenant’s insolvency, bankruptcy, etc.

Tenant’s abandonment of the leased premises

# Must rents be paid in local currency?

The parties may agree on the currency in which rent shall be paid. In the event that rent is paid in foreign currency, the parties will usually agree on the exchange rate to be used for purposes of computing the applicable taxes.

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

This will depend on the agreement of the parties. Depending on the type of property involved (land, or residential, commercial or office space, etc.), rent is usually paid monthly or quarterly, at the beginning of the month /quarter (as the case may be).

In addition, it is common for the landlord to require the payment of advance rent equivalent to three months’ rent to be applied to the first three months of the lease term.

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

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

A maximum allowable annual percentage increase in rent is fixed for certain residential leases.

# What are the basic obligations of landlords and tenants?

The following are usually required of landlords:

Unless otherwise prevented by force majeure, maintain the tenant in peaceful possession of the leased premises for the entire lease term

Repair and maintain the following in good order, condition and repair: (a) the foundations, exterior walls and roof of the building; (b) the electrical, mechanical, plumbing, heating and air conditioning systems, facilities and components located in the building which are concealed and used in common by all tenants; and (c) the common areas

The following are usually required of tenants:

Pay rent on time

Use the leased premises only for the purpose/activity specified in the lease agreement

Keep and maintain the leased premises (including all non-structural interior portions, systems and equipment; interior surfaces of exterior walls, interior moldings, partitions and ceilings; and interior electrical, lighting and plumbing fixtures) in as good order, condition and repair as they were on the start of the lease period — reasonable wear and tear and damage from fire and other casualties excepted

Obtain landlord’s consent before making any alterations, additions or improvements involving either the structural, mechanical, electrical, plumbing, fire/life safety, heating, ventilating or air conditioning systems of the leased premises

Ensure that all alterations are constructed in a good and workman-like manner and in compliance with all applicable laws

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

Unless the lease agreement provides otherwise, the tenant must obtain the consent of the landlord before assigning his rights under the lease agreement to another person.

Unless the lease agreement contains a prohibition, the tenant may sublease the leased premises, in whole or in part, without prejudice to his/her responsibility for the performance of the lease agreement toward the landlord.

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

Unless the lease agreement provides otherwise, the following apply:

If the lease premises is totally destroyed by a fortuitous event, the lease is terminated

If the destruction is partial, the tenant may choose between proportional reduction of rent and a rescission of the lease

# Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises.

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

No, it will not, unless (a) the lease of land is registered (i.e., annotated on the certificate of title covering the land) and the sale occurs subsequent to such registration, (b) there is a stipulation to the contrary in the contract of sale, or (c) the purchaser knows of the existence of the lease.

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

If the lease of land is registered and the mortgage of the land was annotated subsequent to the annotation of the lease, then the lease will have to be respected by the buyer in the foreclosure sale.

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