Global Corporate Real Estate Guide - Switzerland

Leases

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# What are the usual forms of leases?

Commercial/residential leases

The majority of Swiss residents are tenants. As a consequence, there is a wide range of legal precedent regarding rental law. The regulations applicable to leases for residential premises partly differ from those for commercial premises.

Under a lease agreement, the landlord leases the rented space to the tenant in return for rent payment. In residential leases, quite often standard form contracts are used to conclude rental agreements. The parties determine key issues (such as the object of the agreement, term, rent, ancillary costs) and agree that statutory provisions otherwise apply.

Ground leases

A ground lease represents an easement that gives a person the right to erect or retain possession of a building on a parcel of land that he or she does not own. The ground lease is, unless otherwise agreed, transferable and may be inherited and can, as long as it is defined as an independent and permanent right (at least 30 years) be recorded as property in the land register. The advantage of such independent ground lease is that it can be individually mortgaged. An independent ground lease right can be set up for a maximum period of 100 years. As a rule, payment of ground lease interest is agreed and the grantor receives a lien to the ground lease to secure his or her claim.

Usufructuary lease agreements (Pachtverträge)

Usufructuary lease agreements grant the tenant the right to use the leased space as well as the additional right to all commercial profits  generated within the leased premises (e.g., restaurant, bar, hotel etc.).

# Are lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and are freely negotiable. However, rental law contains a number of compulsory provisions protecting the tenant (e.g., above-market rent, minimal notice periods).

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

Rental agreements may be agreed for a definite (fixed) or an indefinite period of time. For residential purposes, the latter is more common. For commercial purposes, fixed-term leases with extension options are more common.

There is no exact maximum term for leases. If the lease agreement for business purposes has been concluded for a definite period of time, it will commonly have a fixed term of 5–20 years. Fixed terms below five years are rare as the rent cannot be raised proportionally to the development of the Swiss consumer price index.

Quite often, rental agreements with a fixed term include an option in favor of the tenant to extend the lease once or twice, often each time for a period of five years. Depending on the agreement, the extension option is a “true option” or a “false option.” In the first case, the tenant is entirely free to exercise the option and no further negotiations are required. In the second case, the parties only agree that, prior to the expiry date, they will negotiate the terms of a new lease agreement.

# What are the usual lease terms?

If the lease agreement for commercial purposes has been concluded for a definite period of time, quite often it has a fixed term of 5–20 years with an option in favor of the tenant to extend the lease twice, each time for a period of five years. There is current trend of shorter terms, except in sale and lease-back transactions where longer term leases are still common.

Rental agreements for residential purposes are typically entered into for an indefinite period of time. In this case, each party can terminate the lease with three to six months’ prior notice.

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

A tenant of residential or commercial premises may request an extension even in the case of a fixed term rental relationship, if the termination would result in hardship for the tenant unjustified by the interests of the landlord. The court will take into account the circumstances of the conclusion of the agreement, the duration of the rental relationship, the personal, family and economic condition of the parties and their behavior, the possible need for personal use by the landlord as well as the urgency of such needs and the conditions of the local market for residential and business space. A lease agreement may be extended for a maximum duration of four years with regard to residential space and for a maximum duration of six years with regard to business space.

# On what grounds may a lease be terminated?

If a lease agreement has been entered into for an indefinite period of time, both parties may generally terminate the lease agreement at any time by serving a notice with the statutory notice period with effect as of the statutory termination dates. The statutory notice period for residential leases is three months, and for commercial leases, six months. Longer notice periods can be agreed.

Furthermore, a landlord can terminate the lease under the following circumstances (even in case of a fixed term lease):

The tenant falls behind with the payment of the rent or ancillary costs and the landlord has already granted the tenant a grace period for the payment and has threatened to terminate the lease agreement after the expiration of such grace period. If the tenant does not pay within the grace period, the landlord may give notice of termination of the lease agreement effective after a period of another 30 days and at the end of a calendar month; or

If the tenant repeatedly violates the duties of care and consideration to other occupants and neighbors of the rented premises, the landlord may give notice of termination of the lease agreement effective after a period of at least 30 days, as per the end of a calendar month, provided that the landlord has previously warned the tenant in writing that the continuation of the rental relationships is endangered due to the behavior of the tenant. The notice has immediate effect if the landlord can prove that the tenant intentionally caused serious damage to the leased premises.

Finally, a tenant can terminate the lease when the landlord is aware of a defect and does not remedy it within an adequate time period. The tenant may give notice of termination with immediate effect if the defect prevents or significantly impairs the predetermined use of the leased premises. This termination right applies irrespective of whether a fixed term lease or an indefinite term lease has been agreed.

# Must rents be paid in local currency?

The parties are free to set the rent in other currencies. But arrangements for payment of rent in a foreign currency are not common.

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

This will depend on the agreement of the parties. Rent for residential properties is usually paid monthly in advance. Rent for commercial properties is often paid monthly or quarterly in advance.

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

If the parties have not agreed on any rent review mechanism, the rent may be reviewed where the landlord’s costs increase (or decrease), or the leased object has been improved. The landlord may increase rent with effect as of the next possible date of termination of the rental agreement. Such an increase must be formally notified and justified. It is typically justified if the increase of the rent is the result of an increase in the applicable benchmark interest rate issued by the Swiss government. The same adjustment mechanism also allows the tenant to request a rent review. The tenant may further request a rent review if the landlord achieves an excessive yield.

On the other hand, the parties may agree, under certain conditions, on different forms of reviewing the rent, such as indexed rent, staggered rent or a turnover rent.

In case of indexed rent, the rent may only be increased based on increases of the Swiss consumer price index. Indexed rent is only enforceable if the lease agreement is concluded for a fixed term of at least five years.

Staggered rent is only enforceable under the following circumstances:

The lease agreement has been concluded for a fixed term of at least three years

The time period between each increase amounts to at least one year

The amount of the increase is fixed in advance

Staggered rents and indexed rent cannot be combined for the same period of time. Therefore, commercial lease agreements sometimes provide for a staggered rent at the start of the lease agreement (e.g., to support the tenant in the setting up of his/her business) and subsequently for an indexed rent.

# What are the basic obligations of landlords and tenants?

The following, among other obligations, is required of landlords:

Transfer the object of the lease at the agreed time in a suitable condition for the predetermined use and maintain it in such condition. In addition, a landlord is, in certain cases and at the request of a prospective tenant, obliged to inform the prospective tenant of the rent of the preceding tenant and provide him/her with the report of return

Remedy all defects of the leased object, except where these defects are only of a small value

The following, among other obligations, is required of tenants:

Pay the rental fee on time

Pay ancillary costs

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

Use the leased object carefully, i.e., tenants must give due consideration to other occupants and neighbors of 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?

Both residential and commercial leases can be transferred provided all three parties (old tenant, new tenant and landlord) agree on the terms in a transfer agreement. In case of a commercial lease, however, the landlord may only refuse its consent for valid reasons. At the same time, the old tenant remains jointly liable with the new tenant until the next termination date.

Given the consent of the landlord, the tenant may sublet the leased premises fully or partially. The landlord may refuse such consent only if the tenant refuses to inform the landlord of the terms of the sublease, if the terms of the sublease are less favourable to the landlord than the terms of the principal lease agreement or if the sublease triggers significant disadvantages for the landlord.

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

As a principle, the tenant can claim a rent reduction if the leased premises are destroyed or damaged. If the damage or destruction has been caused by the tenant, the landlord has a direct claim against the tenant.

If the premises are substantially damaged or destroyed by an act of God and if the continuation of the lease is therefore no longer possible, the lease is terminated by operation of law. Neither the landlord nor the tenant owes the other for damages. The tenant can claim back rent paid in advance and security services.

# Who is usually responsible for insuring the leased premises?

The landlord is responsible for insuring the leased premises. However, it is suggested that tenants have their own private liability insurance to cover any damage caused to the property. Often lease agreements contain an obligation on the tenant to take out certain property-related insurance as well.

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

If the landlord sells or otherwise transfers the leased premises to a third party, the rental relationship is transferred to the buyer of the leased object by operation of law. However, the buyer may terminate the rental relationship with the statutory notice period (i.e., three months for residential premises and six months for business premises) effective as from the statutory termination date. However, this right can be exercised only if the new owner and landlord can demonstrate an urgent need of the leased premises for him/her, close relatives or in-laws. In case a fixed term lease is broken by the new owner based on the above-mentioned principles, the tenant can claim damages from the previous landlord (i.e., the seller).

To protect him/herself from such termination by the new landlord, the tenant may register his/her lease agreement with the land registry. In this case, the buyer of the lease premises will have to accept the lease agreement as is and he or she cannot break the lease despite an urgent need to use the leased premises.

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

In principle, the same applies as in "Who is responsible for insuring the leased premises". At a foreclosure sale, a rental lease is generally transferred to the transferee. But if mortgage creditors suffer loss and their mortgage instruments have age-priority over the lease agreement, they may request a second auction (double call) without committing the buyer to take the lease. The double call is possible both for rental relationships marked in the land register as well as for unregistered long-term leases. After the double call, the buyer is allowed to terminate the rental relationship in compliance with the statutory notice period effective as from the statutory termination date.

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