



ISSUES RELATING TO COMMERCIAL LEASING

POLAND

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

None.

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

Polish law does not restrict the term of a lease. A lease, however, concluded between the business parties for more than thirty years, after expiry of thirty years, is deemed for the remainder of the lease to have been concluded for an unspecified period of time.

Further, if at least one party to a lease for more than ten years is not a businessperson, the lease after the expiry of ten years is deemed for the remainder of the lease to have been concluded for an unspecified period.

A lease for an unspecified period can be terminated by either party serving one-month's notice, with termination to have effect at the end of a calendar month, if the rent is paid monthly. In addition, if the object leased is sold, the buyer can terminate the lease on the same terms.

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

Polish law does not contain any such provisions; the parties are to agree on any renewal.

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

None.

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

If a lease is for a specified period it can be terminated by either party only upon occurrence of the situations specified in the lease. Additionally, a tenant can terminate a lease, to have immediate effect, if the leased premises have defects that prevent the tenant enjoying normal use, and which cannot be repaired, or, if the landlord does not repair such defects, despite the tenant giving notice to repair. Further, if the leased premises have defects that threaten health or life, the tenant can terminate the lease, to have immediate effect.

If a lease is for an unspecified period, the lease can be terminated by serving the notice specified in the lease. If the lease is silent on termination, either party can terminate it by serving one month's notice, to have effect at the end of a calendar month, if the rent is paid monthly, or three-month' notice, to have effect at the end of a calendar month, if the rent is paid in periods longer than one month. Further, if the premises are leased, the statutory termination period amounts of three months.

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

Any assignment of a lease or subleasing of leased premises require the consent of the landlord.

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

Assignment and sublease of leased premises by the tenant are restricted by law.

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

Eviction requires a court order; the procedure will only be successful upon prior, effective termination of the lease.

A common security a landlord takes for possible eviction is a tenant's voluntary submission to debt recovery enforcement, under article 777 § 1 (4) of Civil Procedure Code. That submission is in the form of a notarial deed and enables the landlord, after obtaining a court confirmation allowing for enforcement, to apply to the court-order enforcement officer to commence eviction. That security and subsequent enforcement are quicker and more effective than regular court eviction proceedings.

Eviction, from date of submission of a claim to the court to completion of enforcement, takes at least a few months.

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

A tenant cannot in any manner, whatsoever, encumber a lease.

A landlord can assign rights under a lease, i.e., the right to collect rent, to the third parties, e.g., a bank, unless the lease provides otherwise.

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.

That is not regulated by Polish law.

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

A building to be let must have an energy performance certificate establishing an amount of energy necessary to fulfil all requirements connected with use of the building. That obligation is based on Energy Performance of Buildings Directive 2002/91/EC.

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

Value Added Tax (VAT) of 22% applies.

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

Landlords cannot exercise self-help.

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

That is not regulated by Polish law, therefore, the parties must provide for that in the 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.

A tenant can provide the landlord with a separate deed that has voluntary submission to debt recovery enforcement, under article 777 § 1 (4) or (5) of Civil Procedure Code. That would enable the landlord to enforce outstanding payments, summarily. The deed would have to have a court confirmation allowing for enforcement that would enable a court-order enforcement officer to enforce it.

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

A lease for more than one year must be in writing.

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 does not have to be registered.

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?**

A lease does not affect a landlord's ability to sell the property. The general rule is that a buyer enters into all of a landlord's rights and obligations under a lease relationship (excluding additional provisions which are not customary for an ordinary lease, e.g., a preliminary contract of lease, obligation to prolong a lease for a further period, etc.).

However, the buyer can terminate the lease by serving statutory periods of notice, i.e., one month, to have effect at the end of a calendar month, if the rent is paid monthly, or three months, to have effect at the end of a calendar month, if rent is paid in periods longer than one month. If the premises are leased, the statutory termination period amounts of three months.

A buyer would not be entitled to terminate the lease when the lease is for a specified period, is in writing, and has a date certain (e.g., notarial confirmation of the date of it) and the object leased was given to the tenant.