



ISSUES RELATING TO COMMERCIAL LEASING

PORTUGAL

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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.

Property transfer tax is due by the tenant in lease agreements with duration of more than 30 years, either when such duration is the initial term, or it results from the renewal of the lease agreement.

Additionally, in accordance with the Portuguese Stamp Duty Code, the execution of a commercial lease agreement is subject to stamp duty, due by the landlord, at the rate of 10% over the amount of the rent corresponding to one month.

Stamp duty on lease agreements must be paid on or before the 20th of the month following the date of the execution of the lease agreement.

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

Urban lease agreements and specifically commercial leases are regulated by the Portuguese Civil Code, as amended by Law 6/2006, September 27th (“New Regime for Urban Leasing” or “NRAU”).

Under the NRAU, although the parties are free to agree the duration of commercial lease agreements, such duration may not exceed an initial period of thirty years. However, there are

no statutory limitations for renewals. Therefore in practical terms, a lease agreement can have a total duration of more than thirty years, if both the initial term and its renewals are considered.

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

Under the NRAU, the parties are free to agree the terms of the duration, renewals, and termination of commercial leases. Therefore, renewal provisions will vary on a case to case basis, in accordance with what has been agreed between the parties.

Should the parties not agree any renewal provisions in the agreement, the agreement shall be renewed in accordance with the general legal provisions contained in the NRAU for home leases, which provides that the lease agreement is automatically renewed for equal and successive periods of 3 years, if not terminated by the tenant with a prior notice of 120 days or by the landlord with a prior notice of 1 year, both from the end of the initial term or its renewals.

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

The NRAU does not contain any specific restrictions on rent concerning commercial leases.

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

As referred above, under the NRAU, the parties are free to agree the terms of the duration, renewals and terminations of the lease.

Therefore, renewal provisions will vary on a case to case basis, in accordance with what has been agreed between the parties. Should the parties not agree on the termination provisions allowing the tenant to terminate a lease prior to its expiration date, the general legal provisions in the NRAU applicable to home leases shall apply. In this case the tenant may freely and unilaterally terminate the lease agreement at any time with a minimum prior notice of 120 days from the date such termination becomes effective.

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

In general, the assignment or sublease is subject to prior consent from the landlord.

As exceptions to such general legal provision, the following cases are not subject to prior consent from the landlord:

- Assignment of the lease together with the transfer of the business as a going concern (“Trespasse”). However, such assignment must be previously notified to the landlord, which has a pre-emption right on the transfer of the business. If the landlord does not exercise such pre-emption right, the transfer must be notified by the tenant within 15 days counted from the respective date of completion;

-Temporary assignment of a business (“Cessão de exploração”). In this case the landlord must also be notified within one month of such assignment.

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

As described in 6. above, the assignment of lease agreements and sublease by the tenants are subject, in general, to the landlord's consent, as established by statutory legal provision.

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

The common form of eviction is by court order in a judicial eviction proceeding, which can then be judicially enforced by the landlord in court as well.

However, the judicial proceeding will not be required in certain cases provided for in the NRAU, when the landlord has other executive titles, such as (i) evidence that the rents have not been paid and the communication of such breach to the tenant, or (ii) evidence that then landlord has exercised its termination right when agreed in the lease, which allows the landlord to immediately enforce the eviction judicially.

Concerning the judicial eviction proceeding, the customary length of time, excluding appeals, is approximately between one and a half year and 3 years. However, such length must be assessed on a case to case basis, depending on the incidents, potential appeals and other specific characteristics of the case. As for the judicial enforcement of the eviction, either based on a judicial court decision or any other executive title, the customary length of time provided for in the law is of 9 months.

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

There are no legal restrictions on pledging a leasehold interest as security for a 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.

Portuguese Law does not contain any restrictions or specific requirements concerning the holding of security deposits.

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

There are no statutory or legal disclosures to be made to all tenants, except for the existence of a use permit, as described in number 18 below.

However, the landlord must provide the leased premises for the purpose it is executed, and a schedule with the description and state of the lease must be attached to the agreement.

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

In general, the lease of real estate is exempt of VAT. Exceptions to this rule, such as leases related with tourism, parking areas, advertising areas and showrooms, in which VAT is due, should in any case be assessed on a case to case basis.

However, the parties can request a waiver of VAT exemption to the tax authorities, provided certain requirements are met, such as (i) both the landlord and the tenant have to be VAT taxable persons or entities whose activities confer the right of deduction (ii) the leased property must be used for activities that confer the right of deduction (iii) the rent must not be higher than a fifteenth of the total value of the acquisition/construction of the immovable property at hand.

In leases where VAT exemption has been waived, or where VAT is applicable, the landlord must collect VAT from the tenant.

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

Distrain is not permitted under Portuguese law in commercial lease agreement. In case of default of the tenant, the landlord may terminate the agreement and take the necessary legal and judicial proceedings in order to enforce the eviction of the tenant, as described in number 8 above.

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

In general, remedies must be provided for in the lease agreement. Concerning the acceleration of rents, these are implied in cases where the tenant has committed to comply with a certain contractual period without the ability to freely terminate the agreement before the end of such period.

In case of default of the tenant in the payment of rents, the landlord may request from the tenant, the payment of such rents plus 50% of the amount due, in order to avoid termination by the landlord. However, if the landlord chooses to terminate the lease, such remedy will no longer be applicable.

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 specific expedited remedies for tenant default, except for the immediate judicial enforcement of the eviction by the landlord based on an executive title, as described in number 8 above.

Additionally, the parties can agree that the judicial proceeding for eviction or other disputes are settled by an arbitration court instead of a judicial court, which may expedite the procedure. Such arbitral decision may then be enforced in a judicial court, if necessary, as arbitrators do not have enforcement powers, in accordance with current applicable law.

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

Commercial lease agreements must be executed in writing when the initial duration is of more than six months. Furthermore, commercial lease agreements are only valid if the use of respective premises for the intended purpose is duly licensed by the competent Municipality. Reference to such use permit, date of issue and issuing entity, as well as the use must be

stated in the agreement, except if the building where the leased premises are located was built before August 12, 1951 date on which the General Regulations on Urban Edifications/Buildings came into force, requiring the existence of such use permits. In such case, evidence of the year of construction must be provided by the landlord.

Commercial lease agreements which are executed in premises that are not licensed for the intended commercial purpose are deemed null and void. In such case, the commercial tenant may seek indemnity from the landlord in accordance with general civil law. Additionally, the landlord is subject to the payment of a fine to the Municipality, which can not be lower than one year of 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.

Commercial lease agreements with a duration of six years or more, as well as their respective assignment or subletting, must be registered at the Property Registry Office, in order to be enforceable against third 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?

The tenant has a legal pre-emption right over the sale of the leased premises in commercial lease agreements that have been in force for more than three years. Apart from such right, there are no other restrictions on the transfer of ownership of real properties subject to a lease and such transfer does not affect the tenant's rights or obligations.