Global Corporate Real Estate Guide - Luxembourg

Leases

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# What are the usual forms of leases?

There are four main types of real estate leases:

Commercial leases (bail commercial) — the landlord provides the tenant with premises for the purpose of trade activities

Residential leases (bail à loyer) — the landlord provides the tenant with premises for residential purposes

Agricultural leases (bail à ferme) — the landlord provides the tenant with land for the purpose of cultivating and harvesting it

Leases subject to common law (baux de droit commun) — the landlord provides the tenant with premises for office use

# Are lease provisions regulated or freely negotiable?

Lease provisions are mostly freely negotiable (especially regarding commercial leases), but there are some legal provisions arising out of the LCC or specific sectorial laws with which the parties have to comply, which may differ depending on the type of lease. For instance, the lease period for residential leases may be set by the parties, but the renewal provisions of the lease agreement are regulated.

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

According to Luxembourg law, there is no maximum term for leases. The lease agreement may be open-ended or with a fixed term and Luxembourg law does not prohibit the extension of fixed term leases. The extension can be set forth contractually either expressly or by tacit renewal. However, for legal certainty, Luxembourg legal rules prohibit lease commitments that are perpetual.

# What are the usual lease terms?

The terms for leases that are for a fixed term and not for an indefinite period are in practice as follows:

Three years (house and big apartment) or between one and two years (small apartment) for residential leases

Three years with tacit renewal up to nine years for commercial leases and office leases

Leases can be concluded either for a limited or unlimited duration. If not specifically indicated, commercial leases are presumed to be concluded for an undetermined period.

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

For commercial and residential leases, the lease term may be extended once:

Preferential renewal (renouvellement préférentiel) - When the business lease agreement comes to an end, the tenant may claim for a preference right for the renewal of the business lease agreement. The landlord may refuse the renewal of the lease agreement for certain reasons (e.g., nonpayment of rent, occupation by the landlord of the premises, etc.). The landlord may refuse the renewal of a lease after nine years of occupation without reason if pay an eviction indemnity is paid to the tenant. This eviction indemnity can be paid by a third party (e.g., a new tenant who will occupy the premises).

For residential leases, if the landlord terminates the lease agreement for personal needs, the tenant may claim an extension of the notice period for a maximum of one year before a Luxembourg court.

# On what grounds may a lease be terminated?

For commercial and office leases, parties are bound for the duration of the lease and may not terminate the lease contract before the end of the lease term. However, if there is a major breach, a party may request termination before a court.

A landlord may terminate a residential lease for any of the following reasons:

Personal needs (wanting to use the leased premises for themselves or their family)

A serious and legitimate ground (motif grave et légitime) (e.g., demolition of the building in case of unhealthy conditions)

If the tenant does not comply with its obligations under the lease agreement

The tenant may terminate the lease agreement if the landlord does not comply with the terms and conditions of the lease contract.

# Must rents be paid in local currency?

Rent may be paid in local or foreign currency. In theory, rent may also be paid in goods or wares of any kind (mostly applicable in agricultural leases).

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

Parties are free to specify the period of rent payments in the lease agreement. In practice, rent in Luxembourg is mostly paid on a monthly basis for residential leases and on a quarterly or yearly basis for commercial leases.

There is no mandatory legal provision regarding timing of payment. The parties generally agree that the rent has to be paid before or at the beginning of the month for which the rent is due.

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

For commercial leases, there are no legal provisions relating to the review of rent.

Regarding inflation, the landlord may insert an indexation clause in the lease agreement so that the rent will automatically be modified in case of a variation in the inflation index.

For residential leases, rent can be reviewed only every two years. Luxembourg law distinguishes two cases for residential rent review:

For lease agreements concluded before 1 November 2006, a written notice has to be sent to the tenant, who has three months to accept the rent increase or terminate the lease ; if the rent increase exceeds 10% of the current lease amount, this increase must be split over the next three years (e.g., a 3.3% increase per year).

For lease agreements concluded after 1 November 2006, the 10% limit does not apply, so the landlord may increase the rent above 10% without the three-year split described above. In any case, the aggregate annual amount of the rent may not exceed 5% of the amount invested by the landlord to acquire the building. The landlord must first send a notice to the tenant and if the parties cannot come to an agreement within a month, a mediator (commission des loyers) may intervene, whose decision may be appealed before a Luxembourg court. A bill of law amending the provisions of the law on residential leases is currently being discussed.

# What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

Deliver the leased premises in a good state.

Proceed with major repairs to provide the tenant with leased premises in a good state.

Guarantee the right to peacefully use the leased premises.

Guarantee the tenant against hidden defects and conformity defects (défauts de conformité).

The following are usually required of tenants:

Use the leased premises according to the “prudent person rule“ (en bon père de famille), for the purpose indicated in the lease agreement.

Pay the rent.

For residential leases, proceed with minor repairs, except if damage are due to normal wear and tear (vétusté), the landlord shall proceed with such repairs.

# 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 allowed to sublet the leased premises or to transfer the lease contract, unless it is expressly prohibited in the lease agreement.

Leases often contain a clause prohibiting subletting. Notwithstanding such prohibition clause, subletting a commercial lease agreement is possible under the following conditions:

Subletting is carried out together with the sale or succession of the business ongoing in the premises (fonds de commerce)

An identical business remains carried out in such premises

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

If, during the term of the lease, the leased premises are totally destroyed by force majeure, the lease contract is automatically terminated. If the leased premises are only partially damaged, the tenant may request either (i) a reduction in rent or (ii) termination of the lease.

# Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises (i.e., the building) and the tenant is responsible for insuring all furniture and other items in the leased premises.

The tenant is responsible for any damage (even to the building) caused by fire and, therefore, has the responsibility to be insured against such risk.

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

If the leased premises are sold by the landlord during the lease, the lease agreement is transferred to the purchaser. The new landlord may not terminate the lease agreement except if this is expressly allowed in the lease contract.

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

The lease will survive in the event of foreclosure.

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