



## ISSUES RELATING TO COMMERCIAL LEASING

### CHANNEL ISLANDS Mourant Ozannes

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

Stamp duty is levied on the creation or assignment of leases in excess of nine years (which must be passed before the Royal Court of Jersey and recorded in the Public Registry). This is calculated in the following way (as at November 2008):-

The annual rent is multiplied by the length of the term (subject to a maximum multiplier of 21) with any premium and optional extension included. Of the total, 0.5% is charged in respect of the first £100,000 and 0.75% is charged in respect of any sum in excess of £100,000.

Stamp Duty is not levied on leases of less than nine years (which do not have to be passed before the Royal Court or registered in the Public Registry).

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

There is no legal minimum or maximum lease term. The term of the lease is entirely a matter for the parties.

However please note the distinction between contract leases (leases in excess of nine years duration), which must be passed before the Royal Court of Jersey and which are treated as realty, and paper leases (leases of under nine years duration), which do not have to be passed before the Royal Court of Jersey and which are treated as personality.

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

There is no legal requirement on landlords to allow a tenant to renew its lease if there is no requirement to do so under the terms of the lease.

There may be an option to renew contained in the lease, however note that there is no remedy of specific performance in relation to any part of the term of a lease in excess of nine years, therefore if the landlord fails to permit the exercise of the option without valid reason the only remedy that the tenant may seek in respect of any term in excess of nine years is damages.

If the landlord permits the tenant to remain in occupation without an express extension of the lease this may give rise to a "tacite reconduction". Where this occurs the rights and obligations of the parties stated in the lease continue in full force, with the exception of any guarantee provisions, which do not extend to the "reconduction". It is not clear how long after the expiry of the lease the tenant must remain in occupation before the "reconduction" takes effect, however there is authority to suggest that a period of one month may be enough.

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

There are no restrictions on the rent that may be charged to a tenant of commercial premises. This is entirely a matter for the parties to agree.

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

There are no laws permitting a tenant to terminate prior to the lease expiration date.

The parties may agree to terminate a lease prior to the stated date, however note that a lease with a stated term in excess of nine years would require a contract of cancellation to be passed before the Royal Court.

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

The customary law of Jersey forbids assignments or sub-lettings without landlord's consent.

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

There are no laws either expressly allowing or prohibiting landlords from restricting assignments or sub-leases. Therefore it is possible to have an absolute prohibition on either.

If there is a right to assign or sub-let contained in the lease then in almost every case that right will be subject to the tenant first obtaining landlord's consent. The lease often prevents the landlord from unreasonably withholding or delaying consent.

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

For leases of less than nine years duration and where the annual rent does not exceed £15,000, proceedings must be brought in the Petty Debts Court. The Royal Court of Jersey has jurisdiction in relation to other leases.

The length of time for completion of eviction proceedings varies.

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

A charge may only be taken over a lease if it is a contract lease (i.e. the term of the lease is for more than nine years and registered in the Public Registry) and the lease expressly permits a charge to be taken over it or the landlord expressly consents by way of contract passed before the Court to such a charge being taken.

**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 statutory requirements regarding the holding of security deposits

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

There are no statutory disclosure requirements to be made by landlord to tenant. The disclosures required are the same as those that would be required under contract law to be made by one party to a contract to the other.

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

Landlords who are registered for Goods and Services Tax (GST) are required to collect GST on rent from tenants of leases of commercial property at a rate of 3% (as at November 2008), although there are exceptions for certain financial services providers. GST is not charged on leases of residential accommodation.

With effect from 1st January 2009 tenants of non-Jersey resident landlords must withhold Jersey income tax at a rate of 20% from rental payments and pay such tax to the Comptroller of Income Tax, unless the non-Jersey resident landlord has produced a certificate (issued by the Comptroller in certain circumstances) permitting the tenant to pay rent to the non-resident landlord free of deduction.

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

There are various common law rights permitting landlords to exercise distraint on their tenant's goods. However, this right is subject to certain conditions and restrictions.

A Court order is required to effect cancellation of a lease in excess of nine years duration. Opinion is divided as to whether a Court order is required to cancel a lease of less than nine years duration.



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

Any such remedy would have to be expressly stated in the lease to be enforceable and is rarely seen in a Jersey lease.

**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.**

There are no expedited remedies for tenant default.

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

There are no particular formalities required in respect of leases of nine or fewer years. However such leases are usually signed by individuals, or by directors on behalf of companies.

Leases in excess of nine years must be passed before the Royal Court and must be presented to the Royal Court by a Jersey-qualified lawyer. The parties must appear in person or by way of representatives before the Court.

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

A lease in excess of nine years must be registered in the Public Registry and as such is enforceable by and against successors in title and assigns. A lease of less than nine years is not registered and is therefore only effective as between the parties unless the lease is stated to be binding on the successors in title and assigns of the parties.

**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 restrictions on the transfer of ownership of properties subject to a lease. The transfer will usually be subject to the terms of any such lease.