



ISSUES RELATING TO COMMERCIAL LEASING

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1. Describe national or local transfer taxes payable on creation or assignment of a lease.

Conclusion of a lease agreement does not itself trigger tax and duty payment consequences, unless the parties have agreed that in order to protect interests of the lessee the lease relationship arising out of the respective agreement is registered with the appropriate division of the Land Register of the Republic of Latvia. Such registration involves payment of a chancellery fee in the amount of 3 lats, a fee for receipt of certificate in amount of 6 lats and additional expenses for notary services, if necessary. The same would apply in the case of an assignment of a lease.

Income from the leasing of property shall be included in taxable income of the lessor subject to 15% corporate income tax. Payments made to a non-resident lessor by a resident lessee are subject to 5% withholding tax to be paid into the state budget of Latvia no later than on the 15th date of the month following that of the payment. The payer of the sum has to keep accounting records of the disbursements and withhold taxes and submit reports to the State Revenue Service of the Republic of Latvia and receiver of the funds.

The assignment of a lease does not trigger any transfer tax consequences or additional fees to be paid for registration of assignment of lease with the State Land Register Division. If the assignment of a lease is based on the sale of the leased property then the lease registered with the State Land Register Division will remain as a binding record for the new owner of the property. The registration of a change of owner of the real property with the State Land Register Division would be subject to a state fee at the rate of 2% of the value of the transaction or cadastral value of the real estate in lats shall be paid into the state budget; however, not more than 30,000 lats.



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

Legal provisions do not set any restrictions limiting the term of the lease agreement. The Civil Law provides for the possibility to enter into lease agreement also for unspecified period of time, in such case the lease agreement shall expire in six months after the party thereto submits a termination notice.

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

The law does not impose a legal obligation on the landlord to agree to renew the lease agreement.

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

Generally the law does not set restrictions on rent that may be charged for to a tenant. In accordance with Civil Law the rent shall comprise fair compensation for the use of the property and the amount of the rent is determined by the parties.

In specific exceptional instances related to separate ownership of the land and buildings resulting from the land reform, the maximum amount of the rent for the use of the land by the owner of the respective building may not exceed 5% of the cadastral value of the land per year.

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

Civil Law provides for several grounds permitting tenants to request termination of the lease prior to its stated expiration date.

First, the tenant may withdraw from the lease agreement unilaterally, if such right has been agreed between the parties in the lease agreement. Moreover, the tenant may request the cancellation of the agreement without the consent of the landlord (even if such right has not been agreed in the lease agreement), if: (a) the landlord delays the delivery of the property for so long, that the lessee loses interest in using the property; (b) the landlord does not do the required repairs in the property or the property is so damaged, that its use is seriously hindered and the damage cannot be cured; (c) the property has qualities being hazardous to human health.

Furthermore, the tenant may request termination of the lease agreement, if the rent more than two times exceeds the actual lease value of the subject of lease. However, the Civil Law contains material restrictions for such termination of the lease agreement, because such rights may be exercised only if it is proven that the landlord has acted in bad faith. The right to bring the claim regarding termination of the lease agreement due to such excessive loss is effective only for the period of one year as from the moment of conclusion of the lease agreement.

Finally, in accordance with Article 2168 of Civil Law the lease agreement terminates automatically, if: (a) the leased property perishes; (b) the landlord loses the title to the property (however, the lease agreement will remain in effect, if the lease agreement has been registered with the Land Registry and the title is lost as a result of transfer of leased property to a third party); (c) the lessee has acquired the leased property.



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

The Civil Law states that the sublease is not permitted without the consent of the landlord. If the object of lease is nevertheless transferred into sublease without the consent of the landlord, the landlord may claim the cancellation of the initial lease agreement.

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

Landlords may act freely and not to agree to sublease. This issue is not regulated by legislation and the general civil law principle is applicable, i.e. everything that is not expressly prohibited is permitted.

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

The tenant can only be evicted by a court bailiff, further to the entrance into effect of the court judgment on the termination of the lease agreement and eviction of the tenant. Self-help and arbitrary eviction of the tenant is not permitted, even though it may have been agreed to in the agreement. If it, nevertheless, happens, the landlord shall compensate for all the losses.

Generally, after commencement of eviction proceedings the court bailiff invites the tenant to release the property voluntarily. If the property is not released within the term specified by the court bailiff, the eviction of the tenant is performed by the court bailiff in the presence of witnesses or the police (if the tenant repeatedly ignores the eviction proceedings).

The length of the eviction proceeding depends on the length of the litigation between the tenant and the landlord. Although it depends on factual circumstances of each case, the review of the case in all three court instances may take three to five years. After entering into effect of the court judgment, the eviction proceedings carried out by the court bailiff may take two to four weeks.

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

It has been recognized in the practice of Latvian courts that a leasehold interest cannot be mortgaged as a security for financing.

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 such requirements.

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

There are no such requirements.

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

The lease or rental of real property located in Latvia is subject to value added tax at the current rate of 21% with the exception of the lease/rental of residential premises which is exempt from VAT. Please note that due to the current financial crisis it is possible the government may change tax rates at any time depending on the state of the budget.

The owners of real property are subject to real property tax. Landlords sometimes indirectly impose the tax on tenants by inclusion in the lease/rental fees or by contractual arrangement. However, the owner of the property cannot transfer liability of the tax to tenants by contract.

As of January 1, 2007 the real property tax is imposed on buildings and land except for those real estate categories listed in the Law on Real Estate Tax as tax exempt, including but not limited to municipal real estate, used by the municipality; real estate owned by foreign states used for the needs of diplomatic and consular representative offices; real estate of religious organizations; buildings and the part thereof, used for the needs of environmental protection, etc.

Applicable tax rates are as follows:

- Till December 31, 2010 – 1% of the cadastral value of the real estate;
- As of January 1, 2011 – 0.4% (base rate) of the cadastral value of the real estate. Municipalities are entitled to state additional rate, not exceeding 0.6% of the cadastral value of the real estate, if there are binding regulations issued thereon by the 1st of October of the pre-taxation year.

Cadastral value of the real estate object is determined by the State Land Service and the taxation period of the relevant tax is one calendar year.

Currently the law states the restriction for increase of the amount of real estate tax, namely, the scope of changes of the real estate tax per year may not exceed 25%.

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

Self-help is not allowed, however, by way of exception from the general principle that conflicts shall be resolved through court, in respect to the land lease the tenant is entitled to exercise the detainer rights over the products of the land plot and movable property of the tenant located on the land plot. Detainer rights means that a certain property held in actual possession is administered and kept for as long as the claim has not been satisfied. Arbitrary eviction from the object of lease is not permitted, even though it may have been agreed to in the agreement. If it, nevertheless, happens, the landlord shall compensate for all the losses.

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

Latvian laws do not provide for any regulation regarding acceleration of rent therefore it must be expressly stated in the lease agreement. It is worth mentioning that the Civil Law prescribes that the rent shall be paid only after the end of the period of use, unless the lease agreement provides for another procedure. In case the lease agreement is concluded for the period of one year or longer the rent is payable six months in advance, unless the agreement provides otherwise. The Civil Law imposes on the tenant the obligation to pay late interest, if the rent is not paid within the terms prescribed by the agreement. In practice the procedure for payment and acceleration of rent is usually agreed between the parties in 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.

The landlord may address the court and request termination of the lease agreement, if: (a) the rent has not been paid within the prescribed terms; (b) if the tenant damages the leased property; (c) the tenant has sub-leased the property without the consent of the landlord. The rights of the landlord referred to above derive from Civil Law.

Also, with respect to the payment obligations the landlord may apply to court for expedited enforcement of the payment obligations in the warning procedure. This procedure can be used for expedited enforcement of payment obligations, if the payment obligations are based on a written document and if the obligations are due. The procedure cannot be used if: (a) the location of the tenant is not known; (b) the location of the tenant is outside the Republic of Latvia; (c) the payment is related to unperformed counter performance; (d) the amount of the requested penalty exceeds the principal amount of debt. Also, the expedited enforcement procedure has to be terminated if the tenant raises objections to the claim for payment of monies due. In such case the controversies between the parties would have to be resolved in regular court proceedings.

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

In practice lease agreements are mainly executed in a written form, but it is not a mandatory requirement for commercial lease. The written form is necessary, in order to register the lease agreement with the Land Registry. For the agreement to be valid, it should at least contain the understanding on material components, i.e. subject of the agreement and the rent.

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

Lease agreement becomes binding on third parties, when it is recorded with the Land Registry. Registration of the agreement with the Land Registry is favorable for the tenant, thus preventing the risk that the agreement could be terminated by transfer of the lease object. Landlord might also be interested in corroboration of the lease agreement to cover against the obligation to compensate losses to the tenant in case if the new acquirer chooses not to continue the lease.

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?

The law does not set any restrictions for transfer of property, as long as it is under lease, however the potential acquirer might be not interested in the real property which is subject to lease with complicated termination provisions.

If the lease agreement is recorded with the Land Registry, it should be observed also by the new acquirer of the property. If the lease agreement is not registered with the Land Registry, then the new owner is entitled to terminate it and the initial landlord would cover all losses, incurred as a result of early termination of the lease agreement. In such case the new owner is obliged to provide the tenant with reasonable time to vacate and return the object of lease.