



## ISSUES RELATING TO COMMERCIAL LEASING

### DENMARK

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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.**

There are no mandatory direct or indirect taxes payable to the state on the conclusion or assignment of a commercial lease agreement.

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

There are no statutory restrictions on the duration of a commercial lease agreement. A commercial lease agreement is usually concluded without restrictions in terms of duration, but is subject to notice of termination. According to Danish law, the tenant can terminate the lease freely according to the agreed term of notice, except if it is interminable for a specific period of time. The landlord can however only terminate the lease, according to the specific circumstances mentioned in the Danish Commercial Lease Act.

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

There is no legislation in Denmark which governs renewals of commercial lease agreements.

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

The landlord and the tenant may freely agree on the rent amount. The only restriction is that the rent amount may not be unreasonable or contrary to honest conduct.

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

Commercial lease agreements have no expiry date and may freely be terminated at the notice agreed in the agreement. A period from the commencement of the lease agreement during which the tenancy agreement is interminable on the part of both parties may have been agreed. If the parties have agreed on a period of non-termination, the parties cannot terminate the lease. If the tenant terminates the lease by moving or not paying rent, the tenant is obliged to pay a compensation to the landlord decided by the court.

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

The tenant may only sublet if this was agreed with the landlord in the commercial lease agreement concluded. There is no statutory right to sublet leased premises.

The tenant has a right of assignment under the Danish Commercial Lease Act (erhvervslejeloven) in the absence of other agreement. The right of assignment and the conditions on which it may take place are usually agreed between the landlord and tenant in the commercial lease agreement.

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

In this respect, under the Danish Commercial Lease Act there is freedom of contract.

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

Non-payment:

The landlord must send a claim after the due date about payment of the payable rent to the tenant, who must be given three days to pay from receipt of the claim. If the tenant fails to pay within this time limit, the landlord may terminate the tenancy agreement.

If the tenant does not vacate the premises voluntarily, the landlord may submit the matter to the enforcement court to which the tenant is summoned to a meeting to discuss the matter. If the tenant does not vacate the premises voluntarily after the meeting, the landlord may request the enforcement court for enforcement procedure where the tenant is physically evicted from the premises. The length of time depends on the delay between issue of proceedings and trial of the enforcement court, but a period of approx 3 months should be expected from the non-payment to the final eviction.

Other non-performance:

Termination of a commercial lease for other reasons than non-payment must be made through the housing tribunal where the completion of a case takes approx 1 year. The housing tribunal consists of a judge and 2 members, 1 appointed by a landlord organisation and 1 by a tenant

organisation.

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

No, there are no restrictions on pledging a tenancy agreement which secures a loan agreement. If a tenancy agreement shall have a value to pledge, it has to contain a right to assign the tenancy agreement to a third party, or else it is not possible to change tenant.

**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 is no requirement for the landlord to set up such a specific bank account. Security deposits paid to the landlord for a amount up to 6 months rent, is secured in the property ahead of mortgages, according to § 6 in the Danish Commercial Lease Act.

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

There are no specific rules on the information which the landlord must provide in a commercial lease agreement.

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

There is only one type of tax (VAT) which the landlord shall collect from the tenant if the property is registered for VAT.

Usually the landlord and tenant have agreed that the rent includes the direct and indirect taxes incumbent on the property, and that the tenant will pay future increases in direct and indirect taxes in relation to the property to the landlord.

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

The landlord may not exercise self-help. The landlord must enforce his claim before the courts if he wishes to evict the tenant from the premises or if he has other claims against the tenant.

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

For a landlord to charge a rent increase the landlord and the tenant must have agreed that such increase may take place. Normally, the landlord and the tenant will agree on a yearly increase in the rent according to the rise in the net price index. If there is no agreement, the parties can only raise the rent, if the rent deviates by more than 10 – 15 percent from a rent a knowing landlord and tenant will agree on according to the rules in clause 13 in the Danish Commercial Lease Act.

**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.**

Under Danish law there are no possible ways to expedite a legal decision of a tenant's breach. It is possible to agree on arbitration proceedings of disputes under the tenancy agreement. Arbitration proceedings are not necessarily faster than a usual housing tribunal case.

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

Under Danish law there are no formal rules for the wording or form of a commercial lease agreement. A commercial lease agreement may be entered into both in writing and orally.

**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 commercial lease agreement may be registered on the property in which the premises are located.

All the tenants' rights according to the Danish Commercial Lease Act are protected, but all agreed further rights must be registered to be secured, cf. The Danish Registration of Property Act.

Registration of the agreement entails that the rights vested in the tenant in addition to the rules of the Danish Commercial Lease Act are protected vis-à-vis a bona fide third party and creditors of the landlord.

**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 sale of a property with commercial tenants.

There are no changes of the tenant's rights and obligations in the case of change of ownership, unless otherwise agreed.