



ISSUES RELATING TO COMMERCIAL LEASING

ARGENTINA

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CONTACT INFORMATION

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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

Value Added Tax is applicable if the rental exceeds AR\$ 1,500 per month (approximately US \$ 410).

The provincial turnover tax is applicable to all normal business activities carried out (whether by entities or individuals) within any province or the City of Buenos Aires on a regular basis. Each province and the City of Buenos Aires have enacted their respective turnover tax regulations. In the City of Buenos Aires, lease fees are taxed at a 1.5% rate (law No. 2998). Stamp tax is a local tax levied on public or private instruments, executed in Argentina or, if executed abroad, when they have effects in Argentina. In general, this tax is calculated on the economic value of the agreement and the parties who executed the document (and the notary public if applicable) are severally and jointly liable. The applicable rate ranges from 0.5% and 1 % —depending on the province— calculated on the aggregated value of the amount of the agreement.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).

A lease contract is subject, under Argentine Law, to a maximum term of 10 years. The consequence of this is that any lease agreed for a longer term will automatically terminate upon the expiry of 10 years. To overcome this restriction the parties may (i) request the courts

to issue a decision allowing an extension or (ii) attempt to classify the contract as one of usufruct rather than a lease, thus benefiting from the longer maximum term of a usufruct (in general, 20 years).

3. Describe any laws requiring landlords to allow a tenant to renew its lease.

There are no express statutory provisions indicating that the term of lease automatically renews; however, the parties are able to agree in the contract the automatically renewal.

4. Describe any restrictions on rent that may be charged for to a tenant.

There are no restrictions on the amount of rent that may be charged for a commercial lease to a tenant.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

Notwithstanding the minimum term for commercial leases of 3 years, after the first six months of the lease have expired, the tenant has a legal right to terminate the lease prior to the expiry of the minimum contractual term. In order to benefit from this right, the tenant must give due notice to the landlord, indicating its decision to terminate the lease at least 60 days prior to the date upon which it intends to vacate the property. Should the tenant avail itself of this right during the first year of the tenancy it is obliged (in addition to the giving of notice) to compensate the landlord in the amount of one and a half month's rent. This compensatory payment is reduced to one month's rent after the expiration of the first year of the tenancy.

6. Describe any laws allowing tenants to assign or sublease without landlord's consent.

The Civil Code establishes that the tenant may sublet in whole or in part, transfer or otherwise dispose of the leased premises provided that it is not prohibited by the lease contract or by law.

If the lease contains a clause purporting to prohibit the transfer or subletting of the lease "without the consent of the landlord", the tenant may nevertheless transfer or sublet in the absence of such consent providing that the proposed transferee or subtenant is solvent and of good credit rating.

The rationale behind this legal provision is that it is presumed that the landlord would be willing to give his consent to the occupancy by a new tenant or subtenant shown to be both solvent and of good credit standing.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

The lease contract may contain a prohibition on the assignment of the lease or a subletting of the leased premises.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

An action for eviction is brought before the ordinary civil courts. In case that the action is filed against intruders or against a tenant who has not fulfilled its payment obligations or does not want to leave the premises after the expiration of the term agreed by the parties, the tenant may request the immediate eviction of the tenant. The customary length of time for this proceeding is between six months and one year.

9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?

There are no legal restrictions.

10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.

There are no restrictions regarding the handling of security deposits.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

There are no such legislated minimum disclosure requirements.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

In principle commercial landlords are not required to collect taxes on rent or other taxes from tenants.

13. Describe any limitations on the ability of landlords to exercise self-help.

Commercial landlords may not exercise self-help.

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

In principle, such remedies shall be expressly stated in the agreement to be enforced.

In Argentina, rent is usually paid within the first 5 days of the corresponding month and lack of payment is considered breach of contract and is considered as grounds for eviction and collection of any amounts owed by the tenant to the landlord under the lease agreement.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

In case that the landlord believes that the tenant would not leave the premises after the term of the lease expires, an early eviction action before the ordinary courts may be filed. The decision would be enforceable after the term of the lease expires, provided that the tenant does not leave the premises. This legal action is usually filed from three to six months before the expiration of the term of the lease. If the tenant complies with its obligation of leaving the premises as provided in the corresponding lease agreement, all the legal costs shall be cancelled by the landlord.

16. Describe any formal requirements for the execution of a lease.

The agreement shall be in writing and signed by the parties thereof. It is recommended to notarize the signatures.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

Commercial leases are not registered in Argentina.

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?

There are no such restrictions and a transfer does not affect the tenant's rights and obligations.