



Global Practice Guide

Issues Relating to Commercial Leasing

A Global Practice Guide prepared by the
Lex Mundi Real Estate Practice Group

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About this Guide

This multi-part Guide of Issues in Real Estate Investment and Finance presents jurisdictional overviews of real estate investment and financing laws in jurisdictions around the world, covering the following four general topics:

Part I -- Foreign Investment

Part II -- Ownership of Real Property

Part III -- Finance

Part IV -- Commercial Leasing

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Issues Relating To Commercial Leasing

Argentina

Prepared by Lex Mundi member firm Marval, O'Farrell & Mairal

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

Value Added Tax is applicable if the rental exceeds AR\$ 1,500 per month (approximately US \$ 410).

The provincial turnover tax is applicable to all normal business activities carried out (whether by entities or individuals) within any province or the City of Buenos Aires on a regular basis. Each province and the City of Buenos Aires have enacted their respective turnover tax regulations. In the City of Buenos Aires, lease fees are taxed at a 1.5% rate (law No. 2998).

Stamp tax is a local tax levied on public or private instruments, executed in Argentina or, if executed abroad, when they have effects in Argentina. In general, this tax is calculated on the economic value of the agreement and the parties who executed the document (and the notary public if applicable) are severally and jointly liable. The applicable rate ranges from 0.5% and 1 % —depending on the province— calculated on the aggregated value of the amount of the agreement.

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

A lease contract is subject, under Argentine Law, to a maximum term of 10 years. The consequence of this is that any lease agreed for a longer term will automatically terminate upon the expiry of 10 years. To overcome this restriction the parties may (i) request the courts to issue a decision allowing an extension or (ii) attempt to classify the contract as one of usufruct rather than a lease, thus benefiting from the longer maximum term of a usufruct (in general, 20 years).

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

There are no express statutory provisions indicating that the term of lease automatically renews; however, the parties are able to agree in the contract the automatically renewal.

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

There are no restrictions on the amount of rent that may be charged for a commercial lease to a tenant.

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

Notwithstanding the minimum term for commercial leases of 3 years, after the first six months of the lease have expired, the tenant has a legal right to terminate the lease prior to the expiry of the minimum contractual term. In order to benefit from this right, the tenant must give due notice to the landlord, indicating its decision to terminate the lease at least 60 days prior to the date upon which it intends to vacate the property. Should the tenant avail itself of this right during the first year of the tenancy it is obliged (in addition to the giving of notice) to compensate the landlord in the amount of one and a half month's rent. This compensatory payment is reduced to one month's rent after the expiration of the first year of the tenancy.

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

The Civil Code establishes that the tenant may sublet in whole or in part, transfer or otherwise dispose of the leased premises provided that it is not prohibited by the lease contract or by law.

If the lease contains a clause purporting to prohibit the transfer or subletting of the lease "without the consent of the landlord", the tenant may nevertheless transfer or sublet in the absence of such consent providing that the proposed transferee or subtenant is solvent and of good credit rating.

The rationale behind this legal provision is that it is presumed that the landlord would be willing to give his consent to the occupancy by a new tenant or subtenant shown to be both solvent and of good credit standing.

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

The lease contract may contain a prohibition on the assignment of the lease or a subletting of the leased premises.

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

An action for eviction is brought before the ordinary civil courts. In case that the action is filed against intruders or against a tenant who has not fulfilled its payment obligations or does not want to leave the premises after the expiration of the term agreed by the parties, the tenant may request the immediate eviction of the tenant. The customary length of time for this proceeding is between six months and one year.

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

There are no legal restrictions.

9. 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 restrictions regarding the handling of security deposits.

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

There are no such legislated minimum disclosure requirements.

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

In principle commercial landlords are not required to collect taxes on rent or other taxes from tenants.

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

Commercial landlords may not exercise self-help.

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

In principle, such remedies shall be expressly stated in the agreement to be enforced.

In Argentina, rent is usually paid within the first 5 days of the corresponding month and lack of payment is considered breach of contract and is considered as grounds for eviction and collection of

any amounts owed by the tenant to the landlord under the lease agreement.

14. 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.

In case that the landlord believes that the tenant would not leave the premises after the term of the lease expires, an early eviction action before the ordinary courts may be filed. The decision would be enforceable after the term of the lease expires, provided that the tenant does not leave the premises. This legal action is usually filed from three to six months before the expiration of the term of the lease. If the tenant complies with its obligation of leaving the premises as provided in the corresponding lease agreement, all the legal costs shall be cancelled by the landlord.

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

The agreement shall be in writing and signed by the parties thereof. It is recommended to notarize the signatures.

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

Commercial leases are not registered in Argentina.

17. 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 such restrictions and a transfer does not affect the tenant's rights and obligations.

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Issues Relating To Commercial Leasing

Australia

Prepared by Lex Mundi member firm Clayton Utz

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

Stamp duty payable on the creation of Leases, pursuant to the Duties Act 1997 (NSW), has now been abolished on Leases executed on or after 1 January 2008. However, stamp duty is still required to be paid on a transfer or assignment of a Lease. Furthermore, Leases of land under the Real Property Act 1900 (NSW) exceeding three (3) years must be registered. To register a Lease a tax must be paid to the Department of Lands, Land and Property Information NSW.

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

Under the Australian common law, a lease in perpetuity is void as its duration is not fixed with certainty. Accordingly, perpetual leases can only be granted where allowed by statute. Furthermore, the duration of a lease term needs to be fixed with certainty and it is not sufficient to fix the duration by reference to a future event. Various statutes may also limit the number of years which government bodies can grant leases of their land.

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

A Landlord is required to allow a Tenant to renew its lease if the Tenant has an effective option in the lease. Options for renewal are normally contained as a covenant in the Lease and can be characterised as irrevocable offers or conditional contracts. An enforceable option for renewal creates an equitable interest in land which runs with the land and the reversion and is enforceable against the Landlord and successors in title to the Landlord.

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

There is no restriction on the amount of rent that can be charged for commercial and industrial premises. However, rent can only be increased during the term of the lease and any option period in accordance with the rent review provisions in the Lease. However, if the manner in which the rent is increased under the Lease is considered oppressive and unconscionable in the circumstances, a Court exercising equitable jurisdiction may strike out the clause.

Furthermore, some leases, such as retail leases and residential leases, have statutory restrictions imposed on the timing and method of increasing rent during the term.

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

There are six (6) key methods of terminating a lease prior to its stated expiration which can be used by a Tenant (or a Landlord in some instances). These methods are as follows:

1. Surrender of the lease
2. Termination pursuant to a term in the lease
3. Frustration
4. Termination pursuant to specific statutory grounds

5. Merger
6. Breach of fundamental term by the Landlord or the Tenant's acceptance of the Landlord's repudiation

Furthermore, the Retail Leases Act 1994 (NSW) provides certain grounds for early termination of a lease. These include the failure of the Landlord to give a complying disclosure statement to the Tenant, the demolition of the premises or damage to the premises. The Residential Tenancies Act 1987 (NSW) and the Contracts Review Act 1980 (NSW) extend to residential leases and leases of "farming undertakings" as does the Agricultural Tenancies Act 1990 (NSW). These Acts also provide some statutory grounds for termination.

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

Under the Australian common law, the right to assign a lease is incidental to every leasehold interest. Accordingly, if there were no specific Lease covenants dealing with the right to assign or sub-lease then a Tenant could assign a lease or grant a sub-lease without having to obtain the Landlord's consent. However, this rarely happens in practice and the Tenant must usually seek the Landlord's consent pursuant to the terms of the Lease and any applicable statutory rules.

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

Under the Australian common law, a Landlord can have a covenant in a Lease which absolutely prohibits the Tenant from assigning or subleasing their leasehold estate. Alternatively, the Landlord can have a covenant in a Lease which qualifies their consent to an assignment or a sublease. The latter situation, however, is governed by the Conveyancing Act 1919 (NSW) which specifies that the Landlord cannot unreasonably withhold consent. Furthermore, the Retail Leases Act 1994 (NSW) limits the grounds on which a Landlord may refuse consent.

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

In regards to commercial premises there is no legal bar to the Landlord recovering physical possession without instituting legal proceedings. However, forfeiture can only be effected after the Tenant has failed to comply with an effective notice. Alternatively, the Landlord may institute proceedings for possession and seek an appropriate order from the Court. If the Tenant does not comply with the order then the Landlord may apply for a Writ for the Possession of Land which will be enforced by the Sheriff. The timing will depend on the nature of the property and the Court or Tribunal where relief is sought. Residential disputes which can be dealt with by a tribunal will be faster than Court proceedings.

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

A leasehold interest may be used for security for land which is registered under the Real Property Act 1900 (NSW) (Torrens system land) or old system land. However, a Torrens title mortgagee does not automatically become liable on the Tenant's covenants in the Lease since the registered mortgagee is not an assignee of the leasehold interest but a chargee only. However, the mortgage should be registered to ensure adequate protections for the mortgagee.

9. 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.

The holding of security deposits by Landlords is regulated by statute for residential leases and retail leases. Under the Landlord and Tenant (Rental Bonds) Act 1977 a Landlord must deposit any security deposit with the Rental Bond Board which is a statutory body constituted under the Act. The Rental Bond Board will hold the security deposit and the Landlord will not hold this money in its own account. Similarly, under the Retail Leases Act 1994 (NSW) a Landlord is required to lodge a security

deposit with the Director-General of the Department of State and Regional Development. The Landlord is not to keep these deposits in its own bank account.

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

At least seven (7) days before a retail lease is entered into the Landlord must provide the Tenant with a document called a "Lessor's Disclosure Statement". The Lessor's Disclosure Statement sets out various information pertaining to the lease such as rent, rent reviews and any option periods, There is no other form of prescribed statutory disclosure document.

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

There are no taxes on rent in New South Wales which are distinct and separate from the requirements of a Landlord to pay income tax or company tax on its rent. If the Tenant pays GST (Goods and Services Tax) on its rent then the Landlord is required to collect that portion of the rent which is payable as GST for the Commonwealth Government.

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

It is common for commercial contracts to contain various self-help provisions such as termination and other rights. A simple termination right, for example, would usually be beyond challenge. However, terms which quantify or limit damages or allow the Landlord to keep certain benefits received are subject to restrictions. These include restrictions imposed by fair trading legislation, the ability of Courts to grant relief against forfeiture and the refusal to enforce a penalty as well as other equitable remedies available to a Court.

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

If the Landlord terminates a lease for the Tenant's default the Landlord may sue the Tenant for damages including loss of rent which may include loss of rent after the Landlord has mitigated its damages. This remedy does not have to be expressly stated and is implied in the common law. A Lease may also allow a Landlord to recover a fixed sum of money from the Tenant, which may represent the "accelerated rent" due under the lease, in the event of a Tenant's default. Such a provision would need to be expressly stated in the Lease. However, this sum of money must be a genuine pre-estimate of damages the Landlord will suffer so as not to constitute a penalty and be held to be void by a court exercising equitable jurisdiction.

14. 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.

Disputes in relation to residential leases are determined by a Tribunal which due to its informal nature and wide range of statutory powers is capable of providing fast relief for applicants. Injunction is another remedy available to a Landlord to restrain a Tenant's default. This remedy is available under the common law and no express covenant is required to seek it. The Landlord may also re-enter the premises and forfeit the lease for the Tenant's default. The Conveyancing Act 1919 (NSW) implies this right although it can be varied by agreement which is the more common method of the Landlord acquiring this right.

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

For land under the provisions of the Real Property Act 1900 (NSW) (Torrens title land which is the vast majority of land in New South Wales) a Lease for a term exceeding three (3) years must be effected by executing a Lease in the approved form and in order to pass to the Tenant a leasehold estate the Lease must be registered.

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

As previously noted, a lease of land exceeding three (3) years under the Real Property Act 1900 (NSW) must be registered. Such registration gives the lease indefeasibility under that Act as well as priority over all later registered interests. This priority extends to any option to renew in the Lease. Accordingly, if after the Lease is registered a mortgage is given over the land the mortgagee takes subject to the rights of the Tenant under its options to renew. If a lease exceeding three (3) years was not registered then it is accorded the status of an equitable interest only and would be unenforceable against a competing registered interest.

17. 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 transfer of land under the Real Property Act 1900 (NSW) which is subject to a registered Lease will transfer title to the purchaser subject to that Lease. There are no restrictions but a purchaser should be aware of registered leases on title as well as potential unregistered leases which may affect the purchaser's desire for vacant possession.

For land under old system title a deed is necessary to create a legal leasehold interest. The Conveyancing Act 1919 (NSW) provides that covenants "having reference to the subject matter" of the lease are annexed to and run with the reversion. The Act also provides that the benefit of every condition of re-entry is annexed to and runs with the reversion. However, covenants in a Lease which were personal to the former Landlord and Tenant will not be enforceable against a new purchaser and vice versa, unless the parties have executed a deed providing for the new Landlord to have all the rights and obligations of the former Landlord.

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Issues Relating To Commercial Leasing

Austria

Prepared by Lex Mundi member firm CHSH Cerha Hempel Spiegelfeld Hlawati

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

Written lease agreements are subject to a 1% stamp duty assessed on the gross rental payments to be paid by the tenant for a period of three years (if the lease agreement is concluded for an indefinite period) or for the definite period for which the lease agreement is concluded (up to a maximum of 18 years).

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

Austrian tenant law does not provide for a maximum term of a lease. However, for residential leases the Rental Act provides for a minimum term of lease (including renewals) of three years.

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

There are no mandatory provisions in Austria requiring landlords to allow a tenant to renew its lease.

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

For lease agreements to which the Rental Act is fully applicable it provides for maximum rents including any adaptations thereof, for limitations on charging operating costs to tenants, and for landlord's obligations to maintain and improve the properties. However, as regards leases for non-residential purposes, for example, business, office or retail premises, the maximum rent is not subject to a maximum cap but has to be appropriate according size, type, quality, location and building condition of the real estate. Tenants may claim back any rent payments exceeding the statutory maximum amount within three years for indefinite period leases and within ten years after payment for definite period leases. As concerns operating costs, the Rental Act contains a conclusive list of costs which may be charged to the tenant. The tenant can claim back any payments exceeding the legally permissible operating costs within three years after payment.

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

Basically a tenant may terminate a lease prior to its stated expiration date with immediate effect for good cause.

Furthermore, the Rental Act provides for the mandatory tenant's right to terminate a residential lease contract after one year in writing by keeping a three months notice period.

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

A tenant is basically entitled to sublease the rental object without landlord's consent if the right to sublease is not excluded in the lease contract and if the sublease does not affect the landlord adversely. However, if the tenant subleases the entire rental object or if the sub-rent disproportionately exceeds the rent to be paid by the tenant, such sublease will entitle the landlord to terminate the lease contract for good cause.

For lease agreements to which the Rental Act fully applies, in case of a sale of the business operated in the lease object by the tenant, the Rental Act provides for an automatic assignment of the lease to the purchaser without requiring the landlord's consent.

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

If the Rental Act does not fully apply, the landlord can restrict assignments or subleases by tenants.

For lease agreements, to which the Rental Act fully applies, the Rental Act provides that a restriction of subleases can only be agreed validly for good cause (e.g. in case of an entire sublease of the rental object or if the sub-rent disproportionately exceeds the rent to be paid by the tenant). Furthermore, for lease agreements to which the Rental Act fully applies, in case of a sale of the business operated in the lease object by the tenant, the Rental Act provides for an automatic assignment of the lease to the purchaser without requiring the landlord's consent.

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

In order to remove a tenant from a rental object, the landlord has to file an eviction with the competent district court and obtain a judgment against the tenant. Afterwards the landlord can commence foreclosure proceedings against the tenant. The time frame for foreclosure proceedings, starting from the time the landlord has obtained an enforceable judgement, usually is between three and six months.

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

The Rental Act provides restrictions on pledging a leasehold interest as security for a financing for such lease agreements, to which the Rental Act fully applies.

9. 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.

No statutory requirements for landlords to hold security deposits in separate accounts exist.

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

According to the Rental Act the landlord has to provide settlements of accounts concerning the operating costs and the revenues and expenditures concerning the rental objects periodically.

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

There are no taxes on rent that a landlord is required to collect from tenants. However, the landlord may charge certain taxes concerning the real estate to the tenant via the operating costs, e.g. real estate tax.

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

To remove the tenant from the rental object the landlord basically has to keep the eviction proceedings described in answer 8. above.

To secure the landlord's rental claims, the landlord has a statutory lien on chattels brought into the rental object by the tenant or the tenant's relatives. If such chattels are removed and the tenant is in default with rental payments, the landlord is entitled to retain such chattels. However, in this case the landlord has to file an application at the competent district court within three days to distrain the

chattels.

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

An acceleration of rent clause is rather unusual in Austria. The stipulation of such clauses is subject to statutory restrictions.

14. 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 special expedited remedies for tenant defaults provided by Austrian law.

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

For definite period leases the Rental Act provides the requirement of a written form.

16. 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 agreement can be registered in the land register if it is concluded for a definite period. To obtain the registration the definite period lease agreement has to be concluded in writing and the signatures have to be certified by a notary public or by court. If a lease agreement is not registered in the land register, Austrian law, however, provides an automatic assignment of the lease to a purchaser of the rental object as new landlord. However, in this case the purchaser is basically not bound to unusual clauses contained in the lease agreement, unless the purchaser knew or should have known such clauses.

17. 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?

According to Austrian law a lease agreement automatically is assigned to the purchaser of a rental object as new landlord. However, if the lease agreement is not registered in the land register, the purchaser is basically not bound to unusual clauses contained in the lease agreement, unless the purchaser knew or should have known such clauses.

Furthermore, if the Rental Act does not apply and the lease agreement is not registered, the purchaser will not be bound to the term or to the landlord's waivers of termination rights and can therefore terminate the lease agreement notwithstanding such clauses.

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Issues Relating To Commercial Leasing

Bahamas

Prepared by Lex Mundi member firm McKinney, Bancroft & Hughes

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

Stamp duty is payable on the creation or assignment of a lease. Stamp duty is on an ad valorem basis and is calculated upon the value of the lease or consideration thereof, whichever is the greater. Stamp duty is calculated on every lease:

- (a) for a term not exceeding 7 years - 1% of the annual rent reserved;
- (b) for a term exceeding 7 years but less than 10 years - 2% of the annual rent reserved; and

Leases for 10 years or more or every transfer of a Crown lease shall be liable to stamp duty based upon the value of the lease or the consideration for the creation or transfer, whichever is the greater, as follows:

- (a) does not exceed \$20,000 - two per cent of the value;
- (b) exceeds \$20,000 and does not exceed \$50,000 - four per cent of the value;
- (c) exceeds \$50,000 and does not exceed \$100,000 - six per cent of the value;
- (d) exceeds \$100,000 and does not exceed \$250,000 - eight per cent of the value
- (e) exceeds \$250,000 - ten per cent of the value

When assessing stamp duty renewal terms are calculated together with the term of the lease.

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

There are no restrictions limiting the maximum term of a lease.

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

Subject to the agreed terms of the lease there are no laws requiring landlords to allow a tenant to renew its lease.

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

There are no restrictions on rent for commercial leases.

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

There are no laws specifically permitting tenants to terminate a lease prior to its stated expiration date.

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

The tenant has a right, in principle, to assign or sublease his lease unless a contrary intention is expressed in the lease. Leases commonly make provision for assignment of subleasing only with the landlords consent. An assignment or sublease created without consent or in breach of the lease is still however valid and shall remain valid subject to and until the landlord exercises his right to terminate the lease.

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

A landlord may restrict assignments and subleases by a tenant within the provisions of the lease on normal freedom of contract principles.

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

A demand notice to vacate in a reasonable time period must first be issued to the tenant. If the tenant has not vacated the premises within the allotted time period a notice of eviction may be filed with the magistrates court and notice properly served upon the tenant. The magistrates court, on proof of service, will scheduled a hearing for the eviction. The length of time varies, however proceedings normally take an average of one month from filing the proof of service with the court.

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

Subject to the provisions contained in the lease itself there are no restrictions on pledging a leasehold interest as 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 requirements for a landlord to hold security deposits in separate accounts.

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

There are no statutory disclosures required for a landlord to make to a tenant. The common law provides however that a landlord must disclose known defects on the premises.

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

There are no taxes that a landlord is required to collect from its tenant.

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

Self-help is available for commercial leases however a right of re-entry or forfeiture under any proviso in a lease, for a breach of a covenant or condition is not enforceable unless and until the landlord serves a notice on the tenant. The notice should specify the particular breach complained of and, if the breach is capable of remedy, requiring the tenant to remedy the breach. The landlord may in any case require the tenant to pay compensation in money for the breach. If the tenant fails, within a reasonable time, to remedy the breach and/or to make reasonable compensation in money to the satisfaction of the landlord for the breach, the landlord may exercise its right of re-entry or forfeiture. Any self-help conducted must be peaceful.

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

Acceleration of the rent (or other remedies) must be expressly provided for 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.

Notwithstanding any remedies provided for within the lease there are no statutory expedited remedies for a tenant default.

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

A lease exceeding three years must be in writing and executed by deed under seal. The deed must be signed in counterparts by both parties and witnessed.

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

Generally there is no requirement to have a memorandum of lease or other document recorded to be enforceable against third parties, however stamp duty is payable prior to the lease being acceptable as evidence in court. The International Persons Landholding Act does require any lease or letting agreement that is for the purpose of trade or business and that enables the lessee or tenant to prolong the term beyond twenty-one (21) years to be registered. Such a lease or letting agreement in the absence of registration will be null and void and be without effect for all purposes of law.

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?

Subject to the provisions contained within the lease there are no restrictions on the transfer of the real property. The lease is enforceable against the transferee of the real property and the tenant's rights and obligations will not be affected. A bona fide purchaser for value without notice may receive the real property free of the lease, this is however rare since most tenants are in possession which shall be deemed as implied or constructive notice on the purchaser.

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Issues Relating To Commercial Leasing

Barbados

Prepared by Lex Mundi member firm Clarke Gittens Farmer

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

Leases attract stamp duty of 1% of the annual rental. Where the annual rent varies the average rent is used. Where the consideration is other than money the stamp duty is US\$12.50. On renewal the stamp duty is the same as though a new lease was created.

Property transfer tax of 2.5% of the value of the lease is payable on leases exceeding 24 years. The tax is payable where the term of a lease for 24 years or less expires and a new lease is granted within 2 years to the same tenant which causes the total time the tenant is in possession to exceed 24 years. This also applies in the case of the renewal of a lease which will take the term over 24 years.

The value of the lease is assessed by the Commissioner of Valuations.

A lease for more than one year must be recorded at the Land Registry at US\$2.00 per page, save in the case of land registered under the Land Registration system, where the lease must be registered and a prescribed fee, based on the value of the land but not exceeding US\$150 must be paid.

On assignment of a lease the stamp duty is 3/5 of 1% of the value of the lease and the Property Transfer Tax is assessed in the same manner as on creation of a new lease.

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

There are no restrictions on the maximum term of a lease but please see above in respect of Property Transfer Tax accruing on leases in excess of 24 years.

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

There are no laws which force a landlord to allow a tenant to renew its lease but many commercial leases have provisions which do allow for renewal if the tenant is in compliance with all of the terms of the lease. If this is the case, the landlord must honor these provisions if the tenant is so in compliance.

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

There are no restrictions on rent that may be charged.

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

There are no statutes that permit the tenant to terminate a lease prior to its stated expiration date. A tenant will have to rely on common law provisions which, in the case of the landlord's gross neglect or refusal to comply with the provisions of the lease that impose obligations on it, would allow the tenant to claim that the landlord has repudiated its contract with the tenant

Most leases do have provisions for early termination on either side however.

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

The Property Act Cap 236 contains a provision at section 158 (f) which implies a covenant on the tenant's part not to assign sublet or otherwise part with possession of the premises or part thereof without the landlord's consent. This provision can be contracted out of. Most leases do contain provisions imposing such prohibitions as well.

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

The Property Act Cap 236 s.158 (f) provided that there is an implied covenant on tenants' part not to transfer, charge, sublet or otherwise part with possession of leased premises or part thereof without the landlord's written consent. This provision can be contracted out of.

Most leases do provide for specific restrictions of some kind as well.

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

Service of a notice to quit is the first step. If the tenant does not quit the premises the landlord can service a notice of intention to apply to the court for eviction. If the tenant still does not vacate the premises application must be made to the magistrates' court accompanied by evidence that the first two steps have been taken.

The entire process can take 3 to 6 months.

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

The Property Act Cap 236 s. 158 (f) provides that there is an implied covenant on the tenant's part not to charge the leased premises without the written consent of the landlord. This provision can be contracted out of.

Lenders are reluctant to take a leasehold interest as security for a loan in Barbados, as they are dependent on the tenant's compliance with the terms of the lease in order to avoid forfeiture by the Landlord. The Property Act section 168 contains provisions to provide relief to mortgagees on forfeiture by a landlord which will, if successful, put the mortgagee in the position of the tenant. This does not suit most mortgagees who consider this to be an insufficient remedy as what they require is a right to sell the leasehold interest in the premises without incurring for themselves any additional responsibilities (such as for payment of rent and upkeep of the premises).

Most leases do have provisions which limit the assignment or sub-lease of the term however.

9. 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 provisions - the tenant would have to insist they be included in its lease.

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

There are none.

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

There are no taxes that the landlord must collect from the tenant but the landlord must pay income tax on all its income - and rental income is included as part of the landlord's income.

Tenancies must be registered under the Landlord and Tenant (Registration of Tenancies) Act so that Government can keep track of their existence.

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

A landlord may not distain against:
things that are in actual use, (for example, an object in the tenant's hand at the time, so that to take it would cause a breach of the peace)
things delivered to the tenant by way of trade or business,
wearing apparel and bedding,
tools and implements of the tenant's trade,
machinery equipment or items belonging to a third party where the landlord has or receives notice of such third party ownership.

The remedy of distress is only available for recovery of unpaid rent.

Section 167 of the Property Act also provides that a Landlord may not exercise the right of forfeiture until he has served notice specifying the breach complained of, and if that breach is capable of being remedied, requiring the tenant to remedy it within a reasonable period of time, and in any case other than non-payment of rent, requiring the tenant to make monetary compensation for the breach, and the tenant has failed to comply with the notice.

Section 168 of the Property Act permits tenants, sub-lessees and mortgagees to seek relief from the court if a lease is ripe for forfeiture by a landlord.

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

The Property Act section 166 allows a landlord to forfeit a lease where the tenant is in breach of its terms by re-taking possession of the premises or court action. (Court action described previously). Re-taking possession itself has limitations under the common law and should not be attempted without legal advice and the help of the appropriate authorities including the police.

Most leases do provide other remedies for a landlord, such as penalties or interest payable.

Prior to forfeiture the landlord must serve a notice requiring the tenant to remedy the breach and, where the breach is other than the non-payment of rent, pay monetary compensation. (see 13 above).

The landlord has a common law remedy of distress which has been codified to some extent in the Landlord and Tenant Act Cap 230 which allows the landlord to enter the premises, take up certain assets belonging to the tenant, and impound and/or sell the same as compensation. This is a complex remedy and should not be executed without legal guidance and the assistance of the Chief Marshal. (see 13 above).

14. 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 Property Act section 166 provides for forfeiture of a lease by a landlord re-taking possession. There is also the right of distress for recovery of unpaid rent. (See 13 and 14 above).

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

All leases of more than one year must be in writing and must be stamped and recorded or registered at the Land Registry within 3 months of execution. Where a lease exceeds 24 years Property

Transfer Tax must be paid on the lease. For a new or renewed lease to be exempt from this tax it must contain a declaration that it is not one which when added to any previous term totals 25 years or more.

A lease should be by deed, executed by both parties and witnessed by attorneys-at-law or notaries public.

To be recorded an attorney-at-law must affix his ""drawn and prepared"" stamp to the lease and sign it.

A lease of land that is registered under the Registration System must conform to the prescribed form.

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

See 16 above.

17. 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 but the transferee would take the property subject to the existing lease.

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Issues Relating To Commercial Leasing

Belize

Prepared by Lex Mundi member firm Barrow & Williams

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

Registration fee for a lease is \$15.00. Nominal stamp duty on the registration of a lease is \$12.

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

The maximum term of a lease is 99 years but may be renewed.

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

The Landlord and Tenant Act, Chapter 189 of the Laws of Belize, Revised Edition 2000 allows a tenant to renew its lease.

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

Restrictions - a) withholding security deposit paid as rent as a result of damages sustained to the leasehold premises.

b) suspension of rent as a result of damages sustained to leasehold premises due to hurricane or natural disaster.

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

Landlord and Tenant Act allows for early termination if the landlord has breached the terms of the lease i.e non payment of insurance for leasehold premises, breach of quiet enjoyment of the leasehold premises by the tenant, failure to perform repairs of the leasehold premises, failure to pay property taxes, and failure to keep leasehold premises insured.

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

No laws allowing this. Landlord must always consent to assignment of sublease.

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

No laws allowing this.

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

Notice of eviction which takes 3 weeks. Then if this fails, summary procedure can be filed in magistrate court for eviction which takes 2 months.

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

There are no legal restrictions.

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 requirements on how a landlord must hold security deposits. It is up to the landlord if he wishes to use separate accounts or consolidate all security deposits in one account.

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

The only disclosure that must be made to the tenant is the condition of the leasehold premises and whether it is fit for habitation.

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

None. Tenants pay their own taxes (if any) to the respective authorities.

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

None.

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

They must be expressly stated.

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 not expedited remedies. All remedies are available to the landlord but are to be conducted in due process.

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

If a lease is over 2 years, the lease must be properly prepared with attestation clauses and filed in the Lands Registry. The Registry will record the lease and issue an instrument number. The lease must be executed by the landlord and tenant in the presence of a witness and a justice of the peace or a notary public.

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

The lease itself once it is over a term of 2 years must be recorded in the lands registry for it to be enforceable.

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?

Once the property is transferred a notice should be issued to the tenant terminating the lease. Properties are sold with vacant possession and thus the tenancy must be terminated prior to the close of sale on the property.

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Issues Relating To Commercial Leasing

Bolivia

C.R. & F. Rojas – Abogados

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

There are no taxes payable on creation or assignment of a lease.

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

The law establishes a maximum of 10 years for the duration of a lease, however, if the purpose of the lease agreement is for a dwelling it is not affected by this restriction, unless: (1) If the tenant voluntarily delivers the property to the landlord. (2) Death of the tenant, except if the spouse and minor children are living in the property. (3) A final judgment of eviction is issued for causes expressly established in the law.

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

Any renewal of a lease should be with the consent of the contracting parties.

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

There are no restrictions on rent that may be charged to a tenant.

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

Permitting tenants to terminate a lease prior to its stated expiration date.

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

There are no laws allowing tenants to assign or sublease without the landlord's consent.

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

There are no laws allowing landlords to restrict assignments or subleases by tenants.

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

The common form for eviction is the filing of a legal action. The length of time for the proceeding can well be over 5 years.

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

There are no restrictions on pledging a leasehold interest.

- 9. 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.**

None.

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

None.

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

For any rent collected from tenants the landlord must issue an invoice that in the amount of the rent it should be included the VAT of 13% and the transaction tax of 3%.

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

Under the law, landlords may not exercise any self-help.

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

Acceleration of rent must be expressly stated.

- 14. 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.

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

The formal requirement for the execution of a lease is to file a legal action with the courts.

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

The Real Estate Law provides that lease agreements for duration of more than five years can be recorded with the Real Estate Office. This recording makes the lease agreement enforceable against third parties.

17. 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?

If the landlord transfers ownership of the real property subject to a lease, this transfer shall not affect the tenants rights or obligations, provided, however, that the signatures of the contracted parties are acknowledged with a judge.

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Issues Relating To Commercial Leasing

Brazil

Prepared by Lex Mundi member firm Demarest e Almeida

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

None.

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

There is no specific term established by the Lease Law regarding the lease agreements. Therefore, the term may be defined by the parties, according to their interest, it being permitted the agreement of a lease for an indeterminate term.

Leases which term is equal or greater than 10 (ten) years must be executed by the spouse if the landlord is married.

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

With regard to commercial leases, please note that the Lease Law (Law no. 8245/91) guarantees, among other things, that commercial leases with a determinate term grant the tenant certain protections, among them the right to renew the lease for an equal term if all the conditions for the exercise of such right are met (the "Renewal Right"). The conditions are: (i) the contract to renew is executed in written and for an determinate term; (ii) the minimum term of the agreement or the sum of the aggregate terms of uninterrupted written agreements is at least 5 years; and (iii) the lessee is exploiting its business, in the same line, for a minimum and uninterrupted term of 3 years. The fact that all conditions for application of the Renewal Right are met does not mean that the renewal will always occur automatically. In case the landlord refuses to respect the Renewal Right, the lessee will have to claim its right in Court, through a proper legal claim (the "Renewal Claim"). The Renewal Claim must be filed by the lessee within the penultimate semester of the term of the lease agreement.

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

The parties are free to fix any index for the rent restatement. However, it is forbidden to fix the rent in foreign currency or to link it to the exchange gain variation or to the minimum wage.

In addition, the Lease Law establishes the right of the parties to, after the 3rd year of the term of the agreement, request a judicial revision of the rent amount, in order to adjust it to the market price (which may be lower or higher than the one in course).

The value of the rent of the sublease may not be higher than the value of the rent of the original lease.

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

According to Brazilian Law, tenants may always early terminate lease agreements, upon a 30-days prior written notice and the payment of the contractual fine, which is usually paid proportionally to the elapsed period of the agreement.

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

The tenant may sublease in whole or in part and free-lease the leased premises or assign the rights and obligations of the agreement to a third party provided that it is not prohibited by the lease agreement. A new lease with new rights and obligations is created between the tenant and the subtenant. The subtenant has the right to require that the tenant not only complies with the terms of the sublease but also complies with the obligations contracted by the tenant in the original head lease. The tenant will of course continue as regards the landlord to be bound by the terms of the head lease.

An assignment of the lease consists of a direct assignment of the rights and obligations under the lease. An assignee of the lease is thus subrogated directly in the rights and obligations of the previous tenant who, as from the date of the assignment ceases, to be so obliged or have any rights under the lease, provided the landlord expressly so agrees, either when granting the lease or upon consenting to the assignment. If there is no express agreement of the landlord, the previous tenant will remain bound under the lease together with the assignee.

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

Landlord may restrict the sublease or assignment. The parties have to reach an agreement and insert a specific provision in the contract which will be valid during the whole lease.

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

Disputes between landlords and tenants are typically resolved by litigation. The proceeding is ordinary and the court must order the eviction after analyzing the grounds for the eviction.

The landlord is entitled to claim the eviction of the tenant from the leased property upon events such as non-payment of rent, change of purpose of the lease agreement, expiration of the term or damage in the property. Tenant has to be given a written notice stating the reason for termination of the lease. Failure of tenant in leaving the property authorize landlord to file an eviction lawsuit requesting the termination of the lease and the eviction of the tenant. In the event of lack of payment, tenant may avoid termination and eviction upon payment of all unpaid rents and costs related to it, such as penalties, interests and attorneys' fees.

Court proceedings may take from months to years, depending on many factors such as the causes of the damages or the eviction and the evidence offered by the parties. Eviction orders are generally obtained in a reasonable short period whether the reasons are sufficient evidenced.

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

No.

9. 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.

Usually any security deposits that are granted to landlords in Brazil are deposited directly in their own accounts and are offset in the end of the lease, upon a discount from the amount of the rent for the last three months of the agreement.

As regards the guarantees for payment of the rent, the Lease Law defines three possible types of guarantee: (i) pledge; (ii) surety ("Fiança"); or (iii) lease insurance. The landlord has the right to choose the type of guarantee to be used but only one type is allowed (landlord cannot may required more than one). Finally, note that the a guarantee is not mandatory in the lease agreement. It is

possible to execute a lease agreement without guarantee, in case this is the will of the parties. In general the surety is the most requested and most accepted type of guarantee most requested or accepted by the landlord but the use of lease insurance is increasing in Brazil.

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

There are none.

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

There are no taxes on rent in Brazil. Brazilian leases usually establish that tenants are responsible for the payment of the taxes levied on the property during the term of the lease.

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

Exercising of self-help is not allowed in Brazil. Any measure to evict tenant and recover the property has to be taken with due observance of a judicial process.

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

In principle, remedies must be expressly stated.

In Brazil rent is usually paid within the first 5 days of the subsequent month and lack of payment is considered breach of contract and is considered as grounds for an eviction lawsuit.

As a general rule, the Lease Law provides that the Tenant may terminate the agreement at any time, provided that Landlord is given proper written notice with at least 30 days in advance, and provided that Tenant pays the fine which was contractually agreed.

Specifically with regard to build to suit contracts, the agreement may provide that the rents are accelerated in the event that the tenant decides to leave the property before the end of the agreement's term. Such provision, however, has to be clearly stated in the agreement.

14. 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 lease law provides some specific cases in which the eviction order may be granted by an injunction, with a term of 15 days for tenant to leave the property, upon a deposit guarantee from landlord in the amount of 3 monthly rents. Such cases are provided for in Section 59 of the Brazilian Lease Law (Law no. 8.245/91).

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

The tenant has to be given a written notice stating the reason for termination of the lease. If the tenant does not leave the property within the time specified in the notice, the landlord may bring an eviction lawsuit to evict him before a civil court. The proceeding is ordinary and the court must order the eviction after analyzing the grounds for the eviction.

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

In order to be enforceable against third parties, leases must be recorded with the competent Real Estate Registry Office. One of the main effects of the recordation of leases is the guarantee of the continuance of the lease in case the property is sold (or transferred, i.e., by means of a foreclosure).

In order to obtain the above mentioned guarantee, it is necessary that the lease agreement: (i) is contracted for a determinate term; (ii) contains a specific clause establishing the new owner's obligation to respect the agreement; and (iii) is recorded with the Real Estate Registry Office. The other relevant effect is related to the right of first refusal which is granted to Tenants in equal conditions with third parties, in the event of sale of the property during the agreement. The landlord has the obligation to notify the tenant in case of any negotiation regarding the sale of the property and tenant shall have a 30-days term as of receipt of the notice to exercise its right. In the event Tenant is deferred with regard to such right, if the agreement is recorded Tenant shall be able to deposit the price and have the property assigned to it.

17. 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 provided the right of first refusal is observed. Please refer to the answer of question 17 above.

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Issues Relating To Commercial Leasing

Bulgaria

Prepared by Lex Mundi member firm Penkov, Markov & Partners

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

No transfer taxes on creation or assignment of a commercial lease are due and payable.

In case the parties decide to have the commercial lease notarized and registered with the Property Register the following fees shall be incurred: i) notary fee (depending on the amount of the rent for the whole lease period but not more than BGN 3,000 (approx. Euro 1,500)) and ii) registration fee – 0.1% of the amount of the rent for the whole lease period. Such notarization and registration of the commercial lease is not required for its validity but it is subject to the discretion of the parties.

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

No restrictions limiting the maximum term are provided with respect to the commercial lease. As the civil lease is concerned such restriction is envisaged - the maximum term of the civil lease agreement could not exceed 10 years.

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

There are not legal regulations or provisions requiring landlords to allow tenants to renew the lease. However, in case that after the expiration of the lease term the use of the property continues with the knowledge and without the objection of the landlord, the agreement shall be deemed extended for an indefinite term. In case of lease agreement extended for indefinite term each party thereof may withdraw from the lease with one month notice.

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 for to a tenant. Usually, the rent is stipulated as a lump sum due and payable yearly, quarterly or monthly or, in case of retail leased areas, as a combination between minimum guaranteed rent agreed on lump sum basis plus respective percentage of the turnover realized in the leased premises.

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

There are no statutory provisions permitting tenants to terminate the lease agreement prior to its stated expiration date, except in case of cancellation because the landlord has delivered the leased property in a condition being not fit for the purposes it has been leased. The grounds for earlier termination are stipulated on contractual basis.

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

As a general rule, if not agreed upon otherwise, a contract of commercial leasing is assignable without the consent of the landlord. However, in this case the tenant is not discharged from obligations under the contract of lease.

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

The landlord may restrict or prohibit the tenant's right to assign the rental agreement by expressly stated clause in the contract prohibiting assignment.

The lease agreement may also restrict the tenant's right to sublease the premises by conditioning such right on the landlord's written consent.

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

The claim for eviction with respect to leased premises is brought in Justice before Civil Courts. A landlord may seek eviction of a tenant by filling a summary proceeding action for the purposes of regaining its right to enter the premises. The procedure is following the Special Action Proceeding (part 3 of the Code of Civil Procedure), which is applicable particularly with respect to leased properties, and is aimed to allow the landlord regaining in shorter periods possession of the leased property. The length of time for the final court ruling varies in each particular case, whereby the deadlines provided in the law are of indicative nature only.

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

The institute of "leasehold" is not regulated by the Bulgarian law. Generally, the tenant could not pledge nor mortgage any interest arising from the lease agreement.

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.

Bulgarian law does not require for the landlords to hold security deposits in separate accounts.

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

There are no such disclosure requirements to be made to all tenants.

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

As far as the commercial leasing agreement is concluded between entities registered under Value Added Tax Act, the landlord are required to incur and collect from tenants the applicable VAT Tax which is levied on all goods and services sold or provided in Bulgaria at the rate of 20%.

The income tax over the revenue from the rent is due and payable by the landlord and not by the tenant.

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

Bulgarian law does not regulate the self-help institute.

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

Acceleration of rent is not regulated in Bulgaria. However, it is the common practice to stipulate under the lease agreement certain remedies in case of breach of the contract's obligations by the tenant (delay in payment of the rental price, earlier vacation of the leased premises, etc.), such as penalties and option for unilateral cancellation of the lease by the landlord.

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 available to the landlord except for the expedited eviction procedure.

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

There are no formal requirements for the execution of commercial lease.

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

The registration of commercial lease with the Property Register is advisable in view of further transfer of the property and enforceability against third parties who acquired the property after the conclusion of the lease agreement. The advantage of the lease agreement being registered with the Property Register is that it shall remain valid and binding for the new landlord for the term stated in it.

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 is no statutory restriction on the transfer of ownership over real properties subject to a commercial lease, except as the lease (rent) on agriculture land used by the lessee for agriculture purposes in concerned, where the lessee has a pre-emptive right.

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Issues Relating To Commercial Leasing

Canada, Alberta

Prepared by Lex Mundi member firm Blake, Cassels & Graydon LLP

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

No transfer taxes are payable on the creation or assignment of a lease, however, registration fees are charged if a lease or notice of a lease is registered at the Land Titles Office.

Leases may be registered at the Land Titles Office, and a certificate of leasehold title may be issued, if the leased premises constitute the entire parcel of land owned by the landlord. In such event, a registration fee of 0.02% is calculated and charged upon 5% of the fair market value of the land (including buildings and any leasehold improvements intended to be made) multiplied by the number of years remaining in the term. The same fee is calculated and charged for the registration of a transfer of the leasehold title.

Nominal registration fees are charged for the registration or transfer of leases which are registered by way of notice (caveat) only.

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

If the lease is for an entire parcel of land, there is no restriction on the length of the term provided it is not perpetual (i.e. indefinite). Where the lease is for a portion of a parcel of land, there is no prescribed maximum term but the lease is not registerable if it has the effecting of subdividing the parcel without approval of the subdivision authority. An example of such a subdivision is where rent for the entire term is paid in advance and/or the landlord's reversionary rights are limited, such that it is the true intention of the parties to effect a sale of the premises rather than a lease.

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

There are no such laws. If the lease does not grant the tenant a right of renewal, the tenant has no legal right to remain in the premises at the expiry or earlier termination of the term.

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

There are no restrictions. Rent is freely negotiable both initially and in respect of renewals.

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

Under common law, a tenant is permitted to terminate its lease if the landlord has committed a fundamental breach. The threshold for establishing a fundamental breach is very high as the Courts have interpreted fundamental breach to mean a breach which essentially deprives the tenant of the entire benefit of its lease. Aside from the foregoing, the law does not afford a tenant any right to terminate its lease.

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

In the absence of any restriction contained in the lease, a tenant may assign or sublet without restriction. However, most leases require the landlord's prior written consent to be obtained (and, in

most cases, the landlord is required to act reasonably in considering the tenant's request).

Where the lease requires the landlord to act reasonably, a tenant may seek redress from the Courts if the tenant is of the view that the landlord has unreasonably refused to grant consent. If the tenant is successful, the Court has the authority to order the landlord to permit the assignment or sublet, as the case may be.

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

It is possible to have an absolute prohibition on assignment or subletting. However, as noted above, most leases oblige the landlord to act reasonably in considering the tenant's request.

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

Court involvement or supervision is not required to effect termination of a lease, however, as the tenant has the right to apply to a court for relief from forfeiture, a court order confirming the termination may be applied for by the landlord. Typically, the landlord provides a notice of default requiring the tenant to remedy a breach within a stipulated cure period (see discussion below on cure periods). Once the cure period has expired, the landlord may terminate the lease.

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

No. However, leases typically stipulate that the pledging of a leasehold interest will constitute a default under the lease unless the landlord's prior written consent is obtained. Some leases require landlords to act reasonably in granting their consent, others permit the landlord to arbitrarily withhold consent.

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 legislated restrictions regarding the handling of security deposits.

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

There are no such legal disclosure obligations.

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

Landlords are required to collect and remit to the Government of Canada Goods and Services Tax (GST). GST is levied in an amount equal to 5% of the rent payable by the tenant to the landlord. GST applies to all rent payable by the tenant (i.e. both on net rent and any additional rent such as recovery of operating costs and property taxes).

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

A landlord may terminate the lease and retake possession of the leased premises without court order, however, the exercise of a power of distress (seizure of tenant's goods for unpaid rent), if available to the landlord, may only be made by a bailiff or civil enforcement agency appointed pursuant to the Civil Enforcement Act (Alberta).

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

The remedies of termination and distress are implied. However, rent cannot be accelerated unless

the lease expressly provides for it. Further, the lease must expressly grant the landlord the right to enter the premises to cure a default on behalf of the tenant.

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 such expedited remedies available.

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

There are no formal requirements.

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

Leases for a period not exceeding 3 years do not require registration where the tenant is in actual occupation. For leases exceeding 3 years, the tenant should register the lease or notice of the lease in order to ensure priority of the lease as against third parties with an interest in the property.

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Issues Relating To Commercial Leasing

Canada, Nova Scotia

Prepared by Lex Mundi member firm McInnes Cooper

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

In Nova Scotia, leases with terms of 21 years or more are subject to payment of deed transfer tax. Deed transfer tax is levied at the municipal level in Nova Scotia. Whether or not a deed transfer tax applies depends upon the municipality in which the property is located. Both registered and unregistered leases are subject to such taxation. The rate of deed transfer tax can vary from 0% (where no tax is imposed) to 1.5% depending upon the municipality. The applicable deed transfer tax rate is applied to the entire consideration for the property in order to arrive at the amount payable.

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

A lease for a term of more than 20 years (inclusive of any renewal provisions will require subdivision approval) if the lease only applies to a portion of an approved parcel or a parcel for which subdivision approval is not required (eg. a lot created before subdivision approval was required). Failure to obtain such subdivision approval does not invalidate the lease as between the parties but does prevent the lease from creating any interest in land. There is no specific exemption for a lease of a portion of a building but the general view is that such leases would be exempt as subdivision approval could not be obtained for a portion of a building.

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

There are no such laws. If the lease does not grant the tenant a right of renewal, the tenant has no legal right to remain in the premises at the expiry or earlier termination of the term.

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

There are no restrictions. Rent is freely negotiable both initially and in respect of renewals.

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

Under common law, a tenant is permitted to terminate its lease if the landlord has committed a fundamental breach. The threshold for establishing a fundamental breach is very high as the Courts have interpreted fundamental breach to mean a breach which essentially deprives the tenant of the entire benefit of its lease. An insolvent commercial tenant making a proposal to its creditors under the Bankruptcy and Insolvency Act has rights to disclaim or resiliate a commercial lease subject to satisfaction of certain conditions.

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

In the absence of any restrictions contained in the lease, a tenant may assign or sublet without restriction. However, most leases require the landlord's prior written consent to be obtained (and, in most cases, the landlord is required to act reasonably in considering the tenant's request).

Where the lease requires the landlord to act reasonably, a tenant may seek redress from the Courts if the tenant is of the view that the landlord has unreasonably refused to grant consent. If the tenant is

successful, the Court has the authority to order the landlord to permit the assignment or sublet, as the case may be.

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

It is possible to have an absolute prohibition on assignment or subletting. However, as noted above, most leases oblige the landlord to act reasonably in considering the tenant's request.

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

Termination is a self-help remedy in Nova Scotia and Court involvement or supervision is not required. Typically, the landlord provides a notice of default requiring the tenant to remedy a breach within a stipulated cure period. Once the cure period has expired, the landlord may re-enter and terminate the lease.

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

No. However, leases typically stipulate that the pledging of a leasehold interest will constitute a default under the lease unless the landlord's prior written consent is obtained. Some leases require landlords to act reasonably in granting their consent; others permit the landlord to arbitrarily withhold consent.

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 legislated restrictions regarding the handling of security deposits for commercial leases.

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

There are no legal disclosure obligations.

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

Landlords are required to collect and remit to the Government of Canada Harmonized Sales Tax (HST) which consists of the Federal Goods and Services Tax in an amount equal to 5% and Provincial Sales Tax in an amount equal to 8% for a total HST of 13% of the rent payable by the tenant to the landlord. HST applies to all rent payable by the tenant (i.e. both net rent and any additional rent such as recovery of operating costs and property taxes).

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

A landlord may terminate the lease and retake possession of the leased premises and exercise a power of distress (if available) without court order. The landlord's rights are limited by the tenant's common-law right to apply for relief from forfeiture.

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

The remedies of termination and distress are implied. However, rent cannot be accelerated unless the lease expressly provides for it. Further, the lease must expressly grant the landlord the right to enter the premises to cure a default on behalf of the tenant.

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 such expedited remedies available.

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

Although there are no formal requirements, the Statute of Frauds requires the lease to be in writing to be enforceable.

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

For properties not yet converted to our Land Registration System, a lease for a term exceeding three (3) years has to be registered to be effective against any person claiming under a subsequently registered instrument. Unfortunately our Registry Act does not include any provision for the filing of a Memorandum of Lease or Short Form of Lease. For properties which have been converted to our new Land Registration System, a lease for three (3) years or less under which there is actual occupation by the tenant does not need to be registered. A lease for a term of more than three years (3) must be registered in order to create an interest in land and to ensure priority of the lease against third parties with another registered interest in the property. Our new Land Registration Act does provide for the registration of a Notice of 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?

There are no legislated restrictions on such a transfer. Any restrictions would be found in the lease document. It is not uncommon for a lease to provide that the landlord may transfer its ownership of the real property and only be liable for the landlord's covenants under the lease during its period of ownership.

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Issues Relating To Commercial Leasing

Canada, Ontario

Prepared by Lex Mundi member firm Blake, Cassels & Graydon LLP

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

In Ontario, leases with terms of 50 years or more are subject to payment of land transfer tax. The land transfer tax amounts to approximately 1.5% of the fair market value of the premises to which the lease extends. For properties in the City of Toronto, the City levies an additional land transfer tax of approximately 1.5% of the fair market value (for a total tax of 3%).

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

A lease for a term of 21 years or more (inclusive of options to renew) is considered void if the lease only applies to a portion of the landlord's land parcel (in other words, the lease is void if the landlord owns adjoining lands which are not subject to the lease). However, exceptions to the foregoing include a lease: (i) of part of a building; (ii) of a whole of a lot or block on a plan of subdivision; and (iii) for which consent has been obtained by the local municipal authority.

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

There are no such laws. If the lease does not grant the tenant a right of renewal, the tenant has no legal right to remain in the premises at the expiry or earlier termination of the term.

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

There are no restrictions. Rent is freely negotiable both initially and in respect of renewals.

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

Under common law, a tenant is permitted to terminate its lease if the landlord has committed a fundamental breach. The threshold for establishing a fundamental breach is very high as the Courts have interpreted fundamental breach to mean a breach which essentially deprives the tenant of the entire benefit of its lease. Aside from the foregoing, the law does not afford a tenant any right to terminate its lease.

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

In the absence of any restriction contained in the lease, a tenant may assign or sublet without restriction. However, most leases require the landlord's prior written consent to be obtained (and, in most cases, the landlord is required to act reasonably in considering the tenant's request).

Where the lease requires the landlord to act reasonably, a tenant may seek redress from the Courts if the tenant is of the view that the landlord has unreasonably refused to grant consent. If the tenant is successful, the Court has the authority to order the landlord to permit the assignment or sublet, as the case may be.

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

It is possible to have an absolute prohibition on assignment or subletting. However, as noted above, most leases oblige the landlord to act reasonably in considering the tenant's request.

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

Termination is a self-help remedy in Ontario. In other words, Court involvement or supervision is not required. Typically, the landlord provides a notice of default requiring the tenant to remedy a breach within a stipulated cure period (see discussion below on cure periods). Once the cure period has expired, the landlord may re-enter and terminate the lease.

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

No. However, leases typically stipulate that the pledging of a leasehold interest will constitute a default under the lease unless the landlord's prior written consent is obtained. Some leases require landlords to act reasonably in granting their consent; others permit the landlord to arbitrarily withhold consent.

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 legislated restrictions regarding the handling of security deposits.

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

Landlords must advise tenants if the premises contain asbestos or asbestos containing materials. Aside from the foregoing, there are no legal disclosure obligations.

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

Landlords are required to collect and remit to the Government of Canada Goods and Services Tax (GST). GST is levied in an amount equal to 5% of the rent payable by the tenant to the landlord. GST applies to all rent payable by the tenant (i.e. both on net rent and any additional rent such as recovery of operating costs and property taxes).

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

Under statute, 15 days must elapse before the landlord can terminate a lease for non-payment of rent. However, this period is usually reduced or eliminated altogether in leases. For non-rent defaults, the landlord must first provide the tenant with written notice of the default and a reasonable period within which to cure it. This statutory requirement cannot be altered under contract.

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

The remedies of termination and distress are implied. However, rent cannot be accelerated unless the lease expressly provides for it. Further, the lease must expressly grant the landlord the right to enter the premises to cure a default on behalf of the tenant.

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 such expedited remedies available.

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

Although there are no formal requirements, the Statute of Frauds requires the lease to be in writing to be enforceable.

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

For properties registered under the Land Titles system (which represents most properties in Ontario), leases for a period not exceeding 3 years do not require registration where the tenant is in actual occupation. For properties registered under the Registry System, the period is increased to 7 years. Save for the foregoing exception, in the absence of the registration of the lease or a notice thereof, a third party without notice may be entitled to an interest in the property without the property being subject to the lease.

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Issues Relating To Commercial Leasing

Canada, Quebec

Prepared by Lex Mundi member firm Blake, Cassels & Graydon LLP

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

In Quebec, leases with terms of 40 years (including renewals) or more are subject to payment of transfer duties upon registration of the lease at the Quebec Land Registry. The graduated land transfer tax amounts to approximately 1.5% of the fair market value of the premises to which the lease extends.

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

In Quebec, the term of a lease may not exceed 100 years; if it exceeds 100 years, it is reduced to that term. (article 1880 of the *Civil Code of Quebec*).

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

A lease is renewed tacitly where the tenant continues to occupy the premises for more than 10 days after the expiry of the lease without opposition from the landlord. In that case, the lease is renewed for 1 year or for the term of the initial lease, if that was less than 1 year, on the same conditions. The renewed lease is also subject to renewal. (article 1879 of the *Civil Code of Quebec*) However, this rule is not of public order and as such most leases usually provide that there is no tacit renewal.

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

There are no restrictions. Rent is freely negotiable both initially and in respect of renewals.

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

In Quebec, the non-performance of an obligation by either the tenant or the landlord entitles the other party to apply for the rescission (i.e. termination) of the lease where the non-performance causes serious injury to said party or to the other occupants of the building. The non-performance by the landlord of its obligations also entitles the tenant to apply for a reduction of rent. (article 1863 of the *Civil Code of Quebec*)

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

A tenant may sublease all or part of the leased property or assign his lease. In either case, the tenant must give notice of its intention and the name and address of the intended sublessee or assignee to the landlord and obtain landlord's consent. (article 1870 of the *Civil Code of Quebec*)

Notwithstanding the foregoing, the landlord may not refuse to consent to the sublease or the assignment without a serious reason. If the landlord refuses, the landlord is bound to inform the tenant of the landlord's reasons for refusing within 15 days after receiving the notice; otherwise, the landlord is deemed to have consented to the sublease or assignment. (article 1871 of the *Civil Code of Quebec*).

However, these rules are not of public order and as such the landlord can request that the lease stipulates that its consent, acting reasonably, is required and/or can list circumstances/events

pursuant to which landlord can refuse to grant its consent. Most commercial leases contain clauses to this effect.

Where the lease requires the landlord to act reasonably, a tenant may seek redress from the Courts if the tenant is of the view that the landlord has unreasonably refused to grant consent. If the tenant is successful, the Court has the authority to order the landlord to permit the assignment or sublet, as the case may be.

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

It is possible to have an absolute prohibition for assignment or subletting. However, as noted above, most commercial leases oblige the landlord to act reasonably in considering tenant's request.

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

Unless there is a clear clause in the lease to the effect that the lease can be terminated by the landlord without any judicial proceedings (usually upon the occurrence and continuance of an event of default and subject to a reasonable cure period, as agreed between the parties), the landlord must petition the Court to obtain the termination of the lease.

When the lease contains a clear clause, the Quebec Courts have held that the landlord is entitled to terminate the lease without any judicial proceeding. There is still, however, uncertainty under Quebec law as to whether the landlord can, upon unilaterally terminating the lease, re-enter the premises without judicial proceeding, even with a clear clause in the lease to that effect.

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

No. However, in Quebec the tenant does not have a real right in the lease but only a personal right to occupy the premises. There is no concept of leasehold interest per se.

9. 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 legislated restrictions regarding the handling of security deposits.

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

Landlords must advise tenants if the premises contain asbestos or asbestos containing materials. Aside from the foregoing, there are no legal disclosure obligations.

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

Landlords are required to collect and remit to the Government of Canada the Goods and Services Tax (GST). GST is levied in an amount equal to 5% of the rent payable by the tenant to the landlord. Landlords are also required to collect and remit to the Government of Quebec the Quebec Sales Tax (QST). QST is levied in an amount equal to 7.5% of the rent payable by the tenant to the landlord (including the GST).

QST and GST applies to all rent payable by the tenant (i.e. both on net rent and any additional rent such as recovery of operating costs and property taxes)

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

The landlord may not unilaterally terminate the lease if (i) there is no clear clause to that effect in the

lease, (ii) the landlord has already commenced judicial proceedings or (iii) the landlord has not provided reasonable time for the tenant to remedy its default (i.e. the landlord has abused its rights).

Also, see above “What is the common form of eviction proceeding? What is the customary length of time for that proceeding?”

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

In Quebec, rent cannot be accelerated unless the lease expressly provides for it. There is no equivalent to the right of distress in Québec.

14. 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 such expedited remedies available.

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

There are no formal requirements.

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

In Quebec, any lease may be registered at the Land Registry by either (i) publishing the lease at length, (ii) by way of summary (in which case the actual lease still needs to be attached for consultation purposes), or (iii) by way of a notice.

The effect of registration is that an acquirer or the person who benefits from the extinction of title may not resiliate (i.e. terminate) the lease if the lease was registered at the Land Registry before the deed of alienation or the act by which the title is extinguished (i.e. deed of sale or foreclosure). (second paragraph of article 1887 of the Civil Code of Quebec)

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Issues Relating To Commercial Leasing

Channel Islands

Prepared by Lex Mundi member firm Mourant Ozannes

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.

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Issues Relating To Commercial Leasing

Colombia

Prepared by Lex Mundi member firm Brigard & Urrutia Abogados

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

There are no transfer taxes payable on creation or assignment of a lease agreement in Colombia.

2. Describe any legal restriction limiting the maximum term of a lease (Including renewals).

Under Colombian law there is no legal restriction limiting the maximum term of a lease (including renewals).

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

Colombian law provides a general regime applicable to lease agreements established in the Civil Code. However, there are particular regulations applicable to: (i) commercial lease agreements established in the Commercial Code ("Commercial Lease Law") and (ii) housing lease agreements determined by Law 820 of 2003 ("Housing Lease Law").

Pertaining to commercial lease agreements, by means of article 518 of the Commercial Code, the tenant shall be entitled to renew its lease contract whenever it has held the property under a lease agreement over a minimum of two consecutive years, except in the following instances:

1. Breach of the contract by the lessee.
2. When the owner needs the property for his own occupation or for the installation of a business establishment (*establecimiento de comercio*) of his own with a different activity from the one carried out by the previous lessee.
3. When the property is subject to reparations that cannot be performed without the restitution.
4. When the property has to be demolished as a consequence of its ruin status, or when a new construction over the property will be carried out by the owner.

In the events described in 3 and 4 above, the tenant shall have preference right to occupy the new premises once the construction is finished.

Pertaining to housing lease agreements, neither the Civil Code nor Law 820 of 2003 provides requirements for landlords to allow a tenant to renew its lease. Under civil and Housing Lease Law, it is up to the parties to consent on the renewals of the agreement, which may be automatic or subject to notification by the parties in accordance to the terms established in the contract.

However, by means of the Housing Lease Law the tenant may unilaterally terminate the lease at the expiration of the initial term or its extensions by sending written notice to the landlord through the authorized Postal Service with no less than three (3) months prior to the expiry date of the initial term or its renewals. In this event, the tenant is not obliged to pay damages compensation to the lessor.

The lessor may unilaterally terminate the agreement only in the following instances:

- (i) When the owner needs the property for his own occupation for a period no less than one year.

- (ii) When the property has to be demolished as a consequence of its ruin status, or when a new construction over the property will be carried out by the owner.
- (iii) When it is to be delivered to a third party in fulfillment of the obligations arising from a purchase agreement.

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

According to Housing Lease Law, the monthly rental fee cannot be superior to a value equivalent to 1% over the commercial price of the leased property.

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

Pursuant to Housing Lease Law, the tenant is allowed to terminate a lease agreement prior to its stated expiration date. In this event, the tenant must send a written notice to the landlord through the authorized Postal Service no less than three (3) months prior to the expiry date of the initial term or its renewals. According to the Housing Lease Law, the tenant is allowed to terminate the lease within its initial term or its renewals. In this event, the tenant is bound to pay damages compensation to the lessor equivalent to three (3) rental fees.

In addition, generally Colombian Law allows tenants to terminate a lease prior to its stated expiration date in the event of breach of the lease agreement by landlord.

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

According to Commercial Law in connection with:

- A) Assignment: In the event of transfer of the business establishment by the tenant, he can assign the lease agreement to the purchaser without any authorization by the landlord.
- B) Sublease: The tenant is allowed to sublease up to 50% of the leased area without the authorization of the landlord.

In accordance to Article 2004 of the Civil Code, the landlord's prior consent is required in order for the tenant to assign the agreement or sublease the area.

In connection with the Housing Lease Law, Article 17 states that the landlord's prior consent is required in order for the tenant to assign the agreement or sublease the area.

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

There is no law that expressly allows landlords to restrict assignments or subleases by tenants.

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

This is a special proceeding known as *proceso de restitución de inmueble arrendado*, which is governed by the rules of special abbreviate process that seeks to enforce the restitution of the property to the landlord. This proceeding takes place before the judges and may take approximately from 1 to two (2) years.

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.

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 requirements under Colombian law for landlords to hold security deposits in connection with lease agreements. There is no prohibition in this regard in the Civil Code nor the Commercial Lease Law.

However, the House Lease Law provides a prohibition to request real deposits and bonds to the lessee. The leases for urban housing will not require cash deposits or other type of bonds in order to ensure the compliance of the obligations by the tenant under this type of contract.

Such guarantees may not be established, indirectly, by an intermediary, by agreements in separate documents that have been recorded in the lease, or by replacement by others under names different from those indicated above.

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 for tenants under Colombian law.

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

Entering in to a lease agreement requires the payment of the following taxes:

- (i) Stamp tax: is applicable for lease agreements with an amount superior to COP\$140.000.000 (Aprox. USD\$60.000). The amount of the agreement is determined by the sum of the monthly rent payable along the term of the agreement. According to Colombian tax law, the stamp tax rate for 2009 is 0.5% on the total value of the contract and from 2010 this tax will have a rate of 0%.
- (ii) Sales Tax or value added tax (VAT): is applicable to commercial lease agreements and is equivalent to the 10% of the value of the monthly rent of the lease. Usually, this obligation corresponds to the tenant according to the agreement between the parties in this regard.

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

By means of Colombian law, the only self-help remedy that can be exercised by the landlord is the lien right which entitles the landlord to retain the lessee's products derived from the lease and his furniture both of which will be understood as his own goods.

In the event that the self-help right is not effective, the landlord may file an action before a judge in order to initiate an eviction process to obtain the restitution of the property.

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

Pursuant to the Colombian law, it is implied in lease agreements that the termination of the agreement prior to its expiration date, due to the lessee's default, entitles the landlord to request the payment of the rental fees corresponding to the remaining time of the agreement term.

It is important to note that in connection with commercial agreements the lessee will be obliged to pay default interests to landlord in the event of non compliance with the payment of the rental fee in the stated date.

As a mean of damages compensation in lease agreements, the parties usually state a penalty clause that customarily is stated as the equivalent of two rental fees.

In addition, it is important to note that the lessee has retaining right over the leased property in the events when the landlord owes him compensation damages. In this sense, the landlord cannot remove the lessee from the leased property if he has not paid him such compensation.

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 the tenants default, the landlord may seek the following expedited remedies:

- Self help right in favor of the landlord to hold the tenants belongings until he fulfills the default.
- Enter in to a lease insurance policy by the lessee in favor of the landlord.

However, there are some remedies that can be agreed by the parties, such as:

- The parties may include a compromising clause in the agreement to resolve any controversy before the arbitral trial in the corresponding chamber of commerce, which is a much more expedited process than the ordinary proceedings in the event of a default.
- The parties may agree on a penalty clause as a mean of damages compensation.

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

There are no formal requirements for the execution of a lease agreement, the consent of the parties alone is sufficient for the execution of a lease agreement. The contract may be verbally agreed upon or supported on a written document.

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

In order to make a lease agreement enforceable between the parties, it is only necessary that the parties consent.

On the other hand, in order to make a lease agreement enforceable against third parties, it is necessary to record it before a notary public by means of a public deed. Such public deed must be duly registered in the corresponding office of the public registry in order for the agreement 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?

Taking into account that generally there are no restrictions to transfer ownership of a real property subject to a lease agreement, it is important to understand that the lessor rights may be affected in the event that the landlord sells the property subject to a lease, due to the fact that the purchaser is not bound to fulfill the lease agreement.

However, in cases when the lease agreement is recorded by means of a public deed, the purchaser is bound with the continuance of the lease agreement so the tenant's rights and obligations derived from the lease agreement will not be affected.

On the other hand, in connection with mortgages creditors, they are obliged to continue fulfilling the lease agreement only when it is duly registered in the certificate of conveyance and good standing of the leased property.

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Issues Relating To Commercial Leasing

Cyprus

Prepared by Lex Mundi member firm Dr. K. Chrysostomides & Co LLC

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

Stamp duty is payable on the total value of a contract calculated at 1.5 per thousand for amounts up to € 170,860.00 and 2 per thousand for amounts exceeding € 170,860.00. Unless otherwise agreed between the parties, the stamp duty would be payable by the tenant.

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

There are no legal restrictions on the maximum term of a lease or any renewals thereof.

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

No express statutory provision exists. If the lease grants the tenant the unconditional right of renewal and the tenant notifies the landlord accordingly then the tenancy is renewed. Such a clause is usually coupled to the parties' prior agreement on the increase of rent without which there will be no renewal.

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

A lease is likely to be governed by the provisions of the Rent Control Law 23/1983 if it falls within certain criteria. More specifically, if a building, whether used as a residence or for professional purposes, was completed prior to 31.12.1999, it is situated within a controlled area as this is designated in the relevant law and the initial rental period has expired or the landlord terminates the lease but the tenant continues to occupy the premises, then the tenant becomes a statutory tenant. In such a case, the tenants' eviction is possible only on the grounds stipulated in the law. Furthermore, any increase in rent cannot exceed the maximum provided by the law which is currently fixed at 14% for a (subsequent) two year period although a lesser increase may be agreed by the parties or fixed by the Court.

If the property is not subject to the Rent Control Law then the lease will be subject to general contract law provisions in which case, where there are no restrictions on the rent that may be charged to a tenant.

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

There are no such statutory provisions. In any action against the tenant for the premature termination of a lease, tenant may however argue that the leased premises have become untenable and/or uninhabitable not due to his fault.

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

Under s. 11(1b) of the Rent Control Law, any sublease of the leased premises without landlord's consent, may lead to eviction but this would ultimately be at the discretion of the Court. Although assignments are not expressly mentioned in the Rent Control Law, they would be equated to subleases for the purposes of the said law. Where the Rent Control Law does not apply, any assignment or sublease without consent from the Landlord could be deemed a breach of contract and

may lead to termination.

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

The Landlord may restrict absolutely the right of the tenant to assign or sublease the lease premises. Even when the assignment or sublease is permitted, the relevant clause usually makes such assignment or sublease subject to the written consent of the landlord, which consent shall not be unreasonably withheld.

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

S. 11 of the Rent Control Law stipulates the grounds for eviction when the leased premises are subject to the Rent Control Law, (as already mentioned in Para. 4 above). These include, inter alia, non-payment or delay in the payment of the rent (for more than 21 days from service upon the tenant of the relevant notice and thereafter, if the tenant does not pay within 14 days from service of the application for eviction); misconduct of the tenant that constitutes a nuisance for the neighbors; serious damage to or destruction of the premises out of gross negligence; subletting the premises without the consent of the owner; demolition and/or reconstruction of the premises; works on a listed building and for reasonable use by the owner himself. In all cases, except where the law provides otherwise, the landlord must give at least one month's notice for eviction. If the tenant files a defence to the eviction proceedings, judgment on the matter can take up to a year.

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

Although, there is no legal restriction on the pledging of a leasehold interest (or any other interest) in practical terms, such security would probably need to be subject to the owner's consent and would be of little, if any, value.

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 statutory provision governing security deposits.

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

None, other than the standard contractual disclosures.

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

There is no VAT on rents. The landlord is not required to collect any taxes from the tenant. However, in practice, the landlord may collect the common expenses, where applicable, either separately or as part of the agreed rent.

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

The landlord may not exercise self help without a court order or judgment.

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

Rent acceleration would be implied as loss of profit. The landlord may seek to recover due rents under the initial lease until a new tenant is found. Damages awarded may cover the period the property was not leased at the highest possible rent and also any shortfall in a subsequent rent provided that the landlord took appropriate measures to mitigate his damages by re-renting the

premises.

- 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.**

See grounds applicable to statutory tenants in Para. 8 above.

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

Under s. 77 of the Contract Law, Cap. 149, leases in excess of one year must be in writing and signed by the parties or their duly appointed representatives in the presence of two witnesses. Where a company with a multi-member Board of Directors is party to a lease, it would be appropriate, as a matter of good practice, to execute minutes and powers of attorney authorising the signing of a lease.

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

Under Clause 65B, of the Immovable Property, (Tenure, Registration & Valuation) Law, Cap. 224, leases may be registered as encumbrances with the local Land Registry office provided that the remaining period of lease exceeds 15 years at the time of registration and this is not expressly prohibited in the contract. Where applicable, the consent is required from an existing mortgagee.

- 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?**

Contractual considerations would apply. In the case of a lease that has been recorded in the Land Registry as per 17 above, sale and further encumbrance of the leased premises would be allowed unless expressly prohibited or limited by any agreement.

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Issues Relating To Commercial Leasing

Denmark

Prepared by Lex Mundi member firm Kromann Reumert

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.

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Issues Relating To Commercial Leasing

Dominican Republic

Prepared by Lex Mundi member firm Pellerano & Herrera

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

The taxes payable on the creation of a lease are the following:

- a. **Income tax:** If the landlord is a commercial entity, the landlord must pay at the end of the year an income tax to the Internal Revenue Department of the Dominican Republic (DGII), which amounts to 25% of the revenue arising from the rent fee.

If the landlord and the tenant are both individuals, the landlord must pay income tax at the end of the year on the revenue arising from the rent fee to the DGII.

If the landlord is an individual and the tenant is a legal entity, the tenant must withhold 10% of the amount of the rent fee and pay it to the DGII. However, in this case, at the end of the year, the landlord will be able to offset the amount retained by the tenant with the applicable tax rate to be paid on income tax, according to the following withholding schedule:

Yearly income in Dominican Pesos			Tax Range
Lower Limit	Upper Limit	Accrued	[Surplus rate]
	330,301.00	-	Exempted
330,301.01	495,450.00	-	15%
495,450.01	688,125.00	24,772.00	20%
688,125.01	-	63,307.00	25%

- a. **Value Added Tax (ITBIS):** In the event that the landlord is a company, and the tenant is a commercial entity or an individual, the tenant must pay the ITBIS (which amounts to 16% of the rent fee) to the landlord, who will pay the funds to the DGII.

If the landlord is an individual and the tenant is a company, the company will pay the ITBIS directly to the DGII. If both parties are individuals, the tenant will pay the ITBIS directly to the DGII.

It is important to take into account that the Tax Code provides that the payment to the DGII cannot exceed 3 months, regardless of the provisions of the lease agreement.

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

There are no legal restrictions on a maximum term for said agreement.

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

According to the Decree No. 4807 for the Control of Leases and Evictions, issued on May 29, 1950, the landlord is required to allow a tenant to renew its lease. The Decree sets forth the reasons by which a landlord may terminate a Lease Agreement, the expiration of the term or the unilateral will of the landlord are not included as causes of termination. This Decree is considered a public order disposition, thus deemed applicable over any law or private agreement regarding this matter.

However, on December 3, 1998, the Supreme Court of Justice declared such exclusion illegal and unconstitutional. Since then, the parties must respect the expiration of the term of the Lease Agreement and the landlord must consent to renew the lease with the tenant, pursuant to the general provisions of the Civil Code.

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

There are certain restrictions on rent that may be charged for to a tenant.

Decree No. 4807 provides that the landlord must request an authorization to raise the rent to a tenant from the Bureau for the Control of Leases and Evictions, explaining the reasons for such raise. If the Bureau deems the reasons adequate, the Bureau will authorize the landlord to raise the rent.

If the raise comes as a result of repairs or improvements to the property, the landlord may adjust the rent accordingly without the intervention of the Bureau of Control. However, if the new rent exceeds 1% of the total appraised value of the property, the tenant may file a claim.

For this purpose, the Bureau will take into account the appraisal made by the General Department of the Cadastre. Nevertheless, it is important to take into account that the Bureau does not change the rent before six months from the start of the lease.

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

In principle, our Civil Code enables tenants to terminate a lease prior to its stated expiration date, although such termination will entail the payment of a penalty for such purposes, unless the agreement states otherwise.

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

The Civil Code allows tenants to assign the Lease Agreement or sublease the property if it is not expressly forbidden in said agreement.

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

The Civil Code allows landlord to restrict assignments or subleases by tenants, by providing such restrictions expressly in the Lease Agreement.

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

The eviction proceeding will depend on the cause by which the tenant is being evicted:

- a. If the reason is that the property will be repaired or rebuilt by the landlord, and the tenant refuses to leave the property, the landlord must request a conciliation session in the Bureau of Control of Leases and Evictions. If the parties do not reach an agreement, then the Bureau will make a decision, which may be appealed before the Commission of Appeals of Leases and Evictions. The decision of the Commission may be contested in the Ordinary First Instance Civil Court. This

judicial procedure, if a remedy is filed in the Supreme Court of Justice, could take from 3 to 5 years.

In case the landlord wishes to live in the property or use it to set his own business, and the tenant refuses to leave, the landlord may follow the same procedure before the Bureau of Control of Leases and Evictions and the Ordinary Courts.

- b. In case that the landlord wishes to evict the tenant for failure to pay the rent, then the landlord must file a claim in the Peace Court. This procedure may last between 3 and 5 months, and the decision will be applied notwithstanding if a remedy of appeal or a remedy to the Supreme Court of Justice is filed.
- c. If the lease has been agreed verbally, the landlord must notify the tenant 180 days before the eviction, in case the property is occupied by a commercial establishment. If there is an expiration term in a written agreement, the tenant must leave the property by the end of such term. If the tenant does not proceed to do so, the landlord must file a claim in the Peace Court. This procedure may take between 3 and 5 months, and the decision will be applied notwithstanding if a remedy of appeal or a remedy to the Supreme Court of Justice is filed.

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.

Law 4314, which Rules the Provision and Application of Funds in the Lease, issued on October 22, 1955, modified by Law 17-88 on February 5 1988 (hereinafter Law 4314), establishes that the landlord must place the security deposits in a separate account in the Agricultural Bank of the Dominican Republic within 15 days of the execution of the Lease Agreement.

There is a minimum amount that must be deposited in the Agricultural Bank according to the duration of the Lease Agreement, as shown in the following schedule:

Duration of the Agreement	Amount of the Deposit
1 year	1 month of rent
2 years	2 months of rent
3 or more years	3 months of rent

However, it is important to outline that in case the landlord requests an amount higher than the one stated in the schedule above, the whole amount must be deposited in the Agricultural Bank.

If the landlord fails to place the security deposits in the Agricultural Bank within the term provided, the landlord must pay 10 % of the amount of the deposit for each month of delay. This penalty will never surpass 50% of the amount of the deposit.

In addition, claims before the Bureau for the Control of Leases and Evictions and the Ordinary Courts will not move forward if the deposit has not yet been performed.

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

There are no required statutory or other legal disclosures to be made to all tenants.

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

Whether the tenant is a commercial entity or an individual, if the landlord is a company, the tenant must render the ITBIS (which arises to 16% of the rent fee) to the landlord, who will deposit the funds in the Internal Revenue Office.

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

The Decree expressly forbid the landlord the possibility of self help, by stating that the landlord must not try any maneuver to pressure the tenant to abandon the property, such as cutting the electricity, the water, suppression of roof or walls, among others.

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

Under the principle of “the free will of the parties” granted in the Civil Code, remedies such as acceleration of rent must be expressly stated in the Lease Agreement in order to be enforced.

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.

According to the Law 4314, the Lease Agreement must be registered in the Agricultural Bank of the Dominican Republic within 15 days of the execution of the Lease Agreement, in order to have certain date (enforceable against third parties), so that the tenant is protected against eviction from a third party purchaser. In addition, it is highly recommended to sign this agreement before a notary, and in certain circumstances, record it in the Registry of Titles.

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Issues Relating To Commercial Leasing

Estonia

Prepared by Lex Mundi member firm LAWIN

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

Estonia does not have transfer tax.

The taxation on lease depends on the character of the contract - does it meet the nature of financial or operational lease. The financial lease (the sale of goods) is basically taxed as sale by installments. All the VAT must be accounted and paid at the moment of transfer of the lease object. Lease interest is exempt from tax. The operational lease, where the right of ownership does not transfer, is taxed as service performance. The VAT is accounted periodically from the payments provided in lease contract.

VAT rate is 18%.

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

Under Estonian law, there are no legal restrictions limiting the maximum term of a lease. However, if a lease agreement has been concluded for a term exceeding 30 years, then after the first 30 years, either party may terminate the agreement without indicating the reason, by giving to the other party a three-month prior notice.

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

In case of commercial lease, Estonian laws do not require a landlord to allow a tenant to renew its lease. However, in practice lease agreements relatively often contain a provision on the tenant's pre-emptive right to renew the lease. If an agreement is concluded for a lease of residential premises, then the tenant may claim the landlord for extension of the lease term for additional three years if terminating of the agreement would bring along serious results for the tenant or his/her family. If the landlord does not agree to extend the residential lease period under such circumstances, then the tenant may claim the extension of term in a lease committee (which is a voluntary alternative dispute resolution body for lease disputes) or in a competent court.

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

There are no such restrictions.

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

A tenant may terminate a lease prior to its stated expiration date only upon material reasons, foremost due to a material breach of duties by the landlord, such as the landlord impeding the use of the leased premises, or because the leased residential premises are become health hazardous. Furthermore, as mentioned under the first questions, a tenant (as well as a landlord) may terminate a lease agreement, which is concluded for a period exceeding 30 years, after the first 30 years have passed, without indicating the reason thereto.

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

A tenant may not assign the lease or sublease the premises without landlord's consent. However, the landlord may not withhold such consent without a material reason.

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

A landlord may withhold its consent to sublease only if the landlord has a material reason thereto. The law provides for an illustrative list of such reasons, including the following:

- the tenant does not disclose the terms and conditions of the sublease to the landlord;
- sublease would bring along material loss/damage to the landlord;
- sublease would unreasonably burden the leased premises;
- landlord has a material reason that relates to the person of the sublessee.

If a landlord refuses the consent to sublease without a material reason, then the tenant has right to terminate the lease agreement on real property by giving a three-month prior notice.

If a reasonable increase in the rent may be assumed for the sublease, then the landlord may state that the tenant's consent to the increase of the rent is prerequisite to the landlord's consent for the sublease.

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

In order to evict a tenant, the landlord should file a claim to the court demanding the premises out of the tenant's possession back to the landlord. After a court resolution has been obtained and this has entered into force, the resolution can be compulsory executed by a bailiff on the landlord's request. In frames of the execution proceedings, the bailiff first gives to the tenant a term of up to three months to voluntarily comply with the court resolution and to leave the premises. After this term has passed without success, then the bailiff will evict the tenant, if necessary, with help of the police.

The length of this process depends mainly on duration of the court proceedings. The duration of the court proceedings may vary depending on the parties' arguments, necessity to hear witnesses, the number of the hearings, appealing to higher court instances, etc. The average duration of the court proceedings is 1.5 years. The customary length of compulsory execution of an eviction resolution in force is ca 6 months. Thus, the average length of time for eviction of a tenant is ca 2 years.

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

No.

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.

The landlord is required to hold the security deposit in a credit institution on an account separate from the landlord's own assets. At least the local average interest should be earned on the security deposit, and this interest belongs to the tenant. The law does not state clearly if the landlord can hold one separate account for all tenant security deposits or whether each security deposit must be held in its own separate account. However, if the landlord holds due accounting on the interest corresponding to each security deposit, then the landlord should have the right to have only one separate account for all tenant security deposits.

If a lease agreement is concluded in respect of any other property than residential premises, then the parties may agree upon that the deposit security must not be kept on a separate account. Without the

respective clause in the agreement, the above-described provisions of law apply.

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

There are no such legal requirements.

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

The VAT on rent is optional. VAT Act provides that the leasing or letting of immovables or parts thereof are supply exempt from tax, but the legislation provides an opportunity to add VAT to immovables rent if the tax authorities are notified in a written form about that. Must be noticed that the rent on dwelling is not optionally taxable.

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

Generally, no self-help is allowed. However, a landlord has statutory pledge on the furnishings and the tenant's property at premises. By such pledge, the claims for the current and the last year rent as well as claims for damages are secured. The landlord may use self-help in order to exercise rights arising out of this pledge. The parties may exclude applying of the statutory pledge and the related allowed self-help by agreement.

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

In Estonia, clauses on acceleration of rent are very uncommon, and the law does not expressly provide for such possibility. However, the parties may add such a clause to the commercial 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.

There are no such expedited remedies.

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

Generally, there are no mandatory formal requirements for the execution of a commercial lease. If a residential lease agreement with a term exceeding one year is not concluded in written form, then such agreement is considered to be concluded for an indefinite term.

A tenant may demand from the landlord making an entry on the lease to the Land Register of Estonia, which is a publicly reliable register of real property. Such entry in the Land Register secures the tenant's rights in case of transfer of the real property to a new owner – in case of an entry in the Land Register, the new landlord is prohibited to terminate the lease agreement due to the change of ownership of the real property.

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

As mentioned under the last question, to enforce a lease against third parties, an entry can be made in the Land Register. But it should be noted that a lease is transferred to a third party acquiring the real property also if there is no such entry in the Land Register and even if this third party is not aware of the lease agreement. Hence, a lease is enforceable against third parties also without the entry in the Land Register but an unregistered lease agreement can be terminated by the acquirer of the real property within three months as of the transfer of 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?

There are no restrictions on the transfer of ownership of real properties subject to a lease. In case of transfer of ownership, the lease on the real property remains in force and is transferred to the new owner, and the tenant retains its rights and obligations. However, the new landlord may terminate the lease agreement, by giving a three-month prior notice, within three months as of the date of acquiring the real property, unless the lease agreement is registered with the Land Register. Under the same conditions, a lease agreement concluded in respect of commercial (or residential) premises can be terminated by the new landlord only due to the reason that the new landlord strongly needs these premises by its own.

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Issues Relating To Commercial Leasing

Finland

Prepared by Lex Mundi member firm Roschier, Attorneys Ltd.

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

The creation of a leasehold right (i.e. a lease of land) for commercial purposes (hereinafter referred to as a "Land Lease") or a business lease (i.e. a lease of a building or part thereof) (hereinafter referred to as a "Business Lease") does not trigger any transfer taxes and neither does assignment of a Business Lease. However, assignment of a Land Lease triggers a transfer tax of 4% of the transfer price (including the price of any buildings located on the real property).

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

The maximum term of a Land Lease is one hundred (100) years (including renewals); a Land Lease can be made either for until further notice or for a fixed period.

There are no statutory limitations on the maximum term of a Business Lease; a Business Lease can be made either for until further notice or for a fixed period.

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

There are no express statutory provisions which require landlords to allow tenants to renew their lease. Any renewal rights should be explicitly included to the lease agreement.

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

Finnish legislation does not explicitly restrict the rent that may be charged from a tenant. However, due consideration should be paid to the provisions of the Index Act.. The lease agreement may contain an arrangement for linking the rent to an index if the agreement is in force for an indefinite period until terminated by a notice or for fixed period of a minimum of three (3) years.

Further both the Finnish Lease on Business Premises Act (applicable to Business Leases) and Land Lease Act (applicable to Land Leases) contain a general principle of fairness, according to which any provision in a lease agreement, including one concerning the rent, considered not to be in accordance with good practice or considered to be otherwise unreasonable may be altered or terminated. The landlord or the tenant may submit the fairness of the rent for consideration by a court of law.

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

Generally, if a Land Lease or Business Lease is entered into for a fixed term, the lease agreement will be binding upon the parties until the expiration date, unless otherwise agreed. However, under certain circumstances, such as material breach by the landlord or if the tenant forfeits possession of the lease object, the tenant may cancel the lease agreement prior to its stated expiration date.

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

A tenant may not assign a Business Lease (save for an assignment in connection with the transfer of

a business to which the landlord has no reasonable grounds to object) or relet the premises without landlord's consent, unless otherwise agreed. However, the tenant is entitled to sublet half of the premises if this does not cause the landlord significant inconvenience or disturbance.

With respect to Land Leases a tenant may assign a Land Lease without landlord's consent. However, subletting is not allowed without landlord's consent.

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

The laws applicable to Land Leases and Business Leases allow landlords to restrict assignment and subleasing by tenants.

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

Chapter 7 of the Finnish Execution Code is applicable to eviction proceedings concerning both Land Leases and Business Leases.

If the tenant does not vacate the lease object voluntarily, the landlord must first seek a formal eviction judgment from a court of law before it may commence formal eviction proceedings. Once the eviction judgment has been rendered by the court of law the landlord may apply for the commencement of formal eviction proceedings to the execution officer. The execution officer shall then serve an order to vacate on the tenant, and, if the tenant does not comply with the order, the execution officer may remove tenant and its belongings from the lease object.

As a result of this process, there is no customary length of time for eviction proceedings, however, usually the eviction process generally takes 4-10 weeks.

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

A tenure created by a Business Lease may not pledged as security for financing. However, it is rather general that the bank account to which the rents are paid is pledged as security for financing.

By contrast, a leasehold interest created by a Land Lease can be freely pledged as security for financing, provided that the land lease agreement fulfils the following criteria: (i) it is for a fixed term, (ii) the leasehold right is freely assignable and (iii) the tenant either (a) owns building(s) located on the leased land or (b) has a right to erect building(s) on the leased land.

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 landlords to hold security deposits in separate accounts.

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

There are no express statutory or legal disclosures with respect to Land Leases or Business Leases which must be made to all tenants. However, if the lease object is not in condition required or agreed on (including hidden defects if the lease object has been leased in a condition as they are), the tenant has the right to rescind the lease agreement. Therefore, the landlord should disclose the condition of the lease object to the tenant.

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

For the purposes of both Land Leases and Business Leases, provided a landlord has been duly VAT registered for letting out the leasable premises, they are required to collect VAT of 22% from their

tenants, unless the tenants are VAT exempt (e.g. banks) or not VAT registered.

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

Landlords may not exercise self-help; they are obliged to follow the formal eviction and collection proceedings.

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

Remedies such as acceleration of rent (i.e. where total amount of rent outstanding under the lease becomes immediately due and payable) are not customarily used in Finland. For such remedies to be available they should be expressly included in the lease agreement. Such provision would, naturally, be subject to the fairness principle.

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.

Collection of rent is typically a remedy which can be enforced against tenants in an expedited manner through court proceedings and an order to pay is enforceable (e.g. through execution proceedings) even though it is not final and binding.

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

A Land Lease must be in written form in order for it to be binding upon the landlord and the tenant, whereas a Business Lease need not fulfil any formal requirements in order for it to be enforceable between the landlord and the tenant.

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

Neither a Business Lease nor a Land Lease needs to be registered in order to be enforceable against third parties, provided that the tenant has the possession of the lease object and the third party did not know (and he/she could not reasonably have known) about the Land Lease or Business Lease. Please see also our reply to question number 18.

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 statutory restrictions on the transfer of ownership of real property which is subject to a Land Lease or Business Lease.

The main rule under Finnish law is that transfer of ownership of a real property does not affect the tenant's rights or obligations under the Land Lease or Business Lease and that the lease remains in force. However, if the tenant does not yet have possession of the lease object and the new owner of the real property did not know (and he/she could not reasonably have known) about the Land Lease or Business Lease, the new owner may terminate the Land Lease or Business Lease.

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Issues Relating To Commercial Leasing

Greece

Prepared by Lex Mundi member firm Zepos & Yannopoulos

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

There are no transfer taxes payable on creation or assignment of lease. Transfer taxes are due only upon the transfer or formation of property rights. A lease is only a contractual relationship whereby the landlord grants to the tenant the right of use of the property for a specific period of time and under specific terms and is not a property right. The consideration paid by the tenant to the landlord or to the existing tenant for the assignment of the latter rights may be subject to VAT at 19%.

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

Pursuant to applicable law there are no such restrictions.

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

Definite term leases are terminated following the completion of such term without the need to serve the tenant a termination notice. The landlord is not obliged by law to renew such lease but such obligation may be provided for in the private lease agreement. However, in case the tenant still uses the leasehold following the lapse of the lease term and the landlord is aware of such fact and does not raise any objections, the lease is considered as renewed for indefinite term and can be terminated by either party (if the parties have not agreed the contrary).

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

There are no restrictions on the amount of the rent chargeable to the tenant, if such amount has been agreed upon. However, restrictions can be applied, if the rent agreed by either party is in full inconsistency with the usual rent amounts of the market, contrary to the principles of good faith and bonus mores.

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

A tenant can terminate the lease prior to the expiration date in case a) the landlord does not grant him/her free use of the leasehold b) of real or legal defects of the leasehold attributed to the landlord c) of significant health peril which can be caused by staying at the leasehold d) of change of job position (for civil servants only) and e) of commercial leases, provided 2 years have lapsed since the beginning of the lease, by granting the landlord 6 months termination notice and compensation of 4 monthly rents.

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

The civil code allows the tenant to assign the use of the leasehold or further sublease it without the landlord's consent in case the two parties have not agreed the contrary. However, in commercial leases the law excludes such possibility. However, following the lapse of 3 years as of the beginning of the commercial lease it is allowed to assign the use of the leasehold to a personal liability company where the tenant holds at least 35% thereof, and with a rent increase of 20%.

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

As described above (6) the landlord may agree with the tenant that assignment of the use of the leasehold or sublease thereof is either totally prohibited or requires the (oral or written) consent of the landlord. However in commercial leases, above assignment cannot be prohibited through the lease agreement. It is allowed to be prohibited through an agreement posterior to the lease agreement.

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

The eviction of the tenant from the leasehold in case of bad use of the leasehold or his/her refusal to leave the leasehold in case of termination of the lease, is ordered by the Court by virtue of a decision issued following a relevant regular lawsuit filed by the landlord. Such decision may be appealed by the tenant and thus it may even take 5 years before it is rendered final.

Eviction is ordered by the Court by virtue of an eviction order issued following the filing of a relevant application of the landlord in case the lease is agreed in writing and provided the tenant does not pay the rent and notwithstanding the relevant notices served upon him by the landlord's bailiff. The procedure for the issuance of such eviction order is deemed to be faster than the procedure of regular lawsuits. Following its issuance, such eviction order is served upon the tenant who may challenge it within fifteen days and also ask the suspension of such order. In case the tenant does not challenge such order within above deadline, following twenty days from its service the order constitutes an enforceable title by virtue of which the landlord may evict the tenant from the leasehold.

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

There are no such restrictions.

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.

Any defect of the leasehold, legal or real, is to be disclosed to the tenant, otherwise the tenant may be entitled to terminate the lease and ask for compensation. Also the tax registration number of the landlord is to be disclosed to the tenant, since it is required for his/her tax return.

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

Rents under a commercial lease agreement are subject to stamp duty, whereas stamp duty does not apply to residential leases. Stamp duty is calculated on the annual rent at a flat rate of 3.6% and is paid to the State by the landlord. Subject to different arrangements made between the landlord and the tenant, stamp duty burdens both equally. In practice, stamp duty is borne by the tenant. It is noted that the lease of an industrial site and optionally the lease of properties in commercial centers may be subject, under specific requirements, to VAT at a flat rate of 19% calculated on the rent. In such a case, the aforesaid leases are not subject to stamp duty. VAT due burdens the tenant and is paid to the State by the landlord.

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

Following termination of the lease and delivery of the leasehold to the landlord, in case the tenant does not remove his/her belongings from the leasehold, the landlord may remove them in his own

power.

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

Any increase on the rent and its percentage must be expressly agreed upon by the parties. Regarding commercial leases, it is provided that in case of lack of relevant agreement, the rent should amount to at least 6% of the objective value of the leasehold, and then it should be increased annually at the rate of 75% of the annual inflation rate.

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 expedited remedies provided to the landlord in case the tenant does not pay the rent or any of his monetary obligations are granted as described above under (8) by virtue of the eviction order. The only other possible expedited remedies are granted by the Court following the injunction proceedings, and result in freezing the tenant's assets or in imposing other similar conservatory measures.

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

Leases do not have to be agreed upon in writing. However, leases whose term is longer than 9 years must be incorporated in a Notarial Deed and registered with the Books of the competent Land Registry so that any future landlord (the person who shall acquire ownership of the leasehold after the execution of the lease agreement) will be bound by the existing lease. In commercial leases, as per well established case law above provision does not apply (i.e. the new landlord is bound for more than 9 years even if the lease agreement was not notarised and registered).

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

See answer under 16.

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?

See answer under 16.

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Issues Relating To Commercial Leasing

Hungary

Prepared by Lex Mundi member firm Nagy és Trócsányi

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

Transfer taxes payable on creation or assignment of a lease do not exist under Hungarian law. (sections 18. (2), 102. d) of Act XCIII of 1990 on Duties ("Itv."))

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

Legal restrictions limiting the maximum term of a lease do not exist under Hungarian law. (section 430. of Act IV of 1959 on the Civil Code ("Civil Code"); section 2. (1) of Act LXXVIII of 1993 on Certain Rules of the Lease and Alienation of Residential and Non-Residential Premises ("Housing Act"))

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

Laws requiring landlords to allow a tenant to renew its lease do not exist under Hungarian law (see section 2. above)

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

According to the general rules of the Civil Code, minor expenses required for the maintenance shall be borne by the tenant; other expenses as well as public duties shall be borne by the landlord. (section 427. (1) of Civil Code) According to the special rules of the Housing Act, in the cases where not agreed upon otherwise by the parties, orders to share tasks (e.g. maintenance, refurbishment and replacement of the floors and tiles, doors and windows, as well as the equipment of the rental property) between the landlord and the tenant in a way that the costs incurred in connection with maintenance and refurbishment shall be borne by the tenant, while the costs incurred in connection with the substitution and replacement shall be paid by the landlord. (section 13. (1) of Housing Act)

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

Termination with immediate effect: Unless otherwise provided by special regulation, the landlord shall guarantee that the object leased out is and will be suitable for use as contracted for the entire duration of the lease period and that it is otherwise in conformity with the provisions of the contract or else the tenant is entitled to terminate the contract with immediate effect. The landlord shall also guarantee that no third person has any right to the leased thing that can prevent or restrain the tenant's use of it or else the tenant is entitled to terminate the contract with immediate effect instead of rescission. (section 424. of Civil Code) [termination by notice]: The tenant is entitled to terminate the contract in writing at any time if such a contract is concluded for an indefinite period of time. The day of termination shall be the last day of the month, although the termination period shall not be less than 15 days. (section 28. of Housing Act) Judicial practice of the recent past appreciate tenants' right to terminate a contract concluded for a definite period.

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

Tenants are allowed to sublease parts of the real property only with the landlord's consent. The rate of the leasing fee is entirely up to the agreement between the landlord and the tenant. It is compulsory to put in writing the contract for sublease. In case of a real property owned by the local government the terms of the landlord's consent are defined in the local government's decrees. (sections 33. (1), 33. (3) of Housing Act) Tenants are allowed to assign, sublease or even swap the leased property only with the landlord's consent. This contract has to be in written form. In case of a real property owned by the local government the terms of the lessor's consent are defined in the local government's decree. (section 42. of Housing Act, section)

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

The tenant is allowed to sublease parts of the real property only with the landlord's consent. The rate of the leasing fee is entirely up to the agreement between the landlord and the tenant. It is compulsory to put in writing the contract for sublease. In case of a real property owned by the local government the terms of the landlord's consent are defined in the local government's decree. The tenant is allowed to assign, sublease or even swap the leased property only with the landlord's consent. This contract has to be in written form. In case of a real property owned by the local government the terms of the landlord's consent are defined in the local government's decree. (see above ref.)

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

Regarding eviction processes, generally, the rules of Act LIII of 1994 on Judicial Enforcement Proceedings ("Vht.") are applicable. As 1st step the court shall issue an enforcement order and the court shall also determine the manner of enforcement. (sections 172-177. of Vht.) Enforcement of Court Decisions on Housing Matters: If the obligor or his representative is not present when the enforcement is carried out, the bailiff takes inventory. If the residential suite is occupied solely by the obligor and his family, it shall be locked and sealed. The bailiff shall postpone the evacuation of a residential property with exceptions for a time other than between 1 Dec and 1 March if the obligor is a private individual. Evacuation of a Residential Suite due to Unlawful Tenancy: The court shall order the evacuation without issuing an enforcement order. It contains instructions to the bailiff to take action for the evacuation within 3 working days. The bailiff serves the decree in person in the presence of a police officer or a witness on the person of legal age who stays in the residential property, and orders this person to vacate the premises and to remove his belongings in 2 days.

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

There are no statutory restrictions on pledging a leasehold interest as security for a financing under Hungarian law.

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.

Expressis verbis requirements for landlords to hold security deposits in separate accounts do not exist under Hungarian law, however this is a general and established custom in business practice.

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

Required statutory or other legal disclosures to be made to all tenants do not exist under Hungarian law. Additional Information: the landlord shall notify the tenant if any work for which is necessary to avert life-danger and for which the landlord is responsible is required. (section 16. (1)-(2) of Housing Act) In the instance of failure to make lease payments, the landlord shall be entitled to terminate the

lease with immediate effect, provided that the landlord has issued a written request for remittance of overdue payments. (section 428. (2) of Civil Code)

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

Public duties in connection with the object shall be borne by the landlord. (section 427. (1) of Civil Code) Value Added Tax: The leasing of immovable property is exempt from VAT. Local tax: The private individuals holding lease rights to a dwelling place owned by a person other than a private individual in the area of jurisdiction of a local government shall be subject to pay community tax. (section 24. of Act C of 1990 on Local Taxes) Corporate tax: Landlords may claim 5% depreciation allowance for leased buildings. The amounts of such depreciation may be deducted from the pretax profit. (section 7. and Schedule No. 1. of Act LXXXI of 1996 on Corporate Tax) Personal income tax: Generally all revenue received by a private individual, including incomings of the lease of real estate, shall be considered income and tax rate 20% shall be applied. (sections Act CXVII of 1995 on Personal Income Tax)

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

Directly, the landlord may not exercise self-help under Hungarian law. In the instance of failure to make lease payments, the landlord shall be entitled to terminate the lease with immediate effect, provided that the landlord has issued a written demand for remittance of overdue payments within a reasonable period of time and notified the tenant of the consequences, and the tenant has failed to remit payment within this period. (section 428. (2) of Civil Code) If the tenant files a written protest against a lien, extent of it, or the landlord's action to block the removal of property items other than those already providing full cover for his claim, the landlord shall enforce his lien by court action within eight days. Failure to do so shall be construed as forfeiture of the lien (section 429. (3) of Civil Code) The landlord shall offer another place of living (e.g. flat) for the temporarily vacated tenant in the same settlement. This shall be done in the capital city if the temporal vacation is placed in the capital. The placing of the tenant's movable properties and the expenses of moving shall be borne by the landlord. (section 18. (2) of Housing Act)

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

Remedies such as acceleration of rent must be expressly stated in contracts.

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.

Generally, expedited remedies for tenant default do not exist under Hungarian law. The landlord is entitled to demand discontinuance of use that is improper or in violation of the contract and indemnification for damages originating from such use. If such use is continued or if a request for discontinuance fails to bring about success because of the gravity of the danger threatening the leased thing, the landlord shall be entitled to terminate the lease with immediate effect and demand indemnification. In the instance of failure to make lease payments, the landlord shall be entitled to terminate the lease with immediate effect, provided that the landlord has issued a written demand for remittance of overdue payments within a reasonable period of time and notified the tenant of the consequences, and the tenant has failed to remit payment within this period. The landlord (sub-lessor) of a real property or dwelling shall hold a lien on the tenant's property found within the rental property for the value of unpaid rent and any additional costs. Lease provisions that would be required for a landlord to seek expedited remedies do not exist.

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

Lease contract shall be concluded only in written form. In case the applicable laws do not define the

rate of the rent and the parties do not come to an agreement regarding the rate, the landlord is obliged to inform the tenant about the rate (sum) in written form. If a tenant do not objected the sum in written form in the coming eight days after being informed about the rate, the tenant shall pay that amount. The tenant may execute tasks on behalf of and at the landlord's expense, in order to avert warranty default if the tenant does not perform such default averting tasks upon the specified time defined in the tenant's written call. The tenant shall house other third persons only with the landlord's written consent, except if these persons are the tenant's minor children, children of the tenant's children which were born during the housing period. Co-tenant is only allowed to house other person(s) by having the co-tenant's written consent, with the exception of the co-tenant's minor children and children of the co-tenant's children which were born during the housing period. Several other provisions exist.

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

Neither a memorandum of lease nor other further documents would need to be recorded for the lease to be enforceable against third parties. The lease contract is essential and sufficient.

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?

Restrictions on the transfer of ownership of real properties subject to lease do not exist under Hungarian law. The lessee shall be obliged to permit any potential buyers of a thing to inspect it at an appropriate time and in an appropriate manner. A lease contracted for a specific term cannot be cancelled by the buyer of the leased thing, unless the lessee has misled the buyer regarding the existence of a lease or material lease conditions. A buyer shall be entitled to demand that lease payments be made for the period for which the lessee had made such payments in advance to the seller, only if he was not aware of such prepayments at the time the sales contract was concluded and if he could not have known of them, particularly if the lessee had misled him regarding said prepayments. (section 432. of Civil Code)

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Issues Relating To Commercial Leasing

Ireland

Prepared by Lex Mundi member firm Arthur Cox

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

Stamp Duty.

Capital Gains Tax - Any premium received on the creation of a lease may incur a charge although it does not usually arise on the granting of a lease where there is no consideration other than rent.

Capital Acquisitions Tax - A liability to capital acquisitions tax may arise where a lease is granted at an undervalue.

Value Added Tax - The right for a landlord to charge VAT on the rents payable under a lease may arise in certain circumstances.

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

None.

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

Where Part II of the Landlord and Tenant (Amendment) Act 1980 a right of renewal may arise. One of three "equities" must be proved for the right to renewal to arise: business equity (a commercial premises occupied by the same party continuously for a period of 5 years or more, and the right to renew has not been renounced); long possession equity (the property was continuously in the occupation of the same party for 20 years or more); or, improvements equity (improvements made by the tenant account for not less than one half of the letting value of the property).

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

None - matter to be negotiated between landlord and tenant. Most commercial leases incorporate rent review clauses which provide that rent payable is to be reviewed typically on a five yearly basis.

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

Where the demised premises are "destroyed, become ruinous and uninhabitable, or incapable of beneficial occupation or enjoyment" as a result of an "accidental fire, or other inevitable accident" (Section 40 of the Landlord and Tenant Law Amendment (Ireland) Act 1860) - this provision is typically specifically excluded from modern commercial leases.

Where the tenant acquires the landlord's interest in the property.

Where a tenant company is being wound up the liquidator may apply to the court to disclaim the lease. (Section 290 Companies Act, 1963).

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

No laws specifically. However, devolution of a tenant's leasehold interest can occur:

- 1) on death - under the succession acts, the tenants estate becomes vested in his personal representatives.
- 2) on bankruptcy - the tenancy vests in the official assignee for the benefit of bankrupt's creditors.
- 3) on winding up - the liquidator may take control of the company's property.

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

Landlords are permitted to place restrictions on tenants' ability to assign or sub-let within the covenants of the lease but any absolute bar on alienation (to include both assignment and sub-letting) is effectively prohibited as such a provision has the effect of being a restriction on alienation without the licence or consent of the landlord, which licence or consent shall not be unreasonably withheld notwithstanding any express provision to the contrary.

There is no statutory definition of the term "unreasonable". The reasonableness or otherwise of the landlord's refusal to grant consent is therefore a question of fact, not of law, and depends entirely on the particular facts and circumstances of each case.

The remedy for a tenant who believes that a landlord has unreasonably refused consent is to apply to court for a declaration that consent has been unreasonably withheld and for an Order permitting the tenant to proceed with the assignment or sub-letting without consent. Onus of proof falling on the tenant.

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

Notice to quit - used to recover possession of premises following the conclusion of the term of a given tenancy where the tenant is overholding.

Forfeiture is appropriate where the term granted by the lease is still running. A landlord has no right to forfeit the lease unless the tenant has been in breach of its terms. Furthermore, a landlord loses the right to forfeit the lease by failing to follow certain statutory procedures intended to provide the tenant with a reasonable opportunity to remedy the breach. Forfeiture is an equitable remedy and the court has a wide discretion to grant relief to the tenant on such terms as it thinks just. With certain exceptions (non-payment of rent being the most notable), before forfeiture can take place, a notice must be served by the landlord on the tenant.

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

No, however, the landlord may include a clause prohibiting it in the lease or at least requiring the tenant to obtain his consent prior to the creation of any charge over the leasehold interest.

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.

None.

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

None.

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

Rental income may result in an income tax payable by a landlord who is an individual or in the case of

a company, to corporation tax.

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

The term "self help" is not one commonly used in this jurisdiction, but forfeiture (see question 8 above) would be the typical remedy used for breach of a lease covenant by a tenant which is not remedied in accordance with the terms of the lease.

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

Again, this is a concept not practised in this jurisdiction. Any provision for an acceleration of rent would require to be expressly stated and extreme care taken in the drafting of such a clause such that it does not constitute a penalty clause designed to deter a tenant from breach of contract by stipulating that breach will result in the payment of an extravagant and unconscionable amount as such a clause would be unenforceable in court.

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 courts tend to lean against sanctioning forfeiture of a vested property interest. There are also some statutory restrictions on forfeiture even in the event of tenant default. However, it is possible to insert a proviso for re-entry into the terms of the lease if the rent is outstanding for a certain period most other breaches require the tenant to be given an opportunity to remedy the breach.

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

Any lease for a term of more than one year must be in writing signed by the landlord or his authorised agent or it will not be a valid agreement enforceable by either party. Typically the signatures of landlord and tenant will be witnessed by a third party on the face of the lease.

Where either party to the lease is a company, typically there will be a requirement for the lease to be executed under seal (i.e. the company's seal is affixed to the lease and witnessed by two directors or a director and secretary of the company).

The executed lease should then be submitted to the Revenue Commissioners for stamping and depending on the length of the term, registered in the Registry of Deeds or Land Registry.

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

Contracts for the future creation of the relationship of landlord and tenant and involving an interest in land must be evidenced by a note or memorandum in writing signed by the party against whom it is sought to enforce the contract. This note or memorandum is not required to be a contract in the formal sense provided that it sets out the essential terms of the lease/tenancy and there is sufficient evidence of an unconditional and complete agreement between the parties as to the terms.

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 leasehold interest is regarded as being entirely distinct from a freehold interest in the same property. The freehold interest will generally be transferred subject to the lease. Provided that the parties to and terms contained in the lease are unchanged, the tenant's rights and obligations will not be affected by a transfer of the freehold.

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Issues Relating To Commercial Leasing

Italy

Prepared by Lex Mundi member firm Chiomenti Studio Legale

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

Transfer taxes payable on leases of real estate assets vary according to the qualification of the subjects involved and also with respect to the characterisation of the assets leased as “commercial” rather than “residential”.

Here below we focus on commercial real estate assets and we assume that both the landlord and the tenant are Italian companies resident in Italy for income tax and VAT purpose.

Value added tax

VAT regime would vary depending on certain characteristics of the landlord and the tenant. In particular, as provided by article 10, par. 1, no 8 of Presidential Decree 633/1972, leases of real estate commercial assets is in principle exempt from VAT, (*i.e.* the transaction is subject to VAT at “zero rate”) unless the tenant is:

- (i) a VAT relevant entity (entrepreneur or professional) with a right to deduct the VAT (so called *pro-rata*) less than 25% due the activity carried out,
- (ii) a subject not acting in connection with a business activity;
- (iii) a subject that expressly opts for the ordinary VAT regime in the lease contract.

In any of the cases listed above, VAT would apply at the standard rate of 20%. Such VAT regime would apply on rent.

VAT charged on rent is in principle deductible by the tenant. However, its actual deduction would depend on specific VAT conditions of the tenant.

Registration tax

Registration tax applies at 1% rate on the lease agreement. The rate applies on the annual rental payments due by the tenant.

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

Pursuant to Section 1573 of the Italian Civil Code, leases have a maximum term of 30 years.

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

According to Italian Law no. 392/1978 leases for commercial, industrial, artisanal or touristic purposes shall have a minimum duration of 6 years and leases of hotels shall have a minimum duration of 9 years.

Upon expiry leases are automatically renewed for 6 or 9 years (respectively) unless the tenant or the landlord refuses the renewal. Please note that, upon expiry of the first 6-year period (or 9-year period, as the case may be), the landlord is allowed to refuse the renewal only in case the landlord intends:

- a. to use the property as its residence or as residence of its relatives;
- b. to use the property for the carrying out of commercial, industrial, artisanal, touristic or hotel activities;
- c. to pull down and re-build or completely renovate the property;
- d. to renovate the property for the purposes of carrying out of commercial activities.

Further restrictions may apply in case of leases of hotels.

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

As general rule there are no legal restrictions on the capacity of the parties to agree the rent for a lease.

However, indexation of rent cannot exceed 75% of the ISTAT inflation index. On the basis of such limit to indexation part of the case law holds that step up clauses (which provide for an increase of the rent starting from a certain date) are not valid as they imply an increase of the rent exceeding such limit to indexation. Please note that a recent amendment to the relevant statute has provided that the 75% limit to indexation applies only to leases with the minimum duration provided by the law (see paragraph 3 above). It would therefore appear that the indexation limit does not apply to leases with a longer duration, and presumably the case law should in future more easily admit step up clauses in lease agreements with a duration longer than the statutory minimum.

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

The tenant is allowed to terminate the lease at any time, giving at least six months' notice to the landlord, only if such faculty has been expressly agreed between landlord and tenant and set forth in the relevant lease agreement. Even if the lease does not include any clause in this respect, the tenant is allowed to terminate the lease in case of occurrence of "serious grounds" by delivering a 6 month advance termination notice. The definition of "serious grounds" is not expressly provided by the law; however, case law has stated that "serious grounds" can be identified in events beyond the tenant's control, unforeseeable by the tenant and occurred after the establishment of the lease relationship which result in the fact that the lease becomes excessively burdensome for the tenant.

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

Pursuant to Section 1594 of the Italian Civil Code (i) subleasing is permitted unless otherwise agreed between the parties, while (ii) assignment of the lease agreement requires, by law, the landlord's consent.

Section 36 of Italian Law no. 392/1978 sets forth that the tenant is allowed, even without the landlord's consent, to sublease the property or assign the lease agreement to the extent the tenant contextually sells or leases its going concern. In such event, the landlord is allowed to oppose such assignment or sub-lease on the basis of "serious grounds" within 30 days from the delivery of the relevant notice.

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

The landlord and the tenant are entitled to agree and establish restrictions on subleases of the property. As mentioned in previous paragraph no. 6, pursuant to Section 1594 of the Italian Civil Code, assignment of the lease agreement (other than in the case of a transfer of going concern) requires, by law, the landlord's consent unless otherwise agreed between the parties.

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

In case of breach of the lease agreement (such as non-payment of the rent or refusal to leave the property in case of termination or expiry of the lease) the eviction of the tenant shall be ordered by the Court by way of a decision issued as a result of a regular lawsuit filed by the landlord. The proceeding before the court of first instance and the issuance of the decision may require approximately 1 year (especially in the case of eviction due to a clear default by the tenant) but may require a longer term depending *inter alia* on whether the tenant contests the grounds for his eviction or on the local jurisdiction.

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

Pursuant to Italian Laws, a leasehold interest is not included in the assets which can be pledged or mortgaged. On the other hand rental incomes are often assigned by way of security pursuant to which the borrower would assign the receivables arising under the lease agreements in favour of the bank as security for the claims of the bank against the borrower under the facility agreement. Under

the Italian Civil Code if the assignment is for a period exceeding three years the security document must be notarised and the assignment must be registered with the Land Register.

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.

The landlord is not required to hold such deposits on specific accounts and is only required to return the deposit amount at the end of the lease (and to pay yearly interest on the deposited amount).

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 the tenant.

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

In principle, there are no taxes that landlord must collect from the tenants. Please however consider that the parties generally agree that costs relating to registration tax shall be borne equally by both parties.

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

As general principle the exercise of self-help as a way to enforce legal or contractual obligations is forbidden and any such power is reserved to the competent Courts.

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

Any acceleration of the rent needs to be expressly agreed between the parties and any clause providing for such an acceleration would likely be contested by the tenant, unless structured as a liquidated damages clause (please note that the amount of the liquidated damages in a liquidated damages clause can be reduced by the competent court in the event such amount is manifestly excessive).

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.

In case of default of the tenant the landlord is entitled to start court proceedings, to enforce the deposit or other security and to claim termination of the lease agreement – pursuant to Section 1453 of the Italian Civil Code (which states that in case of in agreements providing for mutual performances, when one of the parties fails to perform its obligations, the other party can choose to claim either performance or termination of the agreement) - and damages. According to Section 1455 of the Italian Civil Code, the agreement cannot be terminated and the non defaulting party will be entitled only to claim damages if the default by one party has only slight importance with respect to the interest of the other. The judicial proceedings for termination of the lease and consequent eviction of the tenant is based on a faster procedure than “ordinary” proceedings.

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

Theoretically commercial lease agreements do not need to be executed in writing. However, please consider that, for tax purposes, lease agreements shall be registered with the competent Tax Authorities.

Furthermore, when the duration of the lease exceeds 9 years, the relevant lease agreement shall be executed in writing, notarized and registered with the relevant Land Register.

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

The lease is enforceable vis à vis third parties (such as purchasers of the property) provided that it has a date certain at law (such certainty can be obtained inter alia by means of registration with the tax authorities or by notarization of the lease).

However, if the lease has not been registered with the Land Register, the lease is enforceable vis à vis a subsequent purchaser of the property only for a maximum of nine years from the start of 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?

If the tenant uses the leased property for carrying out commercial activities which entail a contact with customers, the tenant has a pre-emption right for the purchase of the property in the event the landlord intends to transfer such ownership to a third party (there are certain specific cases of non application of such pre-emption right, including "block sales" and certain contributions in kind).

There are no other statutory limits to the transfer of leased properties – please note however that in some case the lease agreement provides for additional limitations.

On the other hand, tenant's rights and obligations are not affected by the sale and purchase of the property, provided that the lease has a date certain at law and (for durations exceeding nine years) has been registered with the Land Register (see paragraph 17 above).

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Issues Relating To Commercial Leasing

Latvia

Prepared by Lex Mundi member firm LAWIN

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.

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Issues Relating To Commercial Leasing

Lithuania

Prepared by Lex Mundi member firm LAWIN

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

There are none.

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

In general, the maximum term of any lease may not exceed 100 years. Special rules are applied to the lease term of the State-owned land: it cannot exceed 25 years for the State-owned agricultural land and 99 years for any other State-owned land.

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

Following Lithuanian Civil Code, a tenant having duly performed its obligations during validity of a lease, upon its expiry has a priority right against third parties to renew the lease for a new term (of course, if a landlord intends to further lease the property). A landlord is obliged to inform a tenant of its right to renew the lease prior to its expiry.

In addition, a lease agreement will be deemed renewed for an indefinite term if a tenant continues to use leased property for more than 10 days after expiry of the lease term and a landlord does not object to such use.

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

Generally, there are no such restrictions. Nevertheless, all transactions between related parties should be effected based on the arm's length principle. This means that transactions between related parties should be made under such (market) conditions (including rent) as if the parties to the transaction were not related.

Further, the rent charged for the State-owned land, which has been leased without an auction procedure, is calculated based on the fixed tariffs. These may vary depending on the location of land and some other aspects.

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

Lithuanian Civil Code stipulates a number of grounds for a tenant to terminate a lease prior to the expiration of its term. In absolute majority of cases the tenant's right to terminate a lease is subject to certain specific circumstances defined in the law, e.g. defects of leased property, landlord's incompliance with its obligations, etc.

In addition, tenants have a statutory right to terminate any lease upon change of the owner of the leased property.

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

According to Lithuanian Civil Code, tenants are allowed to assign or sublease without the landlord's consent only if such rights are explicitly stated in the lease agreement. However, if the lease is

documented as a long-term lease (i.e. emphyteusis a specific right in rem available only in respect of real estate), a tenant will be deemed entitled to sublease, unless the agreement provides otherwise.

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

Please see answers to Q 6.

A landlord is free to restrict the tenant's right to sublease or assign. Nevertheless, if the landlord unreasonably refuses to allow sublease, the tenant becomes entitled to early termination of the lease.

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

Generally, a landlord seeking eviction of a tenant has to apply to court. If the tenant fails or refuses to vacate premises after adoption of the final decision in favour of the landlord, the latter will need to apply to a bailiff for enforcement of the court decision.

The length of time for eviction proceeding depends on a number of circumstances (availability of written evidence, tenant's objections, etc.). In the best case scenario the first instance court decision (which may be appealed) could be expected approximately in 2-3 months after application to the court.

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

Same rules as for sublease and assignment apply (see comments under Q 6). Tenants may pledge a leasehold interest only after receipt of the landlord's prior written consent.

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.

Before executing a lease, a landlord is required to disclose to tenants all third parties' rights to the leased property.

After the execution of lease, a landlord is obliged to disclose to tenants intended sale or other transfer of leased property as well as intended restrictions of the landlord's rights to the leased property.

As far the defects of the leased property are concerned, a landlord may avoid liability for them if they have been disclosed to tenants when executing the lease or if the tenants should have been aware of relevant defects.

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

When lease is subject to VAT, tenants must pay the same to a landlord on top of the rent. Except for the latter, landlord is not required to collect any other taxes from the tenants.

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

Self-help may be exercised only in the cases established by the Civil Code. When exercising self-help, landlords must not violate the rights and interests of tenants. The measures of self-help should correspond to the extent and nature of violation of the landlord's rights.

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

Unless otherwise provided for in the agreement, if a tenant materially breaches rent payment term, a landlord is deemed entitled by virtue of the Civil Code to require the tenant to pay the rent in advance, however, not in excess of 2 successive rent payments.

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.

In addition to acceleration of rent (see Q 14), Lithuanian laws provide for the landlord's right to terminate a lease without applying to court if the tenant's default constitutes a material breach. Further, specific summary procedures are available for recovery of debts and eviction of tenants. All those remedies may be sought by landlords without any specific lease provisions.

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

Any real estate lease must be executed in a written form. The Civil Code provides for a specific data that has to be set out in the land lease agreement. Also see comments under Q 17.

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

Any agreement on lease of buildings, structures or land has to be registered with the Real Estate Register in order to be enforceable against third parties. The same requirement is applied to the lease of other real estate when the lease term exceeds 1 year.

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 landlord is free to sell or otherwise transfer the leased property, unless otherwise set out in the lease agreement. A landlord must, nevertheless, disclose to tenants the intended sale or other transfer of leased property.

As stated under Q 5, tenants have a statutory right to unilaterally terminate any lease in case of change of the owner.

Further, upon change of the owner of real property, its lease agreements will remain valid provided they have been registered with the Real Estate Register.

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Issues Relating To Commercial Leasing

Malaysia

Prepared by Lex Mundi member firm Skrine

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

In general, ad valorem stamp duty will be payable for the creation of a lease. The amount of stamp duty payable is prescribed under the Stamp Act 1949. The stamp duty chargeable for a lease or agreement for lease of any immovable property is: when the average rent and other considerations calculated for a whole year - (i) does not exceed RM2400, then no duty is chargeable and (ii) for every RM250 or part thereof in excess of RM2400 (a) RM1.00 if lease is for a period not exceeding one year; or (b) RM2.00 if the lease is for a period exceeding one but not exceeding three years; or (c) RM4.00 if the lease is for a period exceeding three years or for any indefinite period.

In respect of a lease registered pursuant to the National Land Code 1965, a registration fee is payable to the relevant land office.

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

Pursuant to the National Land Code 1965, every lease granted shall be for a term exceeding 3 years, otherwise, it is regarded as a tenancy. The maximum term for which any lease may be granted shall be 99 years if it relates to the whole of any alienated land and 30 years if it relates to part only thereof.

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

There is no provision in Malaysia which compels a landlord to allow the renewal of a lease or a tenancy. Any renewal of the lease or tenancy is agreed contractually between the landlord and tenant.

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

There is generally no restriction on rent that may be charged to a tenant.

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

A lease may be terminated before its stated expiration date either expressly (as provided by section 239 (1) of National Land Code) or by operation of law.

The express surrender of any lease or sublease must be effected in writing by an instrument in the prescribed form, and the interest of the lessee or sub-lessee, as the case may be, will determine as from the date on which the instrument is registered.

To effect a surrender by operation of law, there is not only to be a quitting of the premises by the tenant but also a taking of possession of the premises by the landlord, which shows that the landlord consented to the tenancy being put to an end.

Otherwise, termination of lease will be in accordance of the provisions in the lease or tenancy agreement. If the lease or tenancy is terminated prematurely, it is common that a lease/tenancy

agreement to provide that the lessee/tenant will pay rental for the unexpired period of the said lease/tenancy provided always that the lessor/landlord has to mitigate their losses.

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

There are no laws that expressly allow tenants to assign or sublease without landlord's consent. However, in the absence of restrictions on assignment in the tenancy agreement, an assignment by the tenant to a third party of its rights in the tenancy agreement for any period less than his own term may be deemed effective by serving the landlord a notice of assignment.

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

Some titles to real estate are subject to restrictions in interest such that a lease cannot be created unless State Authority consent is obtained. However, there are generally no specific laws that expressly allow a landlord to restrict assignments or subleases. Nonetheless, it is common that landlord will impose restrictions on assignment or sublease in the lease or tenancy agreement. In the absence of such restrictions, an assignment of such tenancy in the usual course is deemed to be effective by providing an express written notice to the landlord on such assignment. In such an event, assignment of liabilities is not permitted.

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

In the event of a default by a tenant, the Landlord is required to serve a forfeiture notice to the Tenant pursuant to section 235 of the National Land Code 1965 where the Tenant is given a reasonable time to remedy the said forfeiture (usually 14 to 30 working days as stated and provided in the agreement), failing which the Landlord will then be authorised to re-enter upon the premises and determine the lease/tenancy without prejudice to the right of action of the Landlord in respect of any antecedent breach by the Tenant. It is usually contractually permitted on determination of the lease/tenancy, all security deposits paid by the Tenant will be forfeited as liquidated damages.

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

Pursuant to the National Land Code 1965, any lease of alienated land may be charged with the repayment of any debt, or the payment of any sum other than a debt, or the payment of any sum other than a debt, or payment of any annuity or other periodic sum, subject to any prohibition or limitation imposed by the National Land Code, any restrictions in interest to which the land in question is for the time being and the provisions in the lease, express or implied. Where there is restriction in interest, Eg. no charging allowed without prior approval of State Authority, such prior approval has to be obtained before the creation of the charge.

Pursuant to section 213(5) of the National Land Code, no tenancy exempt from registration (ie tenancy not more than 3 years) shall be capable of being charged. In such an event, the rights of the Landlord may be assigned.

By virtue of 231(1)(d) of the National Land Code and in the absence of contrary intention, it is also implied in every lease that unless there is provision to the contrary, the lessee agrees not to charge the lease without the prior written consent of the lessor, which consent must not be unreasonably withheld.

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.

No such requirement.

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

Nil.

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

Nil.

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

Pursuant to the amendment of Section 7 of the Specific Relief Act 1950 which came into operation on 21 February 1992, where a specific immovable property has been let under a tenancy, and that tenancy is determined or has come to an end but the occupier continues to remain in occupation, the person entitled to the possession of specific immovable property may only recover it by proceedings in the court and in the manner prescribed by the law relating to civil procedure. Notwithstanding Section 7 of the Specific Relief Act 1950 which refers specifically to tenancy, some academic writers have opined that the section also applies to leases as well.

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

Remedies such as acceleration of rent must be expressly stated in the lease/tenancy 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.

All remedies are subject to agreement between the Landlord and the Tenant. However, a landlord may apply ex-parte to the Court for an order for the issue of warrant of distress for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding twelve completed months of the tenancy immediately preceding the date of the application.

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

In West Malaysia, a statutory lease must be granted by an instrument in prescribed form pursuant to the National Land Code. The interest of any lessee, whether or not it takes effect in possession, vests in him on the registration of the lease.

Where the lease relates to a part only of any alienated land, there must be attached to the instrument a plan and description sufficient to enable the part to be accurately identified.

On the other hand, in respect of tenancy not more than 3 years, there is no formal requirement for registration of tenancy exempt for registration (ie, tenancy not more than 3 years) under the National Land Code 1965 and may be granted either by word of mouth or by a written instrument in any form. However, it is not compulsory but prudent for a tenant to obtain endorsement of the tenancy on the register document of title to protect its interests.

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

Yes. Please refer to the answer in question 16 in respect of tenancy not more than 3 years. The prescribed form is Form 15A under National Land Code.

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?

Upon the registration of the said transfer, the title of the transferor will pass to and vest in the transferee, together also with the benefit of any registered interests then enjoyed with the land. The transferee will hold the same subject to any lease and tenancy exempt from registration which are endorsed on the register document of title subsisting in respect thereof at the time the transfer is registered (section 215 (3) of National Land Code). Any tenancy exempt from registration where endorsement has not been made on the register document of title is not binding on the transferee.

Pursuant to section 216 of National Land Code, where any land is transferred subject to any lease or tenancy exempt from registration with endorsement on the register document of title, every provision, express or implied, of such lease or tenancy shall, so long as the land continues vested in the transferee, be enforceable by or against him as if he were a party thereto.

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Issues Relating To Commercial Leasing

New Zealand

Prepared by Lex Mundi member firm Simpson Grierson

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

There are none as New Zealand does not levy stamp duties on leases (or any other instruments).

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

A lease must be of an entire certificate of title (called a unique identifier) or if it is over a part title then it must either be:

- (a) for less than 35 years (in total); or
- (b) authorized pursuant to a resource consent (subdivision consent) granted by a territorial authority.

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

If a lease grants a tenant a right of renewal then a tenant can seek a Court to force the landlord to accept that renewal. This applies even where the tenant is in breach or has not met agreed pre-conditions however it is a situation where the Court has a wide discretion as to the orders it will make which will likely be fact specific (Property Law Act 2007, sections 261-264).

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

There are no such restrictions.

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

There are no such laws.

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

Where a tenant assigns without consent (where consent is required) that action does create a valid assignment but that is subject to the landlord's rights to terminate the lease for breach – the effect being that unless and until the landlord exercises that right the assignee in occupation is the tenant and must abide by the terms of the lease.

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

It is possible to have an absolute prohibition on assignment or subletting.

However if there is a right to assign or sublet (with landlord consent) then that consent must not be unreasonably withheld or delayed (and reasons why the landlord rejected the request must be given in writing if requested). Landlords are liable for damages if they unreasonably reject such a request.

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

First a notice in a prescribed form (requiring the tenant to remedy a breach within a prescribed notice period) must be given. Once that notice has expired unsatisfied then the landlord may peacefully re-

enter and cancel the lease. Additionally, in the case of a residential tenancy, the landlord must first gain the consent of the Residential Tenancies Tribunal prior to re-entry.

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

No. However most leases would provide for that to be a contractual breach (or at the least require prior consent from the landlord).

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 legislated restrictions regarding the handling of security deposits.

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

There are no such legislated minimum disclosure requirements.

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

The only tax that landlords are required to collect is Goods and Services Tax (GST) which is levied on all goods and services sold or provided in New Zealand (other than financial products) at the rate of 12.5%.

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

Landlord's are not allowed to take tenant's goods (distrain has been made illegal since 1 January 2008).

There are statutory notice periods that must be complied with before landlords can re-enter and cancel a lease.

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

Acceleration of rent is not common in New Zealand. If it is to be used then it would be necessary to expressly provide for it.

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 such expedited remedies available in New Zealand.

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

All leases for a term of 12 months or more (including rights of renewal) must be executed as deeds. This requires individual's signatures to be witnessed and for corporations usually 2 directors must sign. There are other means of compliance depending on the constitution of the corporation.

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

Most commercial leases are not registered in New Zealand. That means that an innocent third party without notice **may** be entitled (in certain limited circumstances) to an interest in land without that land being subject to that lease. If a memorandum of lease is entered into and registered against the title to the land then that prevails over all other unregistered interests.

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 such restrictions. A transfer is subject to the terms of any lease (and the failure to disclose the existence of an unregistered lease to a bona fide purchaser for value would be an actionable fraud.

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Issues Relating To Commercial Leasing

Peru

Prepared by Lex Mundi member firm Estudio Olaechea

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

In Peru, no transfer taxes levy the creation or assignment of a lease related to real estate property.

Notwithstanding the above, if the assignment of the lease also implies the transfer of title to property, a tax on real estate property transfers ("alcabala") will apply.

This tax on real estate property transfer applies on the transfer value exceeding 10 Peruvian taxable units (during 2009, 1 taxable unit equals to S/. 3,550.00, three thousand five hundred and fifty Peruvian soles) at a rate of 3%. This is a local tax borne by the buyer and is payable within the month following the transfer/assignment.

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

The Peruvian Civil Code pursuant Article 1688 establishes that a lease can not be exceeded more than ten years.

As an exception, in case of the real estate owns to a public entity or disabled person the term of the lease cannot be exceeded more than 6 years.

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

Article 1701 of the Peruvian Civil Code establishes that if a lease allows enforced terms for both parties and voluntary terms stated by one of the parties, these last ones terms will be became into enforced terms if the corresponding party does not notice that the lease will terminate on the last enforced term.

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

Article 1676 of the Peruvian Civil Code establishes that the rent may be agreed whether for due or prior terms.

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

The Peruvian Civil Code, pursuant Article 1697, number 5, allows the tenants to terminate a lease prior to its stated expiration date if the landlord does not comply with his/her obligations.

On the other hand, it is a commercial use in Peru that when a tenant decides to return the real estate to the landlord prior to the termination of the lease, the tenant shall pay a penalty to the landlord.

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

There is not any law in this sense. However, in Perú, if the tenant wants to assign or sublease, he/she must have necessarily the previous written consent of the landlord.

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

The Peruvian Civil Code, pursuant Article 1681, number 9, establishes that the tenant can not sublease partially or at all the real estate nor assign the lease without the previous written consent of the landlord.

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

A summary and urgent eviction proceeding. This kind of proceeding takes approximately between 6 months to a year and a half.

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

No. Pursuant to Peruvian Law it is possible to incorporate a mortgage over chattel regarding the leasehold rights on the lease contract.

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 regulation regarding obligations to hold securities deposits in specific accounts. Our Civil Code just establishes the obligation of diligent custody.

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

The Peruvian Civil Code, pursuant Lease Section, under articles from 1666 to 1712, rules this kind of contract.

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

The income obtained by a Landlord for the lease of real estate property located in Peruvian territory is subject to the Peruvian Income Tax in the following way:

The income obtained by domiciled individuals will be levied with a 5% Income Tax over the gross income obtained. Since said income qualifies as first category income, individuals must comply with making an income tax payment in advance (5% of the gross income obtained from the lease).

The income obtained by domiciled legal entities for the leases will be levied with a 30% Income Tax, which will be part of the domiciled legal entity's annual income.

Finally, the income obtained by non domiciled individuals or legal entities are subject to an effective 24% withholding tax rate on the rent.

On the other hand, if the real estate property is leased by a domiciled legal entity the Peruvian General Sales Tax ("Value added tax") will apply at a 19% rate on the rent amount. In the case of domiciled individuals, this tax will not apply. If the real estate property located in Peru is leased by a non domiciled legal entity, the lease will be subject to the Peruvian General Sales Tax hence a 19% rate will apply on the rent.

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

Pursuant to Peruvian Law, any action regarding the repossession of the real estate property should emanate from a judicial ruling.

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

Sometime, due to the commercial use, it is possible to enter into a lease, and therefore the rents can be paid in advanced.

In example, a home is leased by a year and the tenant at the beginning of the lease pays all the rent to the landlord (an amount equivalent to 12 months of rent).

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.

In case of tenant default, the landlord may begin an eviction judicial proceeding (before commented) as well as a remedy of precautionary measure, in order to request to the corresponding judge the immediate return of the real estate.

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

Peruvian Civil Code does not demand specific formal requirements for a lease.

However, and taking into account that the matter is a real estate, it is advisable to enter into a lease by a Public Deed, then it shall be necessary to register it in the Records of Real Estates of the Public Registry.

On the other hand, it shall be required to pay a monthly tax over the rent of lease.

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

In order to the lease be enforceable against third parties, it is important that it becomes into a public deed and then records it before the Public Registry.

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?

In this respect, Articles 1708 and 1709 of the Peruvian Civil Code establishes as follows:

- If the lease is recorded, the buyer shall respect the lease and he/she will substitute the prior landlord in all his/her rights and/or obligations.
- If the lease has not been recorded, the buyer may decide the termination of the lease. Exceptionally, the buyer is compelled to respect the lease just in case he/she assumed that obligation.
- If the lease has been terminated, the landlord is compelled to pay the possible damages incurred against the tenant.

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Issues Relating To Commercial Leasing

Philippines

Prepared by Lex Mundi member firm Romulo Mabanta Buenaventura Sayoc & De Los Angeles

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

There is a documentary stamp tax on the creation of a lease in the amount of P3.00 for the first P2,000, or fractional part thereof, and an additional P1.00 for every P1,000 or fractional part thereof, in excess of the first P2,000 for each year of the term of the lease. An assignment of lease is subject to the same rate of documentary stamp tax for the unexpired portion of the lease.

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

The maximum term of a lease of land to Philippine nationals is 99 years.

The maximum term of a lease of land to non-Philippine nationals is 25 years, renewable for another 25 years (Presidential Decree No. 471(1974)). Under certain conditions, if the lease is made under the Investors' Lease Act (Republic Act No. 7652 (1994)), the lease may be for a term of 50 years, renewable for another 25 years.

A "Philippine national" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least 60% of the fund will accrue to the benefit of the Philippine nationals; Provided, that where a corporation its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least 60% of the capital stock outstanding and entitled to vote of both corporations.

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

There are no such laws; however, applying general contract law, if the lease grants a tenant the right to renew the lease, then the landlord may be compelled by the courts to honor the renewal.

Moreover, if at the end of the lease, the tenant continues enjoying the lease with the acquiescence of the landlord, and unless a notice to the contrary by either party has been given, it is understood that there is an implied new lease (from year to year, if rent agreed upon is annual; from month to month, if rent is monthly; from week to week, if rent is paid weekly; from day to day, if rent is paid daily).

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

There are no such restrictions with respect to commercial leases.

The Rent Control Act of 2005 (Republic Act No. 9341 (2005)) applies to "residential units" in the National Capital Region and other highly urbanized cities the total monthly rent for each of which does not exceed P10,000.00 and all residential units in all other areas the total monthly rent for each of which does not exceed P5,000.00. As defined, a "residential unit" shall refer to an apartment, house and/or land on which another's dwelling is located and used for residential purposes and shall include not only buildings, part or units thereof used solely as dwelling places, boarding houses,

dormitories, rooms and bedspaces offered for rent by their owners, except motels, motel rooms, hotels, hotel rooms, but also those used for home industries, retail stores or other business purposes if the owner thereof and his or her family actually live therein and use it principally for dwelling purposes.

If the Rent Control Act of 2005 applies, rent shall not be increased by more than 10% annually as long as the unit is occupied by the same tenant. When the residential unit becomes vacant, the landlord may set the initial

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

There are no such laws; however, applying general contract law, if the landlord is in substantial breach of its obligations under the lease, the tenant may be able to terminate the lease prior to its stated expiration date.

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

The tenant cannot assign the lease without the consent of the landlord, unless there is a stipulation to the contrary. An assignment of the lease without the consent of the landlord is a ground for resolution of the lease.

Unlike in assignment of lease, the law provides that the tenant may sublease the property in the absence of express prohibition. The typical contract, however, does not allow the tenant to sell, assign, or sublease without the prior express written consent of the landlord.

If the Rent Control Act of 2005 applies (see response to question no. 4), the tenant may not assign or sublease the property without the written consent of the landlord.

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

It is possible to have an absolute prohibition on assignment or subletting.

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

In an instance where the tenant does not vacate the leased premises even after expiry or termination of the lease, the landlord may file an action in court for ejectment (commonly unlawful detainer or recovery of possession) after a demand to pay or comply with the lease and vacate the premises is made upon the tenant. A favorable judgment would allow the landlord to recover possession of the leased property and a sum justly due for rent in arrears or a reasonable compensation for the use and occupation of the premises.

An action for unlawful detainer may be instituted by any person against whom the possession of any land or building is unlawfully withheld, after the termination of the right to hold possession, by virtue of any contract, express or implied. An action for unlawful detainer must be brought within one year from the last demand to vacate.

If the action for ejectment is brought after one year from last demand to vacate, or if the dispossession was effected by means other than those that are grounds for an unlawful detainer suit, the action shall be for recovery of possession.

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

There are no such legal restrictions.

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 generally no such legal requirements.

If the Rent Control Act of 2005 applies (see response to question no. 4), the deposit shall be kept in a bank under the landlord's account name during the entire duration of the lease agreement. There is no legal requirement that each security deposit must be held separately from the others.

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

There are no such legal disclosure requirements.

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

Aside from documentary stamp tax on the lease agreement, the rent is subject to the following taxes: (a) creditable withholding income tax which is required to be withheld at source by the tenant. This tax is creditable against the income tax due from the landlord; (b) 12% Value Added Tax (VAT), which may be passed on by the landlord to the tenant; and (c) local business taxes.

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

In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. One who believes that he has an action or a right to deprive another of the holding of a thing must invoke the aid of the competent court, if the holder should refuse to deliver the thing (Civil Code of the Philippines, Article 536).

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

Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other (Civil Code of the Philippines, Article 1196).

The tenant may lose his right to make use of the period in the following instances:

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

(2) When he does not furnish to the landlord the guaranties or securities which he has promised;

(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

(4) When the tenant violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the tenant attempts to abscond (Civil Code of the Philippines, Article 1198).

Notwithstanding the foregoing, we would recommend that remedies such as acceleration of rent be expressly stated.

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.

Aside from the summary proceedings for unlawful detainer (see response to question no. 8), there are no such expedited remedies available.

Subject to the limitation on self-help (see response to question no. 13), the agreement may provide that upon failure of the tenant to comply with any of the terms and conditions of the lease agreement or failure to vacate and return the premises as provided, the landlord can be given the right to enter and take possession of the leased premises, without need of resorting to any court action.

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

The Statute of Frauds (Civil Code of the Philippines, Article 1403(2)) requires that a lease for a period longer than one year must be in writing to be enforceable.

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

The lease must be recorded in the Registry of Property to be binding upon third persons (but see response to question no. 18 for the qualification where the Rent Control Law of 2005 applies).

In the Philippines, commercial leases are generally in writing, notarized, and 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?

There are generally no such legal restrictions.

The purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may generally terminate the lease, save when there is a stipulation to contrary in the contract of sale, or when the purchaser knows of the existence of the lease.

If the Rent Control Act of 2005 applies (see response to question no. 4), the new landlord shall not shall be entitled to eject the tenant upon the ground that the leased premises have been sold or mortgaged to a third person regardless of whether the lease or mortgage is registered or not.

Under the Urban Land Reform Act (Presidential Decree No. 1517 (1978)) and related issuances, 244 sites in Metropolitan Manila were declared as Areas for Priority Development and Urban Land Reform Zones. Among the implications of this are that (i) qualified tenants within the zones shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices; and (ii) all landowners tenants and residents within the zones are required to declare to the Housing and Land Use Regulatory Board any proposal.

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Issues Relating To Commercial Leasing

Poland

Prepared by Lex Mundi member firm Wardyński & Partners

- 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.

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Issues Relating To Commercial Leasing

Portugal

Prepared by Lex Mundi member firm **Morais Leitão, Galvão Teles, Soares da Silva & Associados**

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.

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Issues Relating To Commercial Leasing

Russia

Prepared by Lex Mundi member firm Egorov Puginsky Afanasiev & Partners

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

Registration of a newly established lease is levied with the state duty equals to USD 485 for legal entities and to USD 32 for individuals.

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

There are no general restrictions limiting the term of lease, except some cases, in particular:

- the land plot may be leased from a public authority by the owner of the building located thereon for no more than 49 years;
- the land plot may be leased for the public purposes and for the project works for the term no more than 1 year.

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

There is a general rule that a tenant has the pre-emption right to conclude the lease contract for a new term. In case the landlord concludes a new contract within a year after the expiration of the previous one, the tenant may ask a court to transfer rights and duties under new contract to the tenant and/or to award damages.

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

There are no general regulations regarding restrictions in respect of the amount of the rent charge. Usually, the amount of the rent charge for the state and municipal lands is lower than the market rate.

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

Under the general rule provided by the Civil Code of the Russian Federation a lease may be terminated prior to its expiration date at the request of the tenant by a court in cases when:

- 1) The landlord fails to transfer the property to the tenant or creates impediments to the use of the property by the tenant;
- 2) The leased property has defects preventing its use subject to the defects
 - have not been specified in the lease agreement and
 - have not been known to the tenant at the moment of the conclusion of lease agreement and - the defects should have not been discovered by the tenant during the inspection of the property.
- 3) The lessor does not make a basic repair of the property timely.
- 4) The property is in a bad condition because of the circumstances beyond the control of the tenant.

The parties can establish other cases, when the lease agreement may be terminated.

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

As a general rule the tenant may assign or sublease the leased property subject to the consent of the landlord.

As an exception the Land Code provides that

- The tenant may sublease the land plot without landlord's consent, if it is not prohibited by the lease agreement
- If a state or municipal land plot is leased for the period of more than 5 years, the lease may be assigned without the landlords consent.

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

According to a general rule provided by the Civil Code of the Russian Federation the assignment of the lease or sublease is possible only subject to the consent of the landlord (with exceptions stated above). The landlord has the right to give such consent, but is not obliged to give it.

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

The eviction is exercised upon a court decision. According to law the length of the respective court process in state arbitration courts is three months. A court process usually lasts longer. In case of litigation interim measures may be taken by the court to prevent further transfer of the property.

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

As a general rule the leasehold may be pledged under the landlord's consent only. According to a general rule of the Land Code the tenant is entitled to pledge the leasehold without the landlord's consent, unless otherwise provided by the lease agreement.

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 any requirements concerning the way of holding security deposits. Usually, the deposit paid under a lease agreement is not held in a separate account.

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

The landlord must inform the tenant on all the relevant defects of the real estate and on all the third parties' rights to the real estate.

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

The tenant pays to the landlord value added tax included into the rent charge, except for the rent charge paid for a land plot.

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

Under a general rule if the tenant damages the real property, then the landlord is entitled to terminate the contract by a court decision. There is no special regulation or court practice on self-help for landlords.

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

Acceleration of the rent must be expressly stated in the contract.

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 is no expedited remedies regulation in Russia. Actions brought by a landlord are considered by a court as usual civil cases, though some interim measures may be taken by the court.

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

The real estate lease agreement shall be in written form. The leased property is transferred to the tenant under an act of acceptance.

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

Real estate lease contracts shall be made in written form. In case the term of such lease is not less than a year it must be registered in the Real Estate Register. The lease for the term of one year or more is valid only if it is registered in the Real Estate Register.

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 any restrictions on the transfer of the right of ownership to the leased real property. The transfer of the right of ownership to the leased property is not itself a ground for the termination or changing the lease agreement. In practice such transfer does not affect the tenant's rights and obligations.

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Issues Relating To Commercial Leasing

Scotland

Prepared by Lex Mundi member firm Maclay Murray & Spens LLP

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

If the value of a leasing transaction exceeds the taxable thresholds applicable at the time, it may be subject to Stamp Duty Land Tax payable by the tenant calculated by reference to the “net present value” of the rent payable over the term of the lease together with any premiums. The tenant may also be required to pay VAT.

Capital gains tax or corporation tax may also be payable by the landlord on any premium received, depending on the length of the lease.

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

Under the Abolition of Feudal Tenure etc (Scotland) Act 2000, commercial leases entered into on or after 9 June 2000 have a maximum length of 175 years.

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

With the exception of the Tenancy of Shops legislation, there are no statutory rights of lease renewal in Scotland. This legislation permits the tenant of a shop to secure a court order for a one year extension of a lease following on service of a notice to quit by the landlord.

It is important to note that if neither party to any commercial lease sends the other party a formal notice to quit prior to the end of the contractual term, the lease continues for a maximum of one year, and from year to year thereafter. This is the principle known as “tacit relocation”. The appropriate period of notice to prevent the operation of tacit relocation is usually 40 days.

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

The rent payable is a matter for negotiation between the parties, and there are no regulations which restrict rent levels. It is normal for leases to provide for upward only rent review at regular (often five yearly) intervals.

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

The main ways in which a lease may be terminated at the instance of a tenant are (1) exercise of a tenant-only, or mutual break option in the lease; and (2) rescission of the lease by the tenant if the landlord is in material breach of contract.

A lease may also be brought to an end by “frustration” if something happens (e.g. damage or destruction of the leased premises), through no fault of either party, which makes it impossible for the lease to continue. It is common for leases to contract out of this rule and state that in such circumstances the lease shall continue in full force and effect, but that the tenant shall be entitled to an abatement of rent for the period during which the premises are not fit for the purpose for which they were let. The lease will usually contain termination rights in the event of failure to rebuild the

premises within a specified period.

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

The default position under the common law is that a tenant of urban premises is free to assign or sublease without the landlord's consent.

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

Because of the default position mentioned in answer 6 above it is normal for leases to provide that landlord's consent is needed for an assignation (the Scots law term for an assignment) or a sublease. Although in English leases there is often (by reason of statute or otherwise) an implication that, where landlord's consent is required, such consent is not to be unreasonably withheld or delayed, that is never implied in Scotland. Accordingly, express wording has to be in the lease, failing which, if the landlord's consent is required, the landlord will have a complete discretion as to whether to give consent or not. It should be borne in mind that, where there is provision that landlord's consent to an assignation or sublease is not to be unreasonably withheld, it is for the tenant to prove that the landlord is acting unreasonably, and that can often be difficult to prove.

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

The procedure by which leases are terminated by the landlord for breach by the tenant is known as irritancy. This is the Scots law equivalent of forfeiture in English law. It is easier for a landlord to irritate a Scottish lease than for a landlord to forfeit an English lease, because tenants in Scotland do not have any equitable rights of relief.

There are however statutory protections for tenants in Scotland under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985. In the case of non-payment of rent or other monetary sums, the landlord must first serve a pre-irritancy notice requiring payment under threat of irritancy and giving the tenant a period of fourteen days (or any longer period specified in the lease) within which to make payment. In the case of non-monetary breaches, the 1985 Act provides that a landlord cannot rely on irritancy provisions where "in all the circumstances of the case a fair and reasonable landlord would not seek so to rely".

If the landlord irritates the lease and the tenant refuses to leave the landlord has to obtain a court order requiring the tenant to leave the premises. A tenant cannot be lawfully removed from premises without a court order. The length of time for irritancy proceedings can vary from a few weeks to a number of months depending on whether the tenant challenges the proceedings and the complexity of the issues in dispute between the parties.

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

If a standard security (i.e. a fixed charge equivalent to a legal charge in England) is to be granted over a leasehold interest the lease must be registered in the property register. A lease may only be registered in the property register if its duration exceeds 20 years.

A floating charge can be created over a tenant's interest in a lease of any duration.

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.

The holding of security deposits for commercial leases is not regulated by statute in Scotland and is a matter for the parties themselves to decide.

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

Commercial leasing in Scotland is subject to minimal regulatory interference, and there are no prescribed disclosures which must be made to tenants. It is standard practice however for a prospective tenant to require the landlord to exhibit the title deeds to the property, searches in the property register, and local authority property enquiry certificates containing information relating to planning and building control, public adoption of roads, and provision of sewerage systems, public water, electricity and gas.

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

Income Tax or, if the landlord is a UK resident company, corporation tax will be payable by the landlord on the net rent.

If VAT is due on the rent, the landlord will normally collect the VAT from the tenants.

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

Self-help is not commonly used in Scottish legal terminology. A tenant in breach of a lease cannot be lawfully removed from the premises without a court order.

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

Acceleration for rent is not a remedy implied under Scots law. It is likely that a lease clause which imposed such a remedy/sanction would be deemed to be a penalty clause, and as such, unenforceable.

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 Landlord will usually want to register the lease in the Books of Council and Session. This is a public register of deeds in which originals of documents such as leases (of any length) may be registered, primarily to prevent them from being lost. The Books of Council and Session is a separate register from the property register. Leases are usually registered in the Books of Council and Session "for preservation and execution", which means that an expedited enforcement procedure (known as summary diligence) is available to the landlord for ascertained sums of money (including rent) owed by the tenant. The lease itself will usually contain a clause in which the parties specifically consent to its registration in the Books of Council and Session for preservation and execution. Other than that, no lease provisions would be required for a landlord to use summary diligence.

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

Leases for more than one year must be in writing and should be signed by the landlord and the tenant. For a lease to be "self-proving", and as such capable of being registered in the property register (provided its duration exceeds 20 years), the signature of each party must be witnessed by one witness. Where a party to the lease is a company the signature is that of a director, the company secretary, or a person authorised to sign on behalf of the company. A lease by a company will also be self proving if, in the absence of a witness, it is signed by two directors, or by a director and the secretary, or by two duly authorised persons.

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

If the lease is for more than 20 years the lease must be registered in the property register in order for the tenant to obtain a “real right” enforceable against third parties. This right is enforceable even if the tenant does not take possession of the premises.

If the lease is for no longer than 20 years the lease is not capable of registration in the property register and the tenant must have taken possession of the premises to obtain a “real right” 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?

In the absence of specific agreement to the contrary between the landlord and the tenant, there are no restrictions. The lease will be binding on the purchaser of the property, and the tenant’s rights and obligations are not affected.

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Issues Relating To Commercial Leasing

Slovak Republic

Prepared by Lex Mundi member firm Čechová & Partners

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

There is no specific tax or stamp duty payable on creation or assignment of a lease. Rent as such however forms a taxable income under the income tax of natural or legal person (landlord) (19 %). In general, the rent is not subject to VAT; however, the landlord may decide that the rent will be subject to VAT in cases where the tenant is also a VAT tax payer.

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

The maximum period of the lease is not regulated in the Slovak Republic. In practice, also leases for a period of 99 years or similar occur (especially in cases of leases of real property from the state or municipal bodies).

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

There are no specific statutory provisions on entitlement of the tenant to renew the lease. The lease agreements frequently contain a clause on automatic renewal or renewal upon the option of both (any of) the parties to a lease agreement for the same period or shorter period.

However, in case that tenant uses the leased premises after termination of the respective lease agreement and the landlord does not object such use at the court, the lease agreement is automatically prolonged for a period for which it had been concluded, however not exceeding one year.

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

There are no restrictions on a level of the rent and its actual amount is only subject to a contractual agreement of the parties to the lease agreement.

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

In general, a lease agreement concluded for a definite period of time may be terminated upon notice only if it is agreed in the lease agreement. The tenant may terminate an agreement on a lease of non – residential premises concluded for a definite period of time for the following reasons:

- the landlord has substantially violated his obligation to maintain, at his own cost, the subject matter of the lease in a condition suitable for use for purposes agreed in agreement on a lease of non–residential premises,
- the tenant is no longer entitled to perform the activities for which the subject matter of the lease was leased,
- the subject matter of the lease becomes unsuitable for the agreed use without the tenant's involvement.

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

In general, unless otherwise agreed, a leased real estate may be subleased by the tenant to a third

party. In case of the lease of non-residential premises, they may be subleased by the tenant to a third party (sub-lease) only with prior written approval of the landlord, unless otherwise agreed. There are no statutory provisions allowing in general such sublease or assignment without landlord's consent.

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

In general, according to applicable statutory regulation, the tenant may sublease non-residential premises only with a consent of the landlord. The lease agreement may contain provisions on restriction of assignment or sublease right by the tenant or a requirement for obtaining of consent of the landlord to be granted under fulfilment of specified conditions; it is also possible to absolutely prohibit assignment or sublease by the tenant.

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

The landlord shall apply for eviction of the tenant through court and subsequently through executor (bailiff). It may also cease to provide services related to use of the premises (utilities, etc.) in accordance with terms agreed in the lease agreement or separate agreements on supply of utilities. The length of eviction proceeding may in general vary from 2 - 6 months depending on the level of cooperation of the court and the executor.

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

There are no legal limitations on pledge of leasehold interest. However, limitations may arise from the lease agreement itself.

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 legal restrictions on holding security deposits. Specific conditions on holding and use of security deposits may be contained in the respective lease agreement.

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

There are no statutory duties of the landlords towards tenants regarding any specific disclosures.

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

There are no taxes to be collected from tenants on the basis of statutory regulation. Real estate ownership tax payable by the landlord is commonly re-charged to the tenants in case of long-term leases of office, shopping or industrial premises as a part of service charges under the conditions agreed in the lease agreement. In general, the rent is not subject to VAT (19 %); however, the landlord may decide that the rent will be subject to VAT in cases where the tenant is also a VAT tax payer.

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

The landlord may not exercise self-help in cases of eviction or similar cases.

There is a statutory pledge on movable assets of the tenant located in the leased estate as a security for payment of the rent, which the landlord may execute in accordance with the law (i.e. after failure of the tenant to pay the rent and issuance of respective execution order by a court).

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

Acceleration of the rent (or other remedies) must be expressly provided for 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.

There are no statutory regulated expedited remedies in the Slovak Republic. In principle, any expedited remedies may be agreed in the lease agreement.

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

The lease agreement concerning non-residential premises must be concluded in written form and contain provisions on subject and purpose of the lease, amount and maturity of the rent, and also term of the lease in cases of leases for definite period of time. Failure to meet above mentioned statutory requirements results in absolute invalidity of the lease agreement.

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

Leases are generally not recorded in the Slovak Republic; only lease agreements on land, which are concluded for at least 5 years, must be registered in the respective real estate cadastre. Failure to comply with such a registration duty has no effect on the validity of such a lease agreement or its enforceability 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?

If the ownership to the real estate (which is subject to lease) is changed, the transferee automatically accedes to the legal relation with the tenant and becomes the new landlord. Such change is effective toward the tenant as soon as it is notified to him by the former landlord or evidenced by the new one. However, the tenant shall have right to terminate the lease agreement (even concluded for definite period) due to this reason even if it is not agreed in the lease agreement; the new landlord does not have such right. It is questionable whether the lease agreement may restrict such tenant's right. However, it is usual that lease agreements for non-residential premises (such as industrial parks etc.) contain such restrictions.

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Issues Relating To Commercial Leasing

South Africa

Prepared by Lex Mundi member firm Bowman Gilfillan

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

Over the years the imposition of stamp duty has been reduced. Stamp duty that was payable on leases of at least five years in duration has been repealed in respect of leases entered into on or after 1 April 2009.

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

There are no statutory restrictions limiting the maximum term of a lease. However, in terms of our Roman Dutch Common Law, a lease cannot be in perpetuity.

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

There are no statutes requiring landlords to allow a tenant to renew a lease. That is normally provided by agreement in the lease.

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

There are no statutory restrictions on the amount of rent that may be charged for, to a tenant.

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

There are no statutory provisions permitting tenants to terminate a lease prematurely. The lease can provide such provisions by agreement. If a landlord materially breaches the terms of a lease, the tenant can put the landlord on notice to remedy the breaches failing which the tenant can cancel the lease.

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

Most leases provide that a tenant may not assign or sublease without the landlord's consent. This is not governed by statute. If there is no restriction in a lease, and the tenant sublets, the original tenant remains responsible for the rent vis a vis the landlord. A tenant cannot assign his obligations under a lease without the consent of the landlord.

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

This is not governed by statute but is normally a provision in the lease.

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

Eviction proceedings are actions in the Magistrate's or High Court. The time it takes depends on how much opposition to the action the tenant raises.

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

A landlord may pledge a short term lease as security for funding by means of a notarial bond. A long term lease (ten years or more) which is registered in the deeds registry and recorded against the title of the leased premises may be pledged by mortgage bond registered over the notarial deed of lease.

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.

Unlike residential leases, there are no statutory requirements that deposits have to be held in separate accounts for non-residential leases.

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

Unlike residential leases, there are no statutory provisions requiring specific disclosures to be made to non-residential tenants.

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

Most commercial leases are subject to Value Added Tax at 14% which landlords collect from tenants.

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

Landlords are not allowed to exercise self-help. Evictions and attachment of the tenant's movable property have to be authorized by the High or Magistrate's Court and implemented by the Sheriff.

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

Such remedies must be specified in the lease agreement and do not apply in terms of statute.

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 statutory expedited remedies for tenant default.

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

There has to be an agreement, oral or in the writing, between the landlord and tenant as regards the parties, premises, period (even if indefinite) and rent payable.

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

For a lease of ten years or more it has to be registered by notarial deed against the title deed for it to be enforceable by the tenant against creditors and successors in title of the landlord, see The Formalities in Respect of Leases of Land Act 18 of 1969. A lease of up to ten years does not have to be registered but the tenant has to be in occupation to enforce the lease against third parties. If a lease is registered against property that is already mortgaged, the bondholder's right ranks prior to the tenant's and, if the bondholder organizes a judicial sale in execution, the property could be (but does not have to be) sold free of 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?

There are no restrictions on the transfer of ownership of leased properties. The new owner steps into the landlord's shoes. The new owner has to honour the lease for the remainder of the period in terms of the common law maxim of "huur gaat voor koop".

If the lease is not registered against the title, the tenant may only enforce the lease against third parties for up to the first ten years of the lease, unless the third party was aware of the lease when they entered into the transaction with the landlord.

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Issues Relating To Commercial Leasing

Spain

Prepared by Lex Mundi member firm Uría Menéndez

1. Describe any national, state, territorial, provincial, or local transfer taxes payable on creation or assignment of a lease.

(a) Creation of a lease

Different taxes are payable on the creation of a lease, depending on whether the leased property is to be used for residential or other purposes ("**non-residential purposes**").

(i) Residential lease:

Transfer Tax (*Impuesto de Transmisiones Patrimoniales*) accrues on the basis of the following parameters:

- Taxable event: creation of a lease exclusively for residential purposes.
- Taxpayer: tenant.
- Tax base: sum of the rents payable during the term of the lease. If the lease establishes that it can be extended an unlimited number of times, it is assumed that the extensions are for three-year periods for the purposes of fixing the tax base. If the extended period exceeds three years, the additional extensions would be subject to Transfer Tax. If the extensions do not actually reach three years, the relevant amount should be reimbursed to the taxpayer.
- Rate: Spanish national law allows the regional authorities to determine the applicable tax rate. Where the regional authorities have not determined the applicable tax rate (which is the case in most of the regions), the amount payable is as follows (according to Spanish national law):

Tax base (Euro)	Amount to be paid (Euro)
Up to 30.05	0.09
From 30.06 to 60.10	0.18
From 60.11 to 120.20	0.39
From 120.21 to 240.40	0.78
From 240.41 to 480.81	1.68
From 480.82 to 961.62	3.37
From 961.63 to 1,923.24	7.21
From 1,923.25 to 3,846.48	14.42
From 3,846.49 to 7,692.95	30.77
From 7,692.96	0.024040 for every additional Euro 6.01

(ii) Lease for non-residential purposes:

Leases for non-residential purposes or not exclusively for residential purposes are subject to and not exempt from VAT (*Impuesto sobre el Valor Añadido*) and, therefore, they are not subject to Transfer Tax.

The following types of leases, amongst others, are not considered to be exclusively for residential purposes and are therefore not subject to Transfer Tax:

- a. the letting of premises and sites for the parking of vehicles;

- b. leases of land for warehousing or storage of goods or products, or to install elements of a business;
- c. leases of land for exhibitions or for publicity;
- d. leases of land or homes with a call option, where the supply of the land or home was subject to and not exempt from VAT;
- e. the letting of furnished apartments or homes where the landlord is obliged to provide hostelry services, such as catering, cleaning, laundry or other similar services;
- f. leases of buildings or part thereof to be subleased, with the exception of those intended solely for housing; and
- g. leases of buildings or parts of buildings assimilated to residences in accordance with the Spanish law on urban leases (i.e. Act 29/1994 of 24 November 1994, "ULA").

Stamp Duty (*Impuesto de Actos Jurídicos Documentados*) is payable, if the lease is notarized, on the basis of the following parameters:

- Taxable event: notarization of a lease for non-residential purposes or not exclusively for residential purposes.
- Taxpayer: tenant.
- Tax base: sum of the rents payable during the term of the lease. If the lease establishes that it can be extended an unlimited number of times, it is assumed that the extensions are for three-year periods for the purposes of fixing the tax base. If the extended period exceeds three years, the additional extensions would be subject to Transfer Tax. If the extensions do not actually reach three years, the relevant amount should be reimbursed to the taxpayer.
- Rate: Between 0.25% and 1% of the tax base, depending on the regulations applicable in the region where the notary public is based. Most of the regional regulations establish a 1% rate.

(b) Lease assignments

Different taxes are payable on the assignment of a lease, depending on whether the leased property is to be used for residential or other purposes:

(i) Residential lease:

1. Transfer Tax (if the lessee is an individual):
 - Taxable event: lease assignment.
 - Taxpayer: assignee.
 - Tax base: sum of the rents payable during the term of the lease remaining after the assignment. If the lease establishes that it can be extended an unlimited number of times, it is assumed that the extensions are for three-year periods for the purposes of fixing the tax base. If the extended period exceeds three years, the additional extensions would be subject to Transfer Tax. If the extensions do not actually reach three years, the relevant amount should be reimbursed to the taxpayer.
2. VAT (if the lessee is an entity, not very common in practice):
 - Taxable event: lease assignment.
 - Taxpayer: tax to be paid by the assignee to the assignor, which must then pay the tax authorities.
 - Tax base: the price of the lease assignment. If the assignment is between related parties, the taxable base is the fair market value of the assignment.
 - Tax rate: 16%.
 - In this case, if the assignment of the lease is notarized, Stamp Duty would also be payable by the assignee under the terms described in point (ii) below.

(ii) Lease for non-residential purposes:

1. VAT:
 - Taxable event: assignment for a consideration.
 - Taxpayer: tax to be paid by the assignee to the assignor, which must then pay the tax authorities.
 - Tax base: price of the assignment. If the assignment is between related parties, the taxable base is the fair market value of the assignment.

- Tax rate: 16%
- 2. Stamp Duty is payable if the assignment of the lease is notarized:
 - Taxable event: notarization of a lease assignment.
 - Taxpayer: assignee.
 - Tax base: there is no clear guidance from the regional tax authorities regarding the tax base in this situation. This tax is usually calculated on the payments to be made under the lease contract that are pending at the time of the assignment. However, if the lease is not registered with the Land Registry prior to the assignment, the tax authorities consider that the Stamp Duty should be calculated on the basis of the entire amount to be paid under the lease contract.
 - Rate: between 0.25% and 1%, depending on the regional regulations applicable in the region where the notary public is based. Most of the regional regulations establish a 1% rate.
- 3. Finally, if the transfer of the lease involves the transfer of all a company's assets or a branch of activity, the transfer will not be subject to VAT or Transfer Tax but rather Stamp Duty (unless the Special Tax Neutrality Rules on Mergers, Demergers, Asset Contributions and Share Exchanges are applicable).

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

As a rule, there are no legal restrictions on the term of a lease.

However, the following should be highlighted:

- (a) according to general provisions of Spanish law, contracts by virtue of which one of the parties is entitled to extend the contract indefinitely are not enforceable; and
- (b) according to the former regulations on urban leases (which are still applicable to certain old leases), the tenant is entitled to extend its lease indefinitely in certain circumstances.

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

According to the current ULA, a tenant who has leased a property for residential purposes for a period of less than five years is entitled to extend the lease annually for up to five years from the commencement of the lease.

In addition, according to the former regulations on urban leases (which are still applicable to certain old leases), a tenant is entitled to extend its lease indefinitely under certain circumstances.

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

As a rule, there are no legal restrictions on the capacity of the parties to agree the rent for a lease. By way of exception, the rent updates in residential leases must be in line with Consumer Price Index variations during the first five years of the term of the lease.

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

According to the ULA, tenants who have leased properties for residential purposes are entitled to terminate the lease within the first five years of its commencement by giving the landlord two months' notice.

In this scenario, the tenant must pay the landlord a penalty equal to one month's rent per year remaining of the lease, but only if so established in the lease.

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

According to the ULA, unless otherwise established in the lease, when a business or professional activity is carried out in a property leased for non-residential purposes, the tenant is entitled to assign the lease or to sublease all or part of the premises without the landlord's consent. In the event of any such assignment or sublease taking place:

- (a) the tenant must notify the landlord of the assignment or sublease within one month following the date on which it is agreed;
- (b) the landlord is entitled to increase the rent by (i) 20% in the event of the assignment or sublease of the entire property; or (ii) 10% in the event of the sublease of part of the property.

According to the former regulations on urban leases (which are still applicable to certain old leases), tenants who have leased properties for non-residential purposes (other than warehousing purposes) are entitled to assign the lease without the landlord's consent under certain circumstances. If such an assignment takes place:

- (a) the tenant must notify the landlord of the assignment; and
- (b) the landlord is entitled to (i) increase the rent by 15% (unless a higher increase has been agreed by contract) and (ii) be paid an amount equal to a percentage of the price of the assignment, such percentage being in the range of 10% to 30%, depending on the date the premises are occupied (unless a higher amount has been agreed by contract).

7. Describe any law allowing landlords to restrict assignments or subleases by tenants.

The ULA allows the landlord and the tenant under a lease for non-residential purposes to agree the terms governing assignments and subleases (and not necessarily follow the provisions of the ULA as explained in Section 6 above). Therefore, in principle, the landlord and tenant may establish restrictions on assignments and subleases as they deem appropriate.

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

Under Spanish law, special eviction proceedings (*desahucio*) can be used when there is a breach of the lease contract consisting of the non-payment the rent. The main stages of these eviction proceedings are as follows and, in principle, should not take more than six months.

- (a) Claim: Landlord files a claim before the appropriate first instance court seeking to have the tenant evicted.
- (b) Hearing: Each of the parties submits its evidence before the court. Tenant is entitled to remain in the leased property by paying all the rents owed to the landlord.
- (c) Resolution: The court then issues its ruling on the eviction.

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

Even if the law is silent on this matter, in principle a lease cannot be mortgaged (although some scholars think otherwise). However, rental income is often pledged as security for financing.

Although, strictly speaking, the "leasehold" (understood as temporary ownership) does not exist under Spanish law, the *derecho de superficie in rem* right, which is similar to a "ground lease" (which allows the holder of the right to build on a third party's land and own the construction on a temporary basis, so that title to the construction is transferred to the land owner upon the expiration of the ground lease) may be mortgaged according to Spanish law.

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.

According to the ULA, upon signing the lease the tenant must deliver to the landlord an amount equal to one month of rent (in residential leases) or to two months of rent (in non-residential leases). This amount is known as the *fianza*.

The ULA allows the regional authorities to impose on the landlord the obligation to deposit the *fianza* with the regional authorities or appointed public body. Most of the Spanish regional authorities have imposed such obligation on the landlord.

Most of the regional authorities that impose this obligation on the landlords allow certain landlords (e.g., landlords of a shopping centre or an office building) to execute an agreement with the relevant authority or agency that permits the landlord to reconcile all the *fianzas* (of the leased units within the shopping centre or office building) periodically (usually, on an annual basis).

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

There is no statutory or other legal disclosure to be made to all tenants.

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

Under (a) leases for non-residential purposes, and (b) residential leases in which the tenant is an entity, VAT is applicable to the rent at a 16% rate.

The ULA allows the parties to set out in the lease that the tenant must pay other taxes (e.g., the municipal tax on real estate property), if the parties so agree.

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

The Spanish Constitution forbids the exercise of self-help as a way to enforce any type of legal or contractual obligations, which includes those arising from a lease.

The courts have the exclusive power to determine whether the obligations arising from a lease contract are being fulfilled and to enforce the rights arising from a lease.

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

Any remedies not provided for in the applicable laws (such as acceleration of rent) are not implied and therefore must be expressly set out in the lease contract. A Spanish court may not enforce (or partially enforce) any such remedies established in a contract.

A Spanish court may not enforce a contractual provision that requires a party to pay any amounts as a penalty pursuant to articles 1,152 *et seq.* of the Spanish Civil Code if the court considers that the penalty is excessive as a pre-estimate of damages and the obligations secured by the penalty have at least been partially or irregularly complied with. In this event, the court may reduce the amount of the penalty.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions would be required for a landlord to see expedited remedies.

There are no legal expedited remedies for tenant default other than the eviction proceedings referred to in Section 8 above.

As a matter of practice, the landlord usually requires the tenant to provide him with a first demand bank guarantee to guarantee the tenant's obligations under the lease.

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

There is no formal requirement to enter into a lease contract, unless the parties wish to have the lease registered with the Land Registry, which grants additional protection to the tenant (as explained

in Section 17 below) and requires that the lease be notarized and filed with the Land Registry (in which case Stamp Duty is payable as explained in Section 1.(a).(ii) above). According to the ULA, a party to a verbal lease is entitled to require the other party to formalize the lease contract in writing. As a matter of practice, some lease contracts include a provision according to which the tenant is entitled to require the landlord to notarize the lease contract for the purpose of having it registered with the Land Registry.

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

As a general rule, in order to be enforceable against third parties, lease contracts must be notarized and registered with the Land Registry, which triggers Stamp Duty (as explained in Section 1.(a).(ii) above).

By way of exception, according to the ULA, residential leases executed after January 1, 1995 are enforceable against third parties during the first five years of the duration of the lease, even if not registered with the Land Registry.

18. Describe any restrictions on the transfer of ownership of real estate properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?

If the ownership of real estate properties subject to a lease is transferred, the tenant has a pre-emption right. Therefore, the landlord intending to transfer the leased property must notify the tenant of its intention to transfer, as well as the terms and conditions of the intended transfer. The specific terms of the notice, and of the exercise of the pre-emption right, are established in the ULA and in the former regulations on leases (which still apply to certain old leases).

Although leases usually contain a general waiver by the tenant of the right to exercise its pre-emption right in respect of any future transfer, as a matter of practice it is advisable for the landlord intending to transfer the leased property to serve the tenant with the required notice and to obtain from the tenant a specific waiver of its pre-emption right, given that a Spanish court may not enforce a general waiver contained in the lease contract itself.

The transfer of ownership of real estate properties subject to a lease should not, in principle, affect the tenant's rights or obligations, provided that (a) the lease has been registered with the Land Registry or (b) it is a residential lease executed after January 1, 1995 and the transfer takes place during their first five years of the lease (according to Section 17 above). Otherwise, the purchaser would in principle be entitled to terminate the lease early.

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Issues Relating To Commercial Leasing

Switzerland

Prepared by Lex Mundi member firm Pestalozzi

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

The creation or assignment of real estate leases is not subject to any national or local taxes. This is in contrast to the transfer of title in real estate, which triggers cantonal and communal transfer taxes.

When leasing real estate, the tenant is not subject to any particular taxes payable on the rent. The landlord has to pay ordinary gains on his gains from business leases or income taxes on the rent; in certain instances, he may opt for VAT.

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

The Swiss Code of Obligations (CO) does not limit the maximum term of a lease. It is allowed to conclude lease agreements for a very long duration, for instance for the lifetime of one of the parties or for 25 years. On the other hand the "eternal" lease is null and void under Swiss law and the particular circumstances of each individual case are decisive for the question whether the parties enter into excessively long commitments.

Pursuant to the CO, lease agreements may be concluded either for an indefinite period of time or for a fixed term. Since indefinite leases do not determine the duration of the agreement in advance and since they can be terminated upon a termination period of usually six or twelve months, the length of such agreements is no issue. In the case of fixed term leases, the agreement is often concluded for the duration of five to ten years, sometimes for 20 years and more, with one or several optional or automatic renewal periods at the end of the initial term.

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

A tenant may request the extension of a lease if the termination results in an undue hardship that is not justified by the interests of the landlord. In the case of commercial leases, the practice acknowledges such a hardship only in severe cases, in particular if the termination endangers the existence of the tenant's business. The extension of a commercial lease is limited to six years, that of a residential lease to four years. Within this limit, at most two extensions may be granted.

Any extension is excluded if a tenant is in arrears with the payment of rent, in the case of serious violations of a tenant's obligations of care and consideration, in the case of a tenant's bankruptcy, and for leases that explicitly have been concluded for a limited period of time.

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

A landlord may not charge a tenant for abusive rent. A rent is considered abusive if it results in excessive returns from the leased object or if it is based on an obviously excessive purchase price.

As a general rule, under the following circumstances a rent is not considered abusive: (a) if it lies within the range of rents that are customary in the concerned area, (b) if it is based on increased costs or additional benefits provided for by the landlord, (c) if, in the case of relatively new buildings, it lies in the range of a cost-covering gross return, (d) if it only serves to compensate for a previously granted lower rent based on deferred market conform financing costs and if it is set out in a payment plan that was disclosed to the tenant in advance, (e) if it merely compensates a cost increase with

regard to the risk bearing capital, (f) if it does not go beyond the extent recommended by landlord and tenant associations or organizations safeguarding similar interests in their general agreements.

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

A tenant may terminate the lease with immediate effect if the landlord is in default and thereby excludes or seriously impacts the tenant from using the leased premises. Such defaults are given for instance if the landlord does not remedy severe deficiencies of the leased object.

Also, both parties may extraordinarily terminate the lease for cause. In this case, the terminating party must observe the legal notice period. Each party has this right if valid reasons make the continuation of the agreement unreasonable.

Further, a tenant may return the leased object to the landlord prior to the end of the contractual term and without observing the notice period. In this case, the tenant must present to the landlord another reasonable tenant who is solvent and willing to enter into the lease on identical terms.

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

Both the assignment and the sublease of real estate by the tenant are subject to the landlord's consent. The landlord, however, may withhold its consent for particular reasons only (see next question).

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

Even though subleases and assignments of leases are subject to the landlords' consent, the landlords may withhold their consent for particular reasons only.

In the case of an assignment, the landlord may withhold its consent for valid reasons only. Valid reasons are given for instance if the assignee is not solvent or intends to use the premises in a way that violates the lease agreement.

In the case of a sublease, the landlord may withhold its consent only if (a) the tenant does not disclose the terms and conditions of the sublease, (b) the terms and conditions of the sublease are abusive compared to the main lease, or (c) the sublease results in significant disadvantages to the tenant.

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

The enforcement in general and the eviction of tenants in particular are governed by the specific procedural provisions of the CO, the Federal Statute on Debt Enforcement and Bankruptcy and by the federal and cantonal laws concerning the execution.

The landlord seeking to evict a tenant must first file with the competent local court a substantiated request. Following the court's order to the tenant to leave the premises and if the tenant still refuses to do so, the landlord must file with the enforcement authority in charge the legally binding order together with a request for eviction. The authority in charge then executes the eviction.

Such a proceeding may take about four weeks from filing the first request with the court until the actual eviction of the tenant.

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

A tenant may pledge leasehold interests as security for financing provided that the lease agreement does not explicitly exclude such an assignment. Lease agreements usually do not exclude the

assignment of leasehold interests. To validly pledge leasehold interests, a written pledge agreement is required.

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.

Landlords must deposit all securities received from tenants on separate bank accounts. It is not sufficient to deposit these securities on one account that is separate from the landlord's accounts. Rather, landlords must deposit the security deposits from each tenant on a particular bank account in the name of the concerned tenant. Thus, security deposits must be strictly separated by tenants.

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

If, at the end of the previous rental relationship, a report of return has been drawn up, the tenant may request disclosure of such report. This enables the tenant to identify previous deficiencies of the leased premises and to determine whether or not the landlord did remedy them. Also, the tenant may request disclosure of the previous rent.

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

The rent itself is not subject to a particular tax. Landlords may not collect from tenants anything else than the agreed-upon rent and ancillary costs.

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

As a basic rule, exercising self-help is allowed only under extraordinary circumstances, in particular in the case of urgencies where it is not justified to take legal steps by involving the competent authorities.

Under normal circumstances, landlords must enforce their claims against tenants by taking the appropriate legal steps. This applies for instance to the enforcement of claims for rent, to the prevention of misuse of the leased premises and to the eviction of the leased premises.

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

A rent may be staggered or linked to a particular index. Either case must be expressly stated in the lease agreement, both cases may not be combined in the same lease agreement. In addition, such clauses must comply with the following requirements.

The rent may only follow an index if it is based on the official Swiss Index of Consumer Prices and if the agreement has a minimum term of five years. A staggered rent requires that the rent is increased once a year at most, that the agreement states the amount of increase in Swiss Francs and that the agreement has a minimum term of three years. In both cases, only the landlord is bound to the minimum terms: the parties may agree that the tenant has the right to terminate the agreement earlier.

In addition, a landlord may at any time increase the rent as of the next possible termination date. For this purpose, he must notify and justify the increase of rent to the tenant at least ten days before the beginning of the notice period.

In any of these cases, the landlord must use a particular official form to announce the increase. If the landlord does not use the said form, then the increase of rent is null and void.

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.

If the tenant is in default with the payment of rent or ancillary costs, the landlord may in writing set an additional payment period of at least 30 days, combined with the threat of termination upon expiration of this period. If the tenant does not pay within the said period, the landlord may terminate the lease upon 30 days notice by the end of a calendar month.

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

Lease agreements do not require any specific form. Oral agreements are valid. Lease agreement may also be entered into by way of implied behavior. In practice, most real estate lease agreements are set out in writing, frequently on a form that is supplemented to the extent necessary.

If a landlord wants to exercise certain rights under a lease agreement, he must comply with certain formal requirements. In particular, the landlord must use an official form approved by the authorities of the canton where the leased object is located. This applies to any increase of the rent (including indexed and staggered rents) as well as to the termination of the lease by the tenant.

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

Basically, a lease is only enforceable among the parties thereto. To make a lease enforceable against third parties, an annotation of the lease in the land register is required. Such annotations are regularly made in the case of medium and long term lease agreements.

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 agreement does not restrict the landlord's right to transfer the ownership in the concerned property to a new owner.

If such a transfer occurs during the term of a lease or if, during the term of lease, the landlord disposes of the property in a debt enforcement or bankruptcy proceeding, then the rental relationship is transferred to the acquirer together with the ownership of the property.

Such transfers do not directly affect the tenant's rights or obligations. However, if the new owner demonstrates urgent own needs (including urgent needs of relatives and in-laws), he may terminate the lease upon the legal notice period (in the case of commercial leases: six months) and by the next legal termination date (i.e. as per the end of a three months rental period, subject to different local custom). The acquirer has no such termination right if the lease is annotated in the land register.

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Issues Relating To Commercial Leasing

Thailand

Prepared by Lex Mundi member firm Tilleke & Gibbins

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

- Government fee for the lease registration is 1 % of the rental fee of the entire lease period.
- Stamp duty is 0.1% of the rental fee of the entire lease period.
- House and Land Tax is imposed on owners of properties that contain houses, buildings, or other structures, or land that is rented or otherwise put to commercial use. Tax shall be imposed at the rate of 12.5% of the assessed annual letting value of the leased property.

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

Generally, the duration of a lease of immovable property cannot exceed 30 years. If it is made for a longer period, such period is to be reduced to 30 years. The aforesaid period may be renewed, but it must not exceed 30 years from the time of renewal. [Section 540 of the Civil and Commercial Code of Thailand ("CCC")]

However, immovable property may be leased for commercial or industrial purposes for a period of more than 30 years, but not exceeding 50 years, in accordance to Ministerial Regulations regulating leases under the Act of Lease of Immovable Property for Commercial or Industrial Purpose B.E. 2542 (1999).

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

The CCC stipulates as follows:

Section 570. At the end of the agreed period, if the tenant remains in possession of the property and the landlord, knowing thereof does not object, the parties are deemed to have renewed the contract for an indefinite period.

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

There are no restrictions with regards to the amount of rent that may be charged for a tenant. However, the CCC has provision with regards to the time for payment as follows:

Section 559. If no time for rent is fixed by the contract or by custom, the rent must be paid at the end of each period for which payment is stipulated; that is to say, if a property is leased for a certain amount per year, the rent is payable at the end of each year; if the property is leased for a certain amount per month, the rent is payable at the end of each month.

Section 560. In case of non-payment of rent, the landlord may terminate the contract; but if the rent is payable at monthly or longer intervals, the landlord must first notify the tenant that payment is required within a period of not less than 15 days.

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

The CCC stipulates as follows:

Section 548. If the landlord delivers the property in a condition not suitable for the purpose for which it is let, the tenant may terminate the contract.

Section 556. If the property requires urgent repair during the term of the contract, and if the landlord desires to do an act necessary for such repair, the tenant cannot refuse permission to have such act done, though it may cause him inconvenience. However, if the repair is of such a nature as it would take an unreasonable length of time, and thereby cause the property to be unsuitable for the purpose for which it is let, the tenant may terminate the contract.

Section 567. If the whole of the leased property is lost, the contract is extinguished.

Section 568. If a part of the leased property is lost without the tenant's fault and the tenant cannot use the remaining part to accomplish to the purpose for which he entered into the contract, the tenant may terminate the contract.

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

The CCC stipulates as follows:

Section 544. Unless otherwise provided by the contract, the tenant cannot sublet or transfer his right in the whole or part of the leased property to a third person. If the tenant acts contrary to such provision, the landlord may terminate the contract.

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

See Item 6.

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

In enforcing the rights of eviction, a civil case needs to be instituted. In such event, the provisions of the Civil Procedure Code of Thailand shall apply. If the judgment debtor (i.e., possessor of the property) fails to comply with an eviction order, the judgment creditor is entitled to file an ex parte application to the Court for an order appointing the executing officer to procure the judgment creditor to take possession of the property. The Court has the power to order the arrest and detention of the judgment debtor, entrust the whole or part of the property to the judgment creditor, and where necessary, destroy the obstructive matters which prevent possession as he sees fit.

Land eviction can be time consuming, as it involves lengthy court proceedings, and may take more than a year to complete.

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

Generally, a lease cannot be mortgaged as security for financing unless it is allowed by a specific law to provide registration for that purpose as ruled in Section 703 of the CCC. For example, a lease of immovable property for commercial or industrial purposes can be mortgaged as security for financing as specified in the Act of Lease of Immovable Property for Commercial or Industrial Purpose B.E. 2542 (1999).

However, a leasehold may be used as security for financing through a conditional assignment of the right of lease between the lender and the borrower (i.e., the leasehold shall be transferred or assigned to the lender upon the borrower's default). Please note however, that such assignment of leasehold right merely establishes contractual right between the parties, not real right attached to the property.

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 landlords to hold security deposits in separate accounts.

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

The CCC stipulates as follows:

Section 162. All disclosure requirements are the same as those specified in general provisions of the laws governing juristic acts. In bilateral juristic acts, the intentional silence of one of the parties in respect to a fact or quality of which the other party is ignorant is deemed to be fraud if it is proved that, without it, the act would not have been made.

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

Rent is categorized as assessable income under Section 40 (5) (a) of the Revenue Code of Thailand, which may be subject to the following taxes:

- 1) Corporate income tax at the flat rate of 30% on net profits if the rent is received by a juristic company or partnership.
- 2) Individual income tax at progressive rates ranging from 10% to 37% on net assessable income if the rent is received by an individual.
- 3) Withholding tax at the rate of 5% on rent paid from a company or partnership to another company or partnership carrying on business in Thailand or an individual who is a resident of Thailand.
- 4) Withholding tax at the rate of 15% on rent paid to a foreign company not carrying on business in Thailand or an individual who is not a resident of Thailand.
- 5) Provision of services of letting out an immovable property is exempt from Value Added Tax ("VAT") in Thailand. The landlord is not required to charge tenants for VAT.

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

Self-help is not allowed under Thai law. A civil case needs to be instituted.

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

All remedies must be expressly stated in the contract.

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 Section 560 of the CCC, the landlord may terminate the contract in case of non-payment of rent. Again, a civil case shall be instituted. However, no action by the landlord against the tenant in connection with the contract can be entered later than 6 months after the return of the leased property. (Section 563 of the CCC)

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

The CCC stipulates as follows:

Section 538. A lease of immovable property is not enforceable unless there is some written evidence signed by the liable party. If the lease is for more than 3 years or for the life of either the landlord or the tenant, it is enforceable only for 3 years unless it is made in writing and registered by the competent official.

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

If the lease is for more than 3 years, a lease contract of immovable property shall be registered with the Land Office. In case of land, the lease shall be endorsed on the land title deeds and recoded with the relevant Land Office.

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 contract of immovable property is not extinguished by the transfer of the ownership of the leased property. The transferee is entitled to the rights and is subject to the duties of the transferor towards the tenant.

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Issues Relating To Commercial Leasing

Trinidad And Tobago

Prepared by Lex Mundi member firm Hamel-Smith

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

The stamp duty on the creation or assignment of a lease is as follows:

- (1) For a term of 3-35 years: 2% of the average yearly rent;
- (2) For long leases over 35 years: where the consideration for the sale does not exceed \$300,000.00 TT- 2%; exceeds \$300,000.00 TT but does not exceed \$400,000.00 TT- 5%; exceeds \$400,000.00 TT -7%: Stamp Duty Act, Ch. 76:01

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

There are no statutory restrictions limiting the maximum term of a lease including renewals.

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

Generally, at common law, in the absence of an option to renew clause specifically included in the lease, the lease terminates. The general practice is for the parties to include in the lease the terms of the option to renew, if negotiated.

A tenancy from year to year may be implied from circumstances which would be sufficient to create such tenancy: section 6 of the Landlord and Tenant Ordinance Ch. 27 No 16. If property is held for a term of years and the tenant holds over at the end of the term, a yearly tenancy is established by the acceptance of rent by the landlord unless the intention to create a new tenancy can be disproved. Generally, a tenancy from year to year can be determined at the end of the first or any subsequent year and in the absence of a notice to quit, the tenancy from year to year goes on without interruption.

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

There are no restrictions on the amount of rent that may be charged for commercial property.

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

There are no laws expressly permitting tenants under commercial leases to terminate a lease prior to its stated expiration date.

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

Generally, a commercial lease is assignable unless the lease provides otherwise. Some leases may provide that the written consent of the lessor must be obtained prior to the assignment.

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

Generally, a landlord may restrict assignment or subletting in the lease by requiring the written consent of the landlord.

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

An action for recovery of the premises is made after a valid notice to quit is served on the parties: section 21 of the Landlord and Tenant Ordinance Ch. 27 No. 16. The proceedings must be brought by way of summary proceedings for possession of land by way of a fixed date claim: Part 68 of the Civil Proceedings Rules 1998. The length of time for same varies.

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

Generally, there are no legal restrictions on pledging a leasehold interest for financing. However, a lease may have a requirement that the written consent of the landlord is needed for assignment, subletting or otherwise parting with the whole or part of the property.

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 statute that requires landlords to hold security deposits in separate accounts for commercial property.

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

All commercial leases are governed by general contract principles.

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

A tax on rent is Value Added Tax (VAT). If the rent payable to the Landlord is in excess of TT\$200,000.00, the Landlord may have to register with VAT administration and obtain a Vat registration number and collect VAT from the Tenant: Value Added Tax Act, Ch 75:06.

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

A landlord 'unlawfully evicts' even when he has obtained an order for possession if he resorts to self-help to take possession of the property.

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

Acceleration of rent is not common in Trinidad and Tobago and must be expressly stated 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.

There are no expedited remedies for tenant default.

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

Leases for more than 3 years must be by deed and duly registered: Section 3 of the Landlord and Tenant Ordinance Ch. 27 No. 16.

Every deed executed in Trinidad and Tobago, must be made in the presence of and attested by one witness at least not being a party to the deed and of a qualified functionary and the signing and delivery must be attested by one such witness at least subscribing his name with the addition of his place of abode or business and his profession, occupation or condition in life, and by the qualified

functionary subscribing his name with the addition of his qualification: section 7 of the Registration of Deeds Act, Ch. 19:06.

If a party is a company, the by-laws of the company usually stipulates how the execution of the document is to take place. Generally, two authorised persons usually sign the deed and the common seal of the company is affixed thereto.

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

Most commercial leases are stamped and registered since they usually are for more than 3 years and the law requires registration of a lease which is for more than 3 years.

If the lease is for less than 3 years and it is not stamped and registered in the Land Registry of the Ministry of Legal Affairs, it is not enforceable against third parties in a court of law.

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 statutory restrictions on the transfer of ownership of property subject to a commercial lease. A transfer of property is subject to the terms of the lease.

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Issues Relating To Commercial Leasing

Turkey

Prepared by Lex Mundi member firm Pekin & Pekin

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

Stamp tax is payable on creation or assignment of a written lease agreement. The stamp tax ratio is 0.15 % of the annual rent.

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

There are no legal restrictions limiting the maximum term of a private real property lease (including renewals). However, according to the Public Procurement Law (Law No. 2886) lease of state owned real properties (other than tourism facilities) may only be tendered for a maximum period of 10 years.

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

As per the Law on the Real Property Leases (Law No. 6570), which is applicable to the real properties located within municipality borders, if the tenant does not notify the landlord in writing that he/she wishes to terminate the lease agreement 15 days prior to the expiry date of the lease agreement, the lease agreement shall be deemed to be extended automatically for one more year with the same conditions.

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

The rent amount and what may be included in the rent (electricity, taxes, cost etc.) may freely be determined between the landlord and tenant. However the agreement between the landlord and tenant shall not bind the third parties such as tax authority.

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

In case of early termination by tenants, (In practice and in accordance to the supreme court decisions) tenants continue to pay the rent until the property is re-leased to a different tenant or for a reasonable period that the property could be re-leased. This reasonable period may be determined by a court decision. In addition, as per the Article 264 of the Code Of Obligations (Law No. 818) tenants are allowed to terminate a lease agreement by paying a reasonable compensation to the landlord and by claiming that the exercise of such agreement is unsustainable. In case that the lease agreement term is more than one year, the compensation to be paid to landlord or tenant cannot be less than 6 (six) month's rent. Unless otherwise stated in the agreement, termination of the lease agreement is not legally stated in the provisions excluding exceptional cases. These reasons must oblige tenants to terminate the lease agreement such as devaluation, moving to another city, cancellation of the business etc.

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

As per the Law on the Real Property Leases (Law No. 6570), the real properties such as hotel, boarding house, dormitory etc., which has to be leased in accordance with the objective of the property might be assigned or subleased by tenants without landlord's consent provided that the whole real property is not leased.

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

As per the Law on the Real Property Leases (Law No. 6570), other than the exception mentioned above, tenants are not allowed wholly or partly to assign or sublease the real property unless otherwise stated in the lease agreement.

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

Under Turkish Law, Landlords may not terminate the lease agreement and evict the tenant without relying to a legitimate cause specified by Law. The main causes for eviction specified in Law on the Real Property Leases (Law No. 6570) such as: land landlord or its family is in need of the premises as a residence or a work, in requirement of significant reparation, failure to pay rent (If a landlord has issued within a one-year period two justified warnings to the tenant for failure to pay rent), breach of the terms of the lease, etc.

In occurrence of one of the above causes, landlords may file an "action for eviction" at magistrate court (which is the most common form of eviction proceeding) at the end of lease period.

In the event that the landlord holds a written promise to vacate signed by the tenant the landlord may directly apply to the execution office for the eviction of the real property rather than filing a law suit at magistrate court. If there is no promise to vacate signed by the tenant, the customary length of time for that proceeding is between 6 months to 1 year excluding appeal process.

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

No. Unless otherwise stated in the lease agreement assignment of lease receivables are not restricted and consent of the tenant is not required, general "pledge on receivable" provisions of Turkish Civil Code (Law. No 4721) shall apply.

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 such requirement.

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

According to Article 249 of the Code Of Obligations (Law. No 818), in occurrence of some defects on the real property, such defects needs to be disclosed by landlord prior to the signing of the lease agreement.

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

Withholding tax is deducted from the annual rent amount of real properties leased as a workplace whose owners are real person. 20 % of rent amount is deducted as a withholding tax and paid by tenant. If the rent amount is stated "net amount" in the lease agreement, withholding tax amount must be additionally paid. The real properties used as a residence are exempt from withholding tax. In case that the real property is owned by a corporation, Value Added Tax ("VAT") is paid in the proportion of 18% by tenant. The corporation Landlords will also pay 20% corporate tax over rent amount. If the real property is leased for residential purposes than from a real person landlord then there will be no withholding and the real person landlord shall pay income tax an a rate which is variable in relation to his/hers over all income. However, there are some exemptions regarding the income tax. The rent amounts less than TL 2.600 for residences and TL 4.300 for workplaces which are within the municipality borders and TL 3000 out of municipality borders are exempt from income tax.

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

Exercise of self help by landlords without involvement of a court or execution office would be considered as an offense under Turkish Criminal Code (Law No. 5237).

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

Such remedies must be expressly stated in a 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.

Under Law on the Real Property Leases (Law No. 6570) tenants are highly protected and in practice provisions on expedited remedies are considered as null by supreme court decisions.

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

There is no formal requirement for the execution of a property lease agreement. Verbal lease agreements are also valid.

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

For the lease to be enforceable against bona fide third parties, an annotation should be recorded at the land registry directorate where the lease property is 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?

There is no restriction on transfer of ownership of a real property which is subject to lease. According to the Law on the Real Property Leases (Law No. 6570) article 7-d, in case that the ownership of real property which is subject to a lease agreement is transferred to a third party, the new landlord may terminate the lease agreement with a 6 months prior notice to be served to the tenant 1 month following the date of transfer provided that the he needs the premises as a residence either for himself or for his wife and children and/or for a place of business. If the new landlord fails to serve the notice within a month after the transfer of the property and/or in absence of causes for eviction specified in Law on the Real Property Leases (Law No. 6570) article 7-d he shall be bound by the terms of lease agreement.

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Issues Relating To Commercial Leasing

United Arab Emirates

Prepared by Lex Mundi member firm Afridi & Angell

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

In Dubai, there are no official local transfer taxes. However, registration fees are payable and in relation to certain leases, the registration fees are calculated as percentage of the contract value.

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

There are no restrictions limiting the maximum term of a lease in Dubai. Nevertheless, the period of a tenancy must be specified in the lease or the term shall be deemed to be equivalent to the period specified for payment of rent. Leases will be renewed if the tenant remains at the property without a valid objection from the landlord, for the lesser of the term equivalent to that of the lease or 1 year.

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

Where the tenant continues to occupy the property after the expiry of the lease without objection from the landlord, then the contract shall be renewed for a similar period or for one year, whichever is less, with the same terms and conditions.

There are limited circumstances for which a landlord may object to tenant remaining at the property at the expiry of the term. In summary they are: a) demolition or reconstruction of the property b) renovation c) to use the property personally or by the landlord's next of kin of first degree. In any case the landlord must meet certain standards of proof and must give the tenant notice for the reasons for eviction at least 90 days prior to the date of expiry of the lease.

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

There are currently no restrictions on rent to be charged to the tenant. However, the Government has in the past imposed restrictions on the increase of rent, e.g. for lease renewed in 2008, a cap of 5% was imposed on rental increases.

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

There are no specific circumstances prescribed by law for which the tenants may terminate the lease prior to the stated expiration date. Such matter shall be governed by terms of the lease.

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

There are no laws, which allow the tenants to assign the lease or sublease the property without the landlord's consent. The law specifically provides that unless otherwise agreed in the lease, a tenant may not assign the benefit or sublease the property without first obtaining the landlord's approval. (Article 25 of the Law No 26 of 2007).

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

Pursuant to Article (25) of the law No 26 of 2007, where the tenant subleases the property, or part thereof, without having first obtained the landlord's written approval, the landlord may demand eviction of the tenant (and subtenant). The landlord's ability to restrict assignments or subleases are otherwise be governed by the terms of the lease.

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

A landlord may demand eviction in the circumstances prescribed by law only by giving any requisite notice period as required in such circumstances. If the tenant shall fail to vacate at the expiry of such notice period and as demanded by the landlord may bring eviction proceedings through the Rent Committee. The Rent Committee is the official entity in Dubai empowered and authorized to adjudicate lease disputes upon application by a tenant or landlord.

If terminated by the Rent Committee that the landlord is entitled to evict the tenant, the Rent Committee will grant an order for eviction, Where the tenant fails to vacate the premises in accordance with the order for eviction, the landlord can have the order executed by Rent Committee and subsequently forcibly remove the tenant.

The length of proceedings brought before the Rent Committee can vary and will depend on the circumstances, for example if the eviction is opposed and the number of cases before the committee at the time.

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

Pursuant to Article (22) of Law No (14) of 2008 Concerning Mortgages in the Emirate of Dubai, a tenant may mortgage his interest in respects of a long-term lease for a term between 10 and 99 years . The Lease may only be mortgaged to a bank, company or financial institution that is licensed and registered with the UAE Central Bank to provide finance for property in the UAE. Further the mortgage will only be valid if registered with the Land Department.

10. **Describe any requirement 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?**

A landlord may obtain a security deposit amount from tenant to guarantee maintenance of the property at the expiry of tenancy contract, provided that the landlord must undertake to refund the deposit, or any remaining amount, upon the expiry of the lease. There are no specific requirements for a security deposit to be held by the landlord in a separate account.

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

There are no statutory or legal disclosure requirements.

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

Pursuant to Article (22) of the Law 26 of 2007, unless the lease otherwise provides, the tenant shall pay all fees and taxes due to government authorities for benefiting from the property, in addition to any other fees or taxes due for subleasing.

Property tax is payable to the municipality by reference to the annual rent in respect of residential properties the rate is currently 5% and in respect of Commercial properties the current rate is 10%

of the annual rent. Whilst is the tenant's obligation to pay the property tax, the Dubai Municipality will often collect the tax from the tenant's employer through the department of Economic Development at the time of issuing or at the annual renew of the employers license.

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

There are no specific provisions entitling a landlord to exercise self-help and the parties shall be governed by the terms agreed in the lease in such regard. In any event pursuant to Article (34) of the Law No 26 /2007, the landlord is prohibited from disconnecting the services to the property or preventing the tenant from benefiting from the property.

Where the landlord breaches this provision the tenant may refer the matter to the police to prove the case or to stop such prevention and may also file a case before the Rent Committee for compensation of any damages. In addition, the landlord is prohibited from making any changes to the property, its utilities or ancillaries, which may affect the intended benefit to be derived by the tenant.

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

Acceleration of rent in the event of a default by the tenant must be expressly stated in the lease. Having said that it is customary for rent to be paid annually in advance and the landlord will most likely hold any rent paid upfront unless challenged by the tenant. In either event, the landlord is only entitled to retain the sum equivalent to its loss. Therefore the tenant may challenge the landlord's retention of any sums on the basis that the landlord's loss is less than the sum retained.

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 Rent Committee is the official entity in Dubai empowered and authorized to adjudicate lease disputes upon application by a tenant or landlord. However, the parties may agree to refer any dispute to arbitration.

16. Describe any formal requirement for the execution of lease

A lease must be in writing and executed by both parties. A lease must contain the name of each party, the details of the property (including the property number and type of land and the area in which the property is located), and the purpose of the tenancy, the lease period, rent value and the method of payment of rent.

From 1 January 2009, all new leases and renewed leases must be registered at the Land Department by generating the lease through the website set up by the Land Department for such purpose.

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

Any official body including judicial bodies and governmental departments and authorities shall not consider a claim, case or execution of a lease, unless it is registered at the Land Department.

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?**

Under Article (28) of Law No 26 /2007 the transfer of title to a new landlord shall not affect tenant's right to continue occupation of the property in accordance with the lease signed with the previous owner, provided that the lease has a fixed date.

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Issues Relating To Commercial Leasing

Uruguay

Prepared by Lex Mundi member firm Guyer & Regules

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

There are no national or local transfer taxes payable on creation or assignment of a lease in Uruguay. Leases are exempt from Uruguayan Realty Transfer Tax.

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

According to art. 1782 of the Uruguayan Civil Code, lease contracts have a maximum term of 15 years. Lease Contracts that establish longer terms will expire in 15 years as from the execution of the agreement. There is an exception regarding leases of real estate destined to forestry, which have a maximum term of 30 years.

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

There is no law that requires landlords to allow a tenant to renew its lease. It is not infrequent that the contract provides for automatic term renewals, however the maximum term legally established must be respected.

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

The rent shall be agreed freely between the tenant and the landlord when the contract is regulated by the Civil Code. However under law 14.219 (applicable to lease contracts of real estate the construction permit of which is prior to June 2nd, 1968), establish certain limitations regarding the annual actualization of the price of such agreement.

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

Under art. 1785 of the Uruguayan Civil Code tenants have the possibility to terminate lease contracts prior to its agreed expiration date by paying up the whole price of the lease until its expiration date.

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

Art. 1792 of the Uruguayan Civil Code establishes that tenants cannot assign the lease without the consent of the landlord, but can sublease the property when such faculty has not been expressly prohibited in the contract. Notwithstanding, the Uruguayan law contemplates the possibility in certain cases of an automatic assignment lease for commercial lease contracts in the event of the sale of the business concern when certain conditions are met.

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

Landlords may restrict or prohibit tenants' right to assign or sublease as established above.

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

Eviction proceedings begin with the request for eviction filed before the pertinent court, which in turn notifies the tenant of the same. The tenant has a ten day term to present exceptions. If the tenant

does not do so the process is concluded and the court will set a date of eviction. On the contrary, if the tenant files exceptions, a monitory procedure regulated by arts. 354 to 360 of General Procedural Code will be followed which usually takes from four to five months.

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

The pledge of a leasehold interest is not contemplated under Uruguayan Law.

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.

Under Uruguayan Law Lease contracts without guarantees are a possibility, but if the landlords demands a guaranty, lease contracts of real state located in urban or suburban zones must be guaranteed by a deposit of negotiable obligations with the Banco Hipotecario del Uruguay (National Mortgage Bank) or with a personal surety.

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

There are no such disclosures requirements.

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

None. Landlords are not required to collect taxes from tenants.

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

Under Uruguayan law landlords cannot exercise self-help, instead they must initiate the eviction process in order to evict tenants from the leased property.

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

Under Uruguayan Law acceleration is implied in lease contracts. Therefore tenant's default in paying the rent creates the obligation to pay the total amount of the contract.

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 Uruguayan Law acceleration is implied in lease contracts. Therefore tenant's default in paying the rent creates the obligation to pay the total amount of the contract.

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

Lease contracts should be executed in writing for their filing in the pertinent Public Registries. Unregistered lease agreements are not enforceable against third parties.

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 contracts must be registered into the Public Registry of the place where the real state is located 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?

There are no such restriction. However if the lease contract is registered the new owner is bound by its terms. Notwithstanding, landlords can expressly reserve their right to sell the real estate, and in said case the new owner will have the right to evict the tenant, regardless of the registration of the lease agreement.

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Issues Relating To Commercial Leasing

USA, Alabama

Prepared by Lex Mundi member firm Maynard, Cooper & Gale, P.C.

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

Pursuant to §40 22 1, et. seq, of the Code of Alabama, 1975, as amended (all future section references are to the Alabama Code), Alabama imposes a recording privilege tax on conveyances at the rate of .50 per \$500, rounded up to the nearest \$500. If a lease or memorandum thereof is presented for recording, the deed tax rate is calculated based on multiplying the remaining rental payments due under the lease by a stated net present value discount of the remaining lease years, as established in a lease net present value table, a copy of which is attached, and then applying the deed tax of .50 per \$500, rounded up to the nearest \$500, to such number. If there is a subsequent assignment of the tenant's interest in the lease that is presented for recording, the deed tax will again be imposed using the same formula, applying the then remaining lease term.

In a transaction where real estate is conveyed and the landlord's rights in the leases on the real estate are assigned to and assumed by the purchaser, the deed tax for the recording of the deed will be based on the value of the real estate being conveyed (which, presumably would include the value of the leases). If there is a separate Assignment and Assumption of Rents document that is also presented for recording, it is possible that the Probate Judge will insist on collecting deed tax based on the lease percentage table and formula, even though the deed tax has been collected on the recording of the deed. There is a 1981 Attorney General's Opinion that supports the proposition that when a deed has been recorded and tax collected, it is not appropriate for the Probate Judge to then collect tax on an assignment of rents related to the same real estate, that is also presented for recording.

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

Under §35-4-6, no leasehold estate can be created for a longer term than 99 years. Also, under the same Code section, if the term of a lease of real estate is over twenty years (aggregate of the initial term and any options to extend), such instrument will not be enforceable for the period greater than twenty (20) years unless such lease or a memorandum of lease is filed for record with the Probate Office in which the property is situated, within one year of execution of the instrument purporting to be a lease. §35-4-51.1 provides the information that must be included in a Memorandum of Lease. There is case authority to support the proposition that even if the lease is executed on a certain date, if the commencement date is expressed in the lease to be a later date (for example, commencing upon completion of construction of the space), then the lease or memorandum must be filed within one year from such date of commencement. The safer course is to file within one year of execution.

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

None

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

Generally, there are no restrictions on the amount of rent that can be charged to a tenant. However, provisions in a lease providing for late charges or default interest may be subject to Alabama case law prohibiting interest rates or charges that are unconscionable. Since Alabama courts have not

developed a clear standard for determining unconscionable charge or interest rate, any claim therefor must be decided on a case by case basis

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

None, provided, however, that if a lease is in excess of 20 years (aggregate of the initial term and any options to extend) §35-4-6 could affect the term. See above.

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

Absent an express provision in the lease to the contrary, a tenant generally has the right to assign its interest under the lease or to sublet the premises without the consent of the landlord.

In addition, if the lease provides that the tenant may not sublet the premises without the consent of the landlord, Alabama courts have held that the landlord may not unreasonably or capriciously withhold its consent to a sublease agreement. If the landlord unreasonably rejects a proposed sublease, the landlord's conduct could terminate its remedy for future rent as of the time that the subtenant would have agreed to commence paying rent. Among the legitimate factors a landlord may consider in assessing a proposed sublease: the financial responsibility of the proposed assignee or subtenant, whether the new tenant's use will require alteration of the premises, the legality of the proposed use, the nature of the occupancy, and the compatibility of the tenant's use with the uses of the other tenants in the same facility. Courts have held it improper for a landlord to reject an assignee or sublessee on considerations of personal taste, sensibility or convenience.

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

A landlord may restrict a tenant's right to assign or sublease by express language in the lease. For a prohibited assignment or sublease to be void, the lease must specifically provide that an assignment or sublease in violation of the lease is void. Otherwise, a prohibited assignment or sublease may give rise only to a claim for damages.

However, if the lease provides that the tenant may not sublet the premises without the consent of the landlord, Alabama courts have held that the landlord may not unreasonably or capriciously withhold its consent to a sublease agreement. If the landlord unreasonably rejects a proposed sublease, the landlord's conduct could terminate his or her remedy for future rent as of the time that the subtenant would have agreed to commence paying rent. Among the legitimate factors landlords may consider in assessing a proposed sublease: the financial responsibility of the proposed assignee or subtenant, whether the new tenant's use will require alteration of the premises, the legality of the proposed use, the nature of the occupancy, and the compatibility of the tenant's use with the uses of the other tenants in the same facility. Courts have held it improper for a landlord to reject an assignee or sublessee on considerations of personal taste, sensibility or convenience.

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

The form of eviction proceeding in Alabama is an action for unlawful detainer. The following is a general overview of the procedure for prosecuting an action for unlawful detainer:

To commence an unlawful detainer action, a landlord must first terminate the lease by delivering a notice of termination to the tenant. Generally, this notice must be given in accordance with the terms of the lease and at least 10 days before the lease is terminated, and must contain an adequate indication of the basis for termination. Notice however, is not required in the case of the natural expiration of a lease or an estate for years.

Following termination, the landlord must make a separate demand in writing that the tenant surrender possession of the premises within 10 days of service. If the tenant fails to deliver possession within

such period, the landlord may then initiate an unlawful detainer proceeding by filing a complaint in the district court of the county in which the property is located (though if an action for damages in excess of \$10,000 is being filed simultaneously, the action must be filed in circuit court, and an action in circuit court takes a substantially longer time to complete). The summons and complaint must be served on the defendant in the manner described under the Alabama Rules of Civil Procedure, or, if not possible, by posting a copy on the door of the premises and mailing a copy to the premises the next day. These papers must be served at least 6 days prior to the date set for hearing. The tenant/defendant is not required to file an answer to the complaint. Instead, the defendant must only appear at the hearing in order to avoid default.

After the hearing, if there is a finding in favor of the landlord, the court will issue a writ of execution commanding the sheriff to restore to the landlord possession of the premises. Once this ruling has been issued by the court, the tenant must appeal within seven days. An appeal by the tenant does not prevent the issuance of a writ of restitution or possession unless the tenant pays into the court all rents properly payable under the terms of the lease and continues to make proper rent payments during the pendency of the appeal. Unless the tenant pays proper rent, the writ of restitution will be issued and the landlord can retake possession of the premises.

Due to the fact that many district courts have different scheduling requirements, the average length of an eviction proceeding varies greatly from case to case.

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

None.

However, a tenant's pledge of its leasehold interest would be subject to the statutory lien in favor of the landlord against the personal property of tenant located within the premises. § 35-9-60 et. al.

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.

None

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

There are no disclosures required by statute.

However, Alabama courts have held that a landlord can be held liable for injuries to a tenant proximately caused by latent defects in the premises, which existed at the time of leasing and which were known to the landlord, and unknown to the tenant and not discoverable by the tenant by reasonable inspection, and not disclosed to the tenant by the landlord.

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

There are no taxes on rent or other taxes that a landlord is required by state law to collect from a tenant. However, some municipalities have enacted rent tax ordinances.

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

Alabama courts generally disfavor the enforcement of a landlord right or remedy through self-help.

With respect to enforcement of a landlord's lien, the Alabama Supreme Court has held that a landlord "cannot permanently take possession of property on which he has a lien without any legal process." A landlord with a lien under § 35-9-60 must proceed to enforce it according to the methods prescribed

by statute, and seizure on his or her own motion may give rise to a claim of conversion. For permissible methods of enforcement of a landlord's lien see § 35-9-60 through § 35-9-65.

However, as to self-help evictions, certain cases have implied that, when a lease agreement expressly provides the landlord with a right of re-entry for rent default and includes a waiver by tenant of the demand for rent, the landlord may exercise self-help in order to evict the tenant, provided the landlord's actions do not breach the peace.

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

There must be an express provision in the lease giving the landlord the right to accelerate rents upon an event of default. A rent acceleration remedy is not implied under Alabama law.

With respect to post-eviction rent, the general rule in Alabama is that when a landlord evicts a tenant and takes possession of the premises, the lease is terminated and the right to claim rent which accrues after eviction is extinguished. However, the parties may agree in the lease that the tenant shall be liable for post-eviction rent.

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.

While there are no expedited remedies for tenant defaults provided by statute in Alabama, it is likely that the following provisions commonly included in commercial leases are enforceable under Alabama law: (i) provisions in a lease providing for jury trial waivers, (ii) provisions in a lease provided for choice of law and choice of venue, (iii) provisions in a lease providing that time is of the essence, (iv) provisions in a lease providing that the landlord may exercise self-help in order to evict the tenant (provided the landlord does not breach the peace) and (v) provisions in a lease providing that each covenant in the lease is independent of the other covenants and that the invalidity or unenforceability of any one covenant shall not affect the validity or enforceability of the other covenants contained in such lease.

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

Alabama's version of the Statute of Frauds provides that leases, except those for a term not longer than 1 year, are void unless an agreement, note or memorandum thereof expressing the consideration is in writing and signed by the party to be charged or such party's authorized agent. See § 8-9-2. The signature(s) must be at the foot of the document and such execution must be attested by one witness or, where the party cannot write, by two witnesses. See § 35-4-20. A proper acknowledgement by a notary public or other authorized officer satisfies the witness requirement. See § 35-4-23. In addition, a lease may not be enforceable if not delivered upon signing.

With respect to leases for more than 20 years (aggregate of the initial term and any options to extend), such leases shall be void for the portion of the term in excess of 20 years unless the lease, or a memorandum thereof, is acknowledged or approved as required by law and recorded within one year after execution. See § 35-4-6 and §35-4-51.1.

For a lease or a memorandum thereof to be recordable, it must be in writing and signed at its foot by the contracting parties and attested by one witness or, if a party cannot write, by two witnesses. See § 35-4-6. A proper acknowledgement by a notary public or other authorized officer satisfies the witness requirement. See § 35-4-23. Once recorded, properly acknowledged instruments are self-proving. See § 35-4-27 and § 35-4-65.

A lease or a memorandum thereof will not be accepted for recording unless it includes the name and address of the preparer of the instrument. See § 35-4-110.

The lease, or memorandum thereof, must be recorded in the office of the Judge of Probate in the county in which the property is situated. See § 35-4-50 and § 35 4-62.

To record a memorandum of lease in lieu of the lease, the memorandum must be executed and acknowledged by the landlord and the tenant and contain: (1) the names of the landlord and tenant; (2) the term of the lease; (3) any option of the tenant to renew or extend the term of the lease; and (4) the specific legal description of the leased premises, or a survey or plot plan showing the location of the leased premises. See §35-4-51.1.

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 with a term of less than 20 years does not need to be recorded in order to be enforceable against third parties.

However, leases for more than 20 years (aggregate of the initial term and any options to extend) shall be void for the portion of the term in excess of 20 years unless the lease, or a memorandum thereof, is acknowledged or approved as required by law and recorded within one year after execution. § 35-4-6 and §35-4-51.1.

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?

Under § 35-9-1, a tenant cannot dispute his landlord's title. Under § 35-4-32, a conveyance is good without an attornment of the tenant. The transfer does not affect the tenant's rights or obligations under the lease. However, if a tenant does not receive notice of the conveyance and pays rent to the former owner, the tenant is not liable for such rent to the new owner.

LEASE RECORDING TAX CALCULATIONS

Remaining term/full term of lease (in months) x amount of monthly rent x percentage from chart, which is based on the remaining/full term in years ÷ 1000 = total consideration (to be rounded up to the nearest 500).

Recording tax is \$1.00 x the total consideration from above.

Example:

The recording tax for a 30 year lease at \$144,000 annually, would be calculated as follows:

$$360 \text{ months} \times 12,000 = 4,320,000 \times 45.9\% = 1,982,880 \div 1000 = 1982.88$$
$$\text{Rounded up to nearest 500} = 1,983.00 \times \$1.00 = \$1,983.00 \text{ tax to record}$$

LEASE PERCENTAGE TABLE

# Years Remaining	Percentage
1	94.3
2	91.6
3	89.5
4	86.6
5	84.3

6	82.0
7	79.7
8	77.7
9	75.5
10	73.6
11	71.7
12	69.9
13	68.0
14	66.4
15	64.7
16	63.1
17	61.6
18	60.1
19	58.7
20	57.3
21	55.6
22	54.7
23	53.0
24	52.3
25	51.1
26	50.0
27	48.9
28	47.8
29	46.86
30	45.9
31	44.9
32	44.01
33	43.12
34	42.26
35	41.42
36	40.61
37	39.83
38	39.06
39	38.33
40	37.61
41	36.77
42	36.24
43	35.59
44	34.96
45	34.35
46	33.74
47	33.17
48	32.60
49	32.09
50	31.52
51	31.01
52	30.50
53	30.01
54	29.54
55	29.07
56	28.62
57	28.18
58	27.76
59	27.34
60	26.94
61	26.54

62	26.16
63	25.78
64	25.42
65	25.06
66	24.71
67	24.37
68	24.04
69	23.72
70	23.40
71	23.09
72	22.80
73	22.51
74	22.22
75	21.94
76	21.67
77	21.40
78	21.14
79	20.87
80	20.64
81	20.39
82	20.15
83	19.92
84	19.69
85	19.47
86	19.25
87	19.04
88	18.83
89	18.62
90	18.42
91	18.22
92	18.03
93	17.84
94	17.66
95	17.47
96	17.29
97	17.12
98	16.95
99	16.78
100	16.62

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Issues Relating To Commercial Leasing

USA, Arizona

Prepared by Lex Mundi member firm Snell & Wilmer L.L.P.

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

The speculative builder tax (described in Part II, Question 7) applies to any lease of property for a term of thirty (30) years or more, including renewals, if the transferor would otherwise be subject to the tax in a sale.

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

There are no laws limiting the maximum term of a lease.

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

There are no laws requiring landlords to allow tenants to renew their leases. In fact, a tenant may not renew its lease without written permission from the landlord.

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

There are no laws restricting the rent that may be charged to a tenant.

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

A lessee may quit and surrender possession of the premises, without liability for rent, when the building is destroyed or rendered unfit for occupancy by natural elements or any other cause, other than negligence attributable to the tenant, unless expressly provided otherwise by written agreement.

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

There are no laws allowing tenants to assign or sublease without the landlord's consent. Nevertheless, tenants are allowed to do so unless expressly prohibited by the terms of the contract.

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

There are no laws allowing landlords to restrict assignments or subleases by tenants. A landlord may restrict assignments or subleases in the terms of the lease.

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

The common form of eviction proceeding is forcible entry and detainer. They are summarily tried between five (5) and thirty (30) days after the action is commenced.

Eviction proceeds may be followed by the seizure and sale of the tenant's or subtenant's property. If the tenant refused to pay rent following the court's decision, the landlord has a lien upon as much of the tenant's personal property (or that of the tenant's sublessee) located on the premises as will

secure the payment of rent. If the tenant fails to pay within sixty (60) days after seizure of the property, then the landlord may sell the seized property to satisfy the rent.

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. Pledging is subject to the terms of the lease.

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.

Landlords are not required to hold deposits in separate accounts.

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

In a residential lease, the landlord is required to disclose the name and address of the property owner or agent of the owner as well as that of the manager of the property. The landlord must also inform the tenant in writing that a free copy of the Arizona residential landlord and tenant act is available through the Arizona secretary of state's office.

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

There are no lease or rental taxes that landlords are *required* to collect from tenants. However, the State of Arizona and most of its municipalities impose lease taxes on landlords who engage in almost all forms of rental activity (including all forms of commercial rental activity and many forms of residential rental activity). Though not required, landlords may shift the burden of these taxes to their tenants.

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

The landlord may not seize personal property deemed exempt under Arizona law. The landlord may also be limited by the terms of the lease and by the implied covenant of good faith and fair dealing.

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

The remedy of acceleration of rent must be express to be enforceable.

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 other than forcible entry and detainer. Lease provisions may not waive personal property exemptions under these proceedings.

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

Any agreement to lease for a period longer than one year must be in writing and signed by the party to be charged or its authorized agent in order to be enforceable.

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

There is no law requiring that a memorandum of lease be recorded for the lease to be enforceable against third parties. However, recording a memorandum of lease is advisable, especially if the property is vacant, to provide third parties with notice of 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 only restrictions on the transfer of ownership of real properties subject to a lease are those set for in the terms of the lease.

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Issues Relating To Commercial Leasing

USA, Colorado

Prepared by Lex Mundi member firm Davis Graham & Stubbs LLP

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

There are no state transfer taxes – only a state “documentary fee” that applies to recorded transfers of title. Some home rule cities located in mountain resort areas have transfer taxes, and local law may vary regarding the amount of the tax and the transactions on what it is imposed. Our experience is that such taxes generally have not been assessed against leaseholds. However, the parties to a proposed long-term lease in a municipality that imposes a real estate transfer tax should consider reviewing local law to evaluate whether the local transfer tax applies to the lease.

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

There are no statutory restrictions on the term of a lease in Colorado, but as a general practice landlords and tenants in Colorado do not enter into leases for a term longer than 99 years, including renewals. In at least one case, the Colorado Court of Appeals has avoided giving effect to lease language that appeared to grant the tenant an indefinite renewal right. See *Carder, Inc. v. Cash*, 97 P.3d 174, 181-82 (Colo. App. 2003), cert. denied (Colo. 2004) (holding that a lease providing an option to renew for “successive periods of 5 years each” could be renewed for only one period).

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

There are no statutory provisions requiring a landlord to allow a tenant to renew its lease. However, there is precedent that if the tenant holds over, the landlord continues to collect rent, and the lease is silent as to the consequences of holdover, the lease may be deemed to have renewed for a period equal to or less than the original lease term depending on the duration of the original term and the apparent intent of the landlord and tenant. The best practice is to clearly specify the consequences of holdover in the lease document and to adhere to those provisions to avoid waiving them.

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

There are no state law restrictions on rent.

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

No such laws apply to commercial leases in Colorado, but Colorado common law does include a concept of constructive eviction.

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

There is no Colorado law that limits restrictions on assignment or subleasing. However, in the absence of such a restriction in the lease, the tenant can generally assign the lease or sublet the premises.

A tenant that is a debtor in a proceeding under the U.S. Bankruptcy Code may have the right to assign its lease without the landlord’s consent pursuant to 11 U.S.C. section 365 if the conditions to such an assignment are satisfied, regardless of whether the lease contains restrictions on assignment

or subletting.

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

There is no law prohibiting or invalidating restrictions on assignment or subletting. The lease may contain a provision giving the landlord the absolute right to withhold its consent to assignment or subletting. However, if the lease does not contain such a provision, the landlord must not unreasonably withhold or condition its consent.

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

The only form of eviction proceeding in Colorado is the statutory procedure provided in the Colorado Revised Statutes, Sections 13-40-101 through 13-40-123. The length of time for the proceeding varies, but the eviction hearing can usually be conducted within about three weeks after the initial eviction notice is given, and a writ of restitution entitling the landlord to re-enter the premises can be obtained 48 hours after the hearing.

Before the landlord can bring an eviction action, it must serve a three-day written demand for compliance with the lease or possession of the premises under C.R.S. section 13-40-104(1)(d). The statute provides time periods for the service of the summons and complaint, the scheduling of the initial return hearing, and the setting of trial. The courts require strict compliance by the landlord with the notice and service requirements of the statute and the time periods set forth in the statute.

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

No, but it is typical for Colorado leases to prohibit such a pledge or at least require the landlord's prior consent.

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 statutes regarding how security deposits are held. The Security Deposit Act, C.R.S. sections 38-12-101 through -104, governs the return of deposits in residential leases, but no such statute applies to commercial leases.

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

No Colorado statutes provide minimum disclosure requirements. Leases are governed by general contract principles, and as a general matter the disclosure obligations of the parties will be the same as under any other contract.

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

Landlords are not required to collect taxes on rent or other taxes from tenants.

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

Landlords may not exercise self-help in Colorado. Although many leases in Colorado provide for the remedy of self-help, such provisions are unenforceable, and landlords may dispossess tenants only pursuant to the statutory eviction procedures set forth in C.R.S. sections 13-40-101 through 13-40-123.

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

Acceleration remedies must be expressly stated. Some practitioners question the enforceability of an acceleration clause that does not reduce the lump sum being sought by the fair rental value of the premises or discount the accelerated rent to its present value.

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 statutory eviction procedure is an expedited remedy. Resolution of other claims related to a tenant's default are generally bifurcated from the expedited eviction proceeding and follow the ordinary course of a civil case. A landlord will typically bring one action alleging separate claims for recovery of possession of the premises and breach of the lease.

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

There are no statutory requirements in Colorado.

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

Whether a memorandum of lease is necessary depends on whether the title to the property in question is registered. Title for most property in Colorado is not registered, but Colorado does have a "Torrens" title registration law under which some property is registered. A memorandum of lease is not usually necessary to put third parties on notice of a lease of unregistered property. Generally, a third party will be deemed to have inquiry notice of the lease if a reasonably diligent inquiry of those in possession of the property would have revealed that the property was leased. However, under some circumstances, tenants (and sometimes landlords) may wish to establish record notice by recording a memorandum of lease. Some practitioners contend that a memorandum of lease must contain an actual grant of lease to be effective, based on C.R.S. sect. 38-35-108 (recorded reference to terms of unrecorded document not binding on third parties).

Leases of property in the registered title system for a term of three years or more must be registered in the same manner as a mortgage to bind third parties. See C.R.S. sections 38-36-166 (leases), -160 (mortgages) and -133 (exceptions to title).

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 generally no restrictions on transfer of ownership of leased property, and transfers do not generally affect the tenant's rights or obligations, though lease provisions governing whom the tenant should look to for the return of the security deposit are common.

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Issues Relating To Commercial Leasing

USA, Delaware

Richards, Layton & Finger, P.A.

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

Generally, leases are exempt from the Delaware Realty Transfer tax. However, leases for properties where the underlying fee is owned by the State or some political subdivision of the State are subject to transfer tax liability. 30 Del. C. §5401(4)(b).

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

A permanent leasehold estate, renewable forever, is considered a fee simple estate. 25 Del. C. § 304. There are no other statutory restrictions limiting the maximum term of a lease.

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

There are no express statutory provisions indicating that the term of a commercial lease automatically renews; however, the common law in certain circumstances can be that in the absence of an intention by the parties that the lease terminate at the end of its term, a lease will renew for an equal or shorter term, depending on the original term of the lease and other factors. Accordingly, the best practice suggests that the terms of any automatic renewal should be expressly stated. If an automatic renewal is not desired, the practice for commercial leases in Delaware is to state that the lease term ends on the stated expiration date "without further notice or action of either party."

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

There are no restrictions on the amount of rent that may be charged for commercial, office or retail leased space.

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

There are no statutes expressly permitting tenants under commercial leases to terminate the lease prior to its stated expiration date.

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

A commercial lease, like any other contract, is generally assignable. Likewise, the tenant under a commercial lease can generally sublet unless the lease limits subleasing.

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

The landlord may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may also restrict the tenant's right to sublease the premises by conditioning such right on the landlord's consent.

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

An action for eviction is brought in the Justice of the Peace Court. A landlord may seek eviction of a tenant by filing a summary possession action for the purpose of regaining its right to enter the premises. The Justice of the Peace Courts have exclusive jurisdiction over summary possession actions. See 25 Del. C. § 5701.

The length of time for a summary possession action varies.

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

25 Del. C. § 2501 specifically authorizes lessees of land or premises under a lease of "10 years or more" to mortgage the lessee's leasehold interest in the same manner as the mortgaging of a freehold estate. It is unsettled, however, whether the reference to "10 years or more" is intended to require only that the lease have an initial term of 10 years or more or that the lease must have a remaining term of 10 years or more at the time the leasehold mortgage is granted. Under Delaware law, mortgage liens on leasehold estates having terms of less than 10 years are not likely enforceable.

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.

The Residential Landlord-Tenant Code contains a provision governing security deposits in residential leases (25 Del. C. § 5514); however, no such statute governs commercial leases.

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

As commercial leases are governed by general contract principles, 25 Del. C. § 5101(b), 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.

Commercial landlords are not required to collect taxes on rent or other taxes from tenants.

However, any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a set off against the rent or other demand of the owner for the use or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant. 25 Del. C. § 6105.

Moreover, commercial landlords (defined as entities which receive rental income from the lease of one or more commercial units) are required to pay a license fee of \$75 plus \$25 for any additional office from which leasing operations are conducted and are liable for payment of tax on rents received. 30 Del. C. § 2301(a)(6). Although landlords are not required to collect reimbursement for this tax from tenants, many commercial landlords pass through the tax liability to the tenant.

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

Commercial landlords may not exercise self-help, but are limited to recovering possession if through a summary possession action. An action for distress may also be brought as an action in law in the Justice of the Peace Court. 25 Del. C. §§ 6301-6302.

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

Such a remedy must be expressly stated to be enforceable.

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 other than those for eviction and distress referred to above. Jury trials are not available for either of those remedies except as set forth in 25 Del. C. § 5713.

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

There are no statutory requirements in Delaware.

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

For certain leases (for example, where the underlying fee is owned by the State or some political subdivision of the State), a lease would not be enforceable unless the lease itself, or a memorandum thereof, is recorded in the office of the Recorder of Deeds in the county in which the premises or any part thereof are located within 15 days of the commencement of the term provided by such lease. 25 Del. C. § 158.

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 statutory restrictions on the transfer of ownership of real properties subject to a commercial lease.

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Issues Relating To Commercial Leasing

USA, Hawaii

Prepared by Lex Mundi member firm Case Lombardi & Pettit

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

A conveyance tax is imposed “on all transfers or conveyances of realty or any interest therein, by way of deeds, leases, subleases, assignments of lease. . .” Exempt are leases or subleases with full unexpired terms of less than 5 years. The amount of the tax is the discounted present value of future lease rent to be paid. The conveyance tax certificate includes a table (Inwood factors at 6%) for calculating the amount of the tax. The person subject to the tax is generally the lessor, sublessor or assignor, or any other person conveying the real property interest.

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

There are no legal restrictions limiting the maximum term of a lease.

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

There are no automatic renewals or statutory provisions requiring a landlord to renew a commercial lease, though the lease may allow for an option to renew. Chapter 666, Hawaii Revised Statutes (“HRS”) governs non-residential landlord-tenant relations such as commercial leases. Pursuant to HRS 666-2, when real property is rented for an indefinite time with monthly or periodic rent, such a holding is considered tenancy from month to month and may only be terminated by written notice to vacate given 25 days or more preceding the end of the month or rental period, by either landlord or tenant. (If the tenant under such a month to month tenancy fails to pay rent then the landlord may terminate the tenancy by giving the tenant a written notice to vacate of not less than 5 days.)

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

There are no statutory restrictions on the amount of rent that may be charged.

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

There are no laws permitting tenants to terminate a commercial lease prior to its expiration date.

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

Assignments of leases or subleases are permitted unless they are specifically prohibited by the terms of the lease. Accordingly, if the lease is silent on such matters, the tenant may assign or sublease without the landlord’s consent.

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

A landlord may grant or withhold its consent to an assignment in its sole discretion. Food Pantry v. Waikiki Business Plaza, Inc., 58 Haw. 606, 575 P.2d 289 (1978).

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

HRS Chapter 666 provides the landlord with an expedited judicial procedure for recovering possession of the leased premises: summary possession. Jurisdiction over summary possession lies in the District Court, unless the tenant requests a jury trial and the amount in controversy exceeds \$5,000. In that event there will be two lawsuits, one in District Court over the issue of possession of the property, and one in Circuit Court over the issue of damages.

The length of time could be as short as 5-10 days following the date of service if the tenant appears at the return hearing and confesses to judgment. If there is a trial, the matter could take approximately 4-6 weeks.

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

No, other than the leasehold mortgage must be recorded.

Hawaii law holds that when a bankrupt debtor/lessee rejects a nonresidential lease, that terminates the lease, including any mortgage of it, resulting in the mortgagee losing its collateral. Thus lenders may ask the lessor to agree that if the lessee rejects the lease in bankruptcy, the lessor will enter into a new lease with the lender on the same terms.

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.

The Residential Landlord-Tenant code (HRS Chapter 521) has specific requirements regarding the use and retention of a security deposit but there are no comparable provisions for commercial leases.

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

There are no statutory disclosures that must be made to commercial tenants. A lease is reviewed under principles of contract law.

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

HRS Chapter 237 imposes a general excise tax ("GET") on all trade, business, commerce or sales income, including rent received by a landlord. Typically the landlord passes on the GET to the tenant by adding to the rent an amount that would cover the landlord's GET obligation, plus the additional tax paid on the tax itself. In addition, a sublessor pays GET on the income received from a sublessee. A lease may, though is not required to, pass onto the tenant the obligation for paying real property taxes attributable to the leased premises.

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

Hawaii law permits the landlord to re-enter and take possession of the premises without legal process if the lease specifically provides for such a right, though courts have imposed some limitations on the landlord's right of self-help. See *Watson v. Brown*, 67 Haw. 252, 686 P.2d 12 (1984); *Gomes v. Perry*, 26 Haw. 661 (1922)

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

Such remedies must be expressly stated to be enforceable.

Under Hawaii law, the landlord has the duty to mitigate its damages by making objectively reasonable efforts to re-lease, though the tenant has the burden to prove the landlord failed to satisfy this duty. See *Marco Kona Warehouse v. Sharmilo, Inc.*, 7 Haw. App. 383, 768 P.2d 247 (1989).

Summary possession does not terminate the landlord's right to damages, but the damages are traditional contract damages, not rent due under 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.

The summary possession procedures in HRS Chapter 666 constitute the expedited judicial procedure for recovering possession of the leased premises after a tenant's default. No explicit lease provisions are required in order for the landlord to bring legal proceedings under HRS Chapter 666.

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

There are no formal requirements for the execution of a lease. In order to record a lease, short form lease or memoranda of lease, the signatures must be notarized.

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

All leases with a term of more than one year must be recorded. Any lease not so recorded is void as against any subsequent purchaser, lessee or mortgagee not having actual notice of such lease. HRS § 501-121; § 502-83. Short form leases or memoranda of leases are often recorded in lieu of recording the entire lease document.

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 statutory restrictions on the transfer of ownership of property subject to a commercial lease.

A tenant with a lease with superior priority to a landlord's mortgage may not be foreclosed upon by the landlord's mortgagee in the event of the landlord's default unless the tenant has subordinated its lease to the lien of the mortgage.

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Issues Relating To Commercial Leasing

USA, Indiana

Prepared by Lex Mundi member firm Faegre Baker Daniels LLP

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

Indiana does not have a transfer tax.

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

None, although likely a point where lease could be seen as a transfer of title rather than a lease.

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

A tenant has no statutory right to renew a lease. If a tenant holds over and a landlord accepts rent, there is a presumption that the lease is renewed on the same terms and conditions except term will be limited to the lesser of one year or the length of the original term. Express agreement in the lease will negate this presumption.

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

No limitations are applicable to commercial leases.

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

Absent landlord breach, none.

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

Absent contrary language in the lease, a tenant has the right freely to assign or sublet the leased premises.

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

Assignments and subleases may be restricted. Despite the general rule that a landlord is not required to act reasonably unless the lease expressly requires it to do so, better practice would be to expressly address issue in lease.

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

Action for ejectment. As with any court proceeding, the length of time varies.

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

No.

- 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.**

None.

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

For commercial leases, only disclosures are those required by contract law generally. Residential leases are subject to the Deceptive Consumer Sales Act.

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

None.

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

Peaceable self-help by a landlord seeking to regain possession due to a tenant breach is permitted in Indiana. However, courts tend to look on self-help with disfavor.

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

Such a remedy should be expressly stated.

- 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.**

None, other than waiver of jury trial.

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

Any lease with a term in excess of three years must be in writing and signed by the party to be charged therewith.

- 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 memorandum of lease must be recorded for any lease with a term in excess of three years. Alternatively, the actual lease may be recorded.

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?

None.

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Issues Relating To Commercial Leasing

USA, Iowa

Prepared by Lex Mundi member firm The Davis Brown Law Firm

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

There are no transfer taxes are applicable on the creation or assignment of a lease. Iowa Code § 428A.1 (2008).

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

Except for leases of agricultural land, there are no statutory restrictions limiting the maximum term or renewals of commercial leases. The parties to the lease agreement may agree to any duration the term of the lease, and they may agree to any amount of renewals. The Iowa Constitution limits the term of leases of agricultural land to twenty years.

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

Unless a tenant is a tenant-at-will, a tenant has no statutory right to renew its lease. If a tenant is a tenant at will, then a landlord must give thirty days' notice in writing to the tenant before termination of the tenancy. Notwithstanding, if rent is payable at intervals shorter than thirty days, the termination notice from the landlord need not be given at a time period greater than the interval. Iowa Code § 562.4 (2008). Except for a farm tenant who is a mere cropper, in the case of a farm tenancy with an acreage of forty acres or more, the lease must be terminated in accordance with Iowa Code § 562.7 or the lease will automatically renew for another crop year, regardless of the stated termination date in the lease.

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

There are no statutory restrictions on rent. The parties to the lease agreement may agree to any amount of rent.

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

There is no statutory law allowing tenants to terminate a lease early.

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

Unless explicitly prohibited in the lease agreement, tenants may freely assign or sublease without landlord's consent.

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

Landlords are free to restrict assignments or subleases by tenants, however, they must do so expressly in the lease agreement.

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

The common form of eviction proceeding is an action for forcible entry and detainer. Iowa Code

Chapter 648 (2008). The customary length of time for a forcible entry and detainer action is between fifteen and twenty days.

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

There are no statutory restrictions on pledging a leasehold interest as 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 is no Iowa statute that requires a landlord to hold commercial tenant security deposits in a separate account.

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

There are no statutory or other legal disclosures that must be made to commercial tenants.

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

There are no taxes on rent. Landlords are responsible for the property taxes and may collect them from their tenant(s).

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

There is no self-help remedy available to a landlord unless the tenant has abandoned the property. Where the tenant has abandoned the property, the landlord has the right to enter, take possession and re-let the property. If the tenant is in possession, the landlord must use the judicial process to obtain possession.

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

In order for a remedy such as acceleration of rent to be available to a landlord, it must be expressly stated 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.

A forcible entry and detainer action is the expedited remedy for recovery of possession and may be filed in small claims court. A lease provision waiving a jury trial is not required for a landlord to bring a forcible entry and detainer action, nor are any other lease provisions required. There is no expedited remedy to recover delinquent rent.

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

There are no formal statutory requirements. The lease agreement must be signed by both parties.

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 memorandum of lease must be recorded, or the lease agreement itself must be recorded, in order to provide constructive notice to third parties. However, Iowa is a notice state, and third parties who have other notice of the lease will be subject to it. A party in possession of real estate places third

parties on notice that the party in possession has rights to the real estate.

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 statutory restrictions on the transfer of real properties subject to a lease. Tenant's rights or obligations are not affected, unless otherwise provided expressly in the lease agreement. Note: There are statutory restrictions on organizations and non-resident aliens leasing agricultural land that are beyond the scope of this survey.

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Issues Relating To Commercial Leasing

USA, Louisiana

Prepared by Lex Mundi member firm Jones Walker LLP

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

There are no local or state taxes levied on leases.

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

The maximum term of a lease is ninety-nine (99) years.

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

Louisiana law does not require a landlord to allow a tenant to renew a lease.

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

Louisiana does not impose any rent restrictions.

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

Tenants are permitted to seek termination of a lease through judicial proceedings upon the failure of the landlord to fulfill his obligations under the lease agreement or by law or upon the destruction or expropriation of the thing leased.

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

A tenant may assign a lease or sublease unless expressly prohibited in the lease agreement. A prohibition of one of these actions is deemed to be a prohibition of both unless a contrary intent is expressed.

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

A landlord may prohibit assignment or sublease pursuant to the terms of the lease agreement.

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

The landlord may institute an eviction proceeding against the tenant when the right to occupy the leased premises has ceased. Unless expressly waived, a notice to vacate allowing the tenant five (5) days to vacate the leased premises must be delivered prior to instituting the eviction proceeding. The eviction proceeding is a summary proceeding and may be completed within thirty (30) to sixty (60) days.

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

There are no restrictions on the mortgage or assignment of leases under state or local law.

- 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 requirements under state or local law for holding security deposits in separate accounts.

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

There are no state or local laws requiring specific disclosures to tenants, except for requirements which govern licensed real estate brokers.

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

No taxes are imposed on rents. Landlords are not required to collect any taxes from tenants.

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

Dissolution of a lease and/or eviction of a tenant must be obtained through judicial proceedings. Self-help is not permitted in Louisiana.

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

Acceleration of rent and other remedies must be expressly provided for 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.**

Upon a default by a tenant (and notice to vacate, if applicable), a landlord may initiate an eviction proceeding which is tried as a summary proceeding. No special lease provisions are required to exercise this remedy.

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

There are no formal requirements for leases. Leases may be oral or written.

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

Leases must be in writing and recorded in the official conveyance records of the Parish in which the property is located in order to be enforceable against third parties. In the alternative, a Notice of Lease under La. R.S. 9:2742 may be recorded.

- 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 leased property. If a lease agreement or notice of lease is recorded, the transfer does not affect a tenant's rights or obligations. If no lease agreement or notice of lease is recorded, the lease is not enforceable against the transferee.

unless the transferee expressly assumes the lease or the property was expressly conveyed subject to the lease.

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Issues Relating To Commercial Leasing

USA, Massachusetts

Prepared by Lex Mundi member firm Foley Hoag LLP

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

Ordinary leases of real property and assignments of such leases are not taxable conveyances; however, leases or assignments which are for very extended terms or are renewable indefinitely are subject to the transferor's obligation to pay a transfer tax. Currently, the rate of taxation is \$4.56 per \$1,000.00 of consideration.

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

There is no maximum term for a lease; however, if the land is demised for a term of one hundred years or more, so long as fifty years of the term remains unexpired, the term shall be regarded as an estate in fee simple for certain purposes.

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

There are no express statutory provisions indicating that the term of a commercial lease automatically renews. The best practice suggests that the terms of any automatic renewal should be expressly stated. If an automatic renewal is not desired, the practice for commercial leases in Massachusetts is to state that the lease term ends on the stated expiration date "without further notice or action of either party."

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

There are no restrictions on the amount of rent that may be charged for commercial, office or retail leased space.

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

There are no statutes expressly permitting tenants under commercial leases to terminate the lease prior to its stated expiration date.

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

A commercial lease, like any other contract, is generally assignable. Likewise, the tenant under a commercial lease can generally sublet unless the lease limits subleasing; however, leases generally contain provisions restricting the tenant's liability to assign or sublet without the landlord's approval.

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

The landlord may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may also restrict the tenant's right to sublease the premises by conditioning such right on the landlord's consent.

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

An action for summary process is brought in the local District Court pursuant to M.G.L. c. 239, § 1, et. seq.

The length of time for a summary process action varies.

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

There are no legal restrictions in Massachusetts.

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.

M.G.L. c. 186, § 15(B)(3) contains a provision governing security deposits in residential leases; however, no such statute governs commercial leases.

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

As commercial leases are governed by general contract principles, 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.

Commercial landlords are not required to collect taxes on rent or other taxes from tenants.

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

Commercial landlords may not exercise self-help, and are limited to recovering possession through a summary process action.

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

Such a remedy must be expressly stated to be enforceable.

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 other than those for summary process referred to above.

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

There are no statutory requirements in Massachusetts.

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

For certain leases for a term of seven years or more, a lease would not be enforceable against persons with no actual knowledge of the lease unless the lease itself, or a memorandum thereof, is recorded in the office of the Registry of Deeds in the county in which the premises or any part thereof are located. M.G.L. c. 183, § 4.

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 statutory restrictions on the transfer of ownership of real properties subject to a commercial lease.

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Issues Relating To Commercial Leasing

USA, Missouri

Prepared by Lex Mundi member firm Armstrong Teasdale LLP

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

Missouri does not have a real estate transfer tax.

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

In general, a written lease agreed upon by both parties is not subject to a maximum term so long as a term is defined in the lease. Exceptions typically involve situations in which the parties have not formalized in writing the intended term. See *generally* RSMo Chapter 441.

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

The Missouri statutes do not contain any provisions requiring a landlord to allow a tenant to renew its lease so long as the lease remains silent on renewals. Options, rights of first refusal, and automatic renewals are common practices recognized in Missouri and may be included in the terms of a lease.

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

The Missouri statutes are silent on state mandated rent restrictions; additionally, counties and cities are prohibited, with exceptions, from restricting rent. RSMo 441.043.

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

Generally, in a month to month lease, either party may terminate the tenancy with a one month written notice. RSMo 441.060.4.

Generally, in a year to year lease, either party may terminate the tenancy with a written notice sixty days before the end of the year. RSMo 441.050.

In general, a lease for a specified term requires the tenant to continue paying rent through the stated expiration date regardless of events. For example, in some eviction proceedings, the tenant is required to continue paying rent through the resolution of any pending civil action. RSMo 441.840. Furthermore, in most case, a tenant must pay rent even when the landlord is in breach. The proper remedy for breach is damages and not canceled rent. The exception occurs only when a lease provision obviates required rent in situations of landlord breach.

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

In general, a tenant bound by a lease for a term of greater than two years may assign the leased property to another without landlord's consent. See *Crestwood Plaza, Inc. v. Kroger Co.*, 520 S.W.2d 93, 96 (Mo.App. 1974). A landlord may circumvent this default rule by including a provision in the lease that requires permission.

In general, a tenant bound by a lease for a term of less than two years may not assign the leased property to another without landlord's consent. RSMo 441.030.

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

Landlords typically include provisions within a lease that prohibit assignment without consent. Missouri courts have recognized the validity of these provisions. See *Centerre Bank of Independence v. Bliss*, 765 S.W.2d 276 (Mo.App. 1988).

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

A landlord who wishes to evict a tenant for nonpayment of rent should file an action for rent and possession; this entitles the landlord to repossess the property, recover past due rent, and collect court costs from the tenant. See generally RSMo Chapter 535. Actions for rent and possession are regulated by specific procedural requirements. RSMo 535.020. Actions for rent and possession are heard by corresponding circuit court at the first available court date. RSMo 535.040.

A landlord who wishes to evict a tenant for breaching a lease must file an unlawful detainer action. See generally RSMo Chapter 534.

A landlord who, for some other reason, is entitled to possession of the property may file an action for ejectment. See generally RSMo Chapter 524.

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

No.

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.

The Missouri statute does not specifically provide any requirement that a landlord maintain a separate account for each tenant. However, by default, tenants may demand both the interest on their deposits and that such funds are held in escrow. See RSMo 339.105. As such, typical leases include provisions which permit landlords to commingle deposits and keep accrued interest.

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

Disclosures required by contract law apply to commercial leases. Additionally, if property was previously used for certain criminal activities, such as methamphetamine production, then a landlord must disclose such information to a prospective tenant. RSMo 441.236.

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

There are no specific taxes on rent. Landlords are responsible for the real property taxes and may collect them from their tenant(s).

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

Self-help is legal, though not necessarily advisable; in certain situations, a landlord may enter and repossess leased property after providing the tenant with a minimum ten-day notice. See RSMo 441.020, 441.030, and 441.040.

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

A landlord can sue a tenant in breach of a lease for future rent payments due. However, regardless of whether or not such remedies are expressly stated in the contract, a trial court will determine the validity of such action in each case.

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 landlord has standing to initiate expedited eviction proceedings in specific statutorily defined situations. RSMo 441.710. Primarily, these situations involve emergencies or drug-related criminal activity and are unrelated to any lease provisions. See RSMo 441.740.

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

In general, a lease for longer than one year must be in writing. RSMo 432.010.

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

Every instrument in writing that conveys real estate is valid only between the parties of the lease until deposited with the recorder. RSMo 442.400.

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 statutory restrictions on the transfer of real property subject to a lease; the transferor need not obtain consent from the tenant and the tenant's rights and obligations are not affected, unless otherwise provided expressly in the lease agreement. RSMo 441.140.

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Issues Relating To Commercial Leasing

USA, Nevada

Prepared by Lex Mundi member firm Lionel Sawyer & Collins

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

There are no state or local transfer taxes payable on creation or assignment of a lease.

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

Leases in excess of 99 years are void as to any periods of time in excess of 99 years.

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

There are no laws requiring landlords to allow a tenant to renew a commercial lease.

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

There are no restrictions on rent than may be charged to a tenant.

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

Tenants may have a remedy of termination at common law as a result of uncured defaults by a landlord.

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

It is presumed that a tenant may assign a lease or sublease leased property without landlord's consent unless restricted by the terms of the lease.

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

There are no laws prohibiting landlords from restricting assignments of subleases by tenants.

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

There are summary eviction processes for the failure to pay rent and nonmonetary tenant default. The notice is a five day notice to pay or quit the premises. If the tenant responds to the notice, then the matter will be adjudicated in a court proceeding.

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

From 1967 to 1989, Nevada statutory law prohibited pledging a leasehold interest as security for a financing unless the lease expressly permitted it. The statute was amended in 1989 to allow leasehold interests to be pledged as security for a financing unless prohibited by the terms of the lease, which was also the common law rule before enactment of the statute in 1967.

- 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 landlords to hold security deposits in separate accounts.

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

There are no required statutory or other legal disclosures to be made to all tenants.

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

There are no taxes on rent or other taxes that landlords are required to collect from tenants.

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

Landlords' ability to exercise self-help is limited only by the terms of the lease and the implied covenant of good faith and fair dealing.

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

The remedy of acceleration of rent need not be expressly stated.

- 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 statutory summary eviction procedures for failure to pay rent and nonmonetary tenant defaults. No lease provisions are required to seek these remedies and all statutory eviction requirements must be strictly complied with.

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

There are no formal requirements for the execution of a lease. A lease need not be notarized to be valid.

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

To give third parties notice of a lease, although actual possession of the property should be sufficient to put any potential purchaser on notice of the possessor having a property interest, it is best to record the lease, or a memorandum of 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?

There are no restrictions on the transfer of ownership of real properties subject to a lease. A tenant's rights or obligations would only be affected to the extent set forth in the terms of the lease.

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Issues Relating To Commercial Leasing

USA, New Jersey

Prepared by Lex Mundi member firm Day Pitney LLP

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

Leases and assignments of leases are generally exempt from New Jersey's Realty Transfer Tax. Realty transfer taxes are payable upon creation or assignment of leases with terms of 99 years or more. See N.J. Stat. Ann. § 46:15-7 et seq.

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

There are no limitations regarding the length of the term of any commercial lease, so long as the term is for a fixed and definite period, or for a period which may be rendered fixed and definite. As noted above, creation or assignment of leases for terms of 99 years or more are subject to New Jersey's Realty Transfer Tax.

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

There are no laws requiring landlords to allow a tenant to renew a commercial lease.

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

There are no restrictions on the amount of rent that may be charged for commercial leases.

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

There are no laws expressly permitting commercial tenants to terminate their lease prior to the stated expiration date. There are, however, laws that can operate to terminate a leasehold prior to its stated expiration date. For example, when a building on leased premises is destroyed by fire, without the fault of the lessee, rent abates until the landlord completely repairs the building. N.J. Stat. Ann. § 46:8-6. If a building is totally destroyed by fire or otherwise, without the fault of the lessee, rent is payable up until the time of the destruction, at which point the lease terminates. N.J. Stat. Ann. § 46:8-7. These casualty laws are inapplicable if the parties stipulate otherwise.

Eminent domain proceedings can also terminate a lease before the expiration of the lease term. Unless the lease states otherwise, a tenant is a party in interest in the event of any eminent domain proceeding, and may recover the value of its leasehold interest. The landlord is entitled to the value of its fee interest subject to the leasehold.

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

In New Jersey, commercial leases invariably require the landlord's consent to an assignment or sublease. In absence of such a provision, a commercial tenant can freely sublet or assign its lease without the landlord's consent.

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

As noted above, commercial leases usually require the landlord's consent to a proposed assignment or a sublease. Thus, landlords may restrict a tenant's ability to assign or sublease. Provisions in the

lease often provide that the landlord may not unreasonably withhold consent to a proposed assignment or sublease. If such a provision exists, the landlord must be commercially reasonable if it withholds consent to the proposed assignment or sublease. If the lease merely states that the landlord must consent to an assignment or sublease, but does not state that consent will not be unreasonably withheld, it appears that the landlord may arbitrarily withhold its consent.

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

An action for eviction is brought as a summary dispossession proceeding in the Superior Court, Law Division, Special Civil Part. N.J. Stat. Ann. § 2A:18-53. The time frame for such proceedings varies, but is usually completed 30 to 60 days after commencement.

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

Generally, a commercial lease may be mortgaged unless otherwise prohibited by the lease. N.J. Stat. Ann. § 17:24-1(c) requires that loans on leaseholds given by insurance companies provide for amortization payments that will completely amortize the loan within a period not to exceed 90 percent of the leasehold term. Under this statute, tenants' renewal options can be included as part of the lease term.

Further, leases prohibiting assignment of the lease without the landlord's consent may cause difficulty to the mortgagee. Although mere execution of a mortgage does not violate such an assignment provision, the provision would be violated by the mortgagee's entry or by transfer of the leasehold to the purchaser at a mortgage foreclosure sale.

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.

New Jersey's Security Deposit Law governs security deposits for residential leases. N.J. Stat. Ann. § 46:8-19 et seq. No such statute governs commercial leases. Commercial lease provisions regarding security deposits are negotiable.

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

Landlords have a duty to disclose latent defects, remediable by the landlord, within and without the leased premises. "Latent defects" are those the existence and significance of which are not reasonably apparent to ordinary prospective tenants.

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

Commercial landlords are not required to collect taxes on rent or other taxes from tenants. The title owner of the property (i.e., the landlord) is responsible for paying all real property taxes. N.J. Stat. Ann. § 54:4-24. By agreement, the responsibility for paying real property taxes can be passed through to the lessee.

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

A landlord may not use force when exercising self-help. Where a lease permits the landlord to re-enter and take possession of the demised premises upon the tenant's breach of any of the lease's covenants, the landlord may not re-enter and re-take possession by force, even if such force is only used as is necessary to expel the lessee. If the lessee will not leave the premises voluntarily, commercial landlords are usually limited to summary dispossession actions. See N.J. Stat. Ann. § 2A:18-53.

Also, Landlords may file an Order to Show Cause to permit distraint of the tenant's property. Upon receiving the court's permission, the landlord must then comply with the procedural and notice requirements of N.J. Stat. Ann. § 2A:33-1 et seq.

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

Such a remedy must be expressly stated in the lease to be enforceable. Without an express provision permitting acceleration, a landlord may have to sue for damages.

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 other than those for eviction and distraint referenced above. Jury trials are not available for either. Under N.J. Stat. Ann. § 2A:18-53, only certain defaults will permit the landlord to bring an action to evict the tenant unless the lease states otherwise.

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

A lease with a term of more than three (3) years must be in writing. N.J. Stat. Ann. § 25:1-12(a). The writing must establish the leased premises, the lease term, and the identities of the lessor and lessee and must be signed by the party against whom enforcement is sought. Id. Nevertheless, nonwritten leases may be enforced if the leased premises, lease term, and identities of the lessor and lessee are proved by clear and convincing evidence. N.J. Stat. Ann. § 25:1-12(b).

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

In New Jersey, any lease for life or for any term not less than two (2) years may be recorded, but is not required by law to be recorded. N.J. Stat. Ann. § 46:16-1(a). Recording of a lease gives third parties constructive notice of the lease. Regardless of whether the lease is recorded, the tenant's actual possession of the leased premises serves as actual notice of the lease to 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?

A landlord may freely transfer ownership of real properties subject to a lease. The transfer does not affect the tenant's rights or obligations.

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Issues Relating To Commercial Leasing

USA, New Mexico

Rodey, Dickason, Sloan, Akin & Robb, P.A.

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

There are no state or local transfer taxes on the creation or assignment of a lease of commercial real estate now.

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

There are none now for leases of commercial real property.

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

There are none now for leases of commercial real property.

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

There are none now for leases of commercial real property.

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

No statute now permits tenants under a lease of commercial real property to terminate the lease prior to its stated expiration date, but the common law does so in cases of constructive eviction and other like breaches by the landlord.

In addition the federal Bankruptcy Code allows a tenant that is a debtor to reject a lease as an executory contract, thereby terminating it prior to its stated expiration date. If the tenant does so, however, the landlord has an unsecured claim against the tenant's bankruptcy estate for the rent and is entitled to possession of the premises.

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

A lease of commercial real property, like any other contract, is now generally assignable. Likewise, the tenant under a commercial lease can generally sublet unless the lease limits subleasing.

A tenant that is a debtor in a proceeding under the federal Bankruptcy Code may have the right to assign its lease without the landlord's consent under 11 U.S.C. § 365 if the conditions to such an assignment are satisfied, regardless of whether the lease contains restrictions on assignment or subletting.

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

A prohibition against any assignment or sublease of a lease of commercial real property may violate the common law rule against unreasonable restraints on alienation. For the same reason, a purported unfettered right to declare a default upon an assignment or sublease may be unenforceable. Instead, most New Mexico leases provide for a landlord's right to consent to the assignment or sublease, which consent shall not be unreasonably withheld, conditioned or delayed.

The latter clause will be implied by our courts even if it is not contained in the lease. The reason for this implication is that in New Mexico, leases, like all other contracts, contain an implied obligation of good faith and fair dealing that benefits and burdens both the landlord and the tenant.

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

The common form of eviction proceeding for commercial real property held under a lease is now an unlawful detainer action in the magistrate court or the district court in the county in which the property is located. §§ 35-10-1 *et seq.*

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Issues Relating To Commercial Leasing

USA, Tennessee

Prepared by Lex Mundi member firm Bass, Berry & Sims PLC

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

No transfer taxes are payable on creation or assignment of a lease. Tenn. Code Ann. § 67-4-409.

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

There are no legal restrictions on the maximum term of a commercial lease.

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

There are no laws requiring a landlord to allow a tenant to renew a commercial lease.

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

There are no restrictions on rent that may be charged for commercial lease space.

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

The general rule is that, absent a provision to the contrary in the lease, a tenant may not terminate a commercial lease prior to its stated expiration date. However, in some cases where there has been total destruction of the leased premises or a frustration of purpose for which the lease was entered into, the lease may be terminated. See NWI XVII, L.P. v. Tom James Co., 1993 Tenn. App. LEXIS 496 (Tenn Ct. App. July 30, 1993) and Tenn. Code Ann. § 66-7-102. Also, the Cain Partnership case discussed in #14 below arguably allows a tenant to terminate a lease upon a landlord default even absent an express lease provision allowing such a termination by the tenant.

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

Absent a lease provision to the contrary, a tenant may freely assign, sublet, or encumber.

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

Landlords are free to restrict the ability of a tenant to assign or sublease a commercial lease by including such language in the lease. However, language limiting the ability of a tenant to assign or sublease is strictly construed. Park Place Ctr. Enters., Inc. v. Park Place Mall Assoc., L.P., 836 S.W.2d 113 (Tenn. Ct. App. 1992).

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

The common form of eviction proceeding is a forcible entry and detainer action. Tenn. Code Ann. § 29-18-101, et seq. The time of trial may not be less than 6 days from the date of service. Tenn. Code Ann. § 29-18-117. A writ of possession for the recovery of the real property will not be issued until 10 days after the date judgment is issued in favor of the landlord. Tenn. Code Ann. § 29-18-126. To the extent a party wishes to appeal a decision in such an action, a bond may need to be posted in

varying amounts. See Tenn. Code Ann § 29-18-130.

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 financing. However, language in the lease may restrict or prohibit encumbering the leasehold estate. Additionally, Tennessee imposes a tax on the privilege of publicly recording any instrument evidencing an indebtedness in the amount of 11.5¢ for each \$100, or major fraction thereof, of principal indebtedness in excess of \$2000. Tenn. Code Ann. § 67-4-409(b). In addition to the state recordation tax, the county register of deeds where the instrument is being recorded requires a register's fee for recording. This fee will vary depending on the type and length of the instrument but is generally \$5.00 per page plus a nominal electronic fee.

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 for commercial leases in Tennessee.

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

Generally, there are no disclosures that a landlord must make to a tenant. However, at the request of a prospective tenant, a landlord of commercial property with 1,500 sq. ft. or less of space or of industrial property with 5,000 sq. ft. or less of space, shall furnish a statement detailing the property's compliance with various local codes. Tenn. Code Ann. § 66-7-108.

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

There are no state or local special taxes on rent or otherwise that are required to be collected from a tenant.

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

Landlords are not permitted to exercise self-help in Tennessee, even if the lease has a provision for re-entry. Instead, a landlord must comply with the provisions of the forcible entry and detainer law located at Tenn. Code Ann. § 29-18-101 (see #8 above).

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

Generally, it is good practice for landlords to expressly state the remedies it desires in its lease. However, in certain cases, Tennessee courts have allowed remedies not expressly stated in the lease. For example, if a tenant does not perform a promise in the lease, such as failing to pay rent or taxes, which was a significant inducement of landlord entering into the lease, and the tenant does not cure within a reasonable time, then the landlord may terminate the lease with damages or keep the lease in effect and obtain damages or the cost of performing tenant's obligations. *Cain Partnership v. Pioneer Inv. Servs. Co.*, 914 S.W.2d 452, 464 (Tenn. 1996).

It does not appear that a provision accelerating all rent is enforceable in Tennessee. At a minimum, all future rent would have to be discounted to present value. See *Blankenship v. Century Health Services*, 1995 Tenn. App. LEXIS 812 (Tenn. Ct. App. Dec. 15, 1995).

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.

Except as discussed above, there are no expedited remedies for tenant default.

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

Generally, there are no formal requirements for the execution of a lease. However, a lease with a term of more than 3 years must be in writing. Tenn. Code Ann. § 66-7-101.

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

For leases with a term of more than 3 years to be valid against third parties (other than the landlord, landlord's heirs and devisees and those having actual notice), either the lease or a memorandum of the lease should be properly executed, acknowledged and recorded with the office of the county register in accordance with the requirements of Tenn. Code Ann. §§ 66-22-101 to 66-24-123, including a proper acknowledgment block, legal description, derivation clause and the name of the preparer.

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?

Absent such language in the lease, there are no restrictions on the transfer of ownership of real property subject to a lease.

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Issues Relating To Commercial Leasing

USA, Virgin Islands

Prepared by Lex Mundi member firm Dudley, Topper and Feuerzeig, LLP

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

There are no transfer taxes payable upon the creation and recording of a lease provided that no deed is recorded.

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

Other than the customary common law Rule Against Perpetuities which is applicable in the U.S. Virgin Islands, there are no legal restrictions limiting the maximum term of a lease.

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

There are no laws that require a landlord to allow a commercial tenant to renew an expired lease.

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 commercial tenant.

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

A tenant may terminate a commercial lease under certain circumstances. Generally speaking, the tenant's use of the premises for the purpose intended by the parties must be frustrated due to one of the following circumstances: (i) a paramount title exists before the tenant enters into possession or the tenant is evicted by virtue of a paramount title; (ii) the condition of the property changes; (iii) the landlord fails to maintain the common areas in a safe manner and in good repair; (iv) the landlord interferes with the tenant's intended lawful use of the property; (v) a third party occupies the premises when the tenant is to take possession; (vi) the landlord fails to perform a promise in the lease that was a significant inducement for the tenant to enter into the lease; (vii) eminent domain affects all or a portion of the premises; (viii) the intended use contemplated by the parties is illegal or prevented by the Government. The landlord must usually be afforded notice and an opportunity to cure before the tenant will be allowed to terminate.

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

A tenant can assign or sublet a lease unless: (1) a specific term of the lease prohibits assignment or subletting, or requires the landlord's consent; (2) the lease requires that the tenant provide significant personal services to the landlord and the transfer would substantially impair the landlord's chances of obtaining those services; or (3) the tenancy is a tenancy at will (in which case a transfer terminates the tenancy).

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

Landlords are permitted to restrict assignment and subleases by their tenants, including prohibiting them entirely, or conditioning them on the Landlord's consent. To restrict transfers entirely, the lease

must expressly state that the landlord has an absolute right to withhold consent. Absent such a provision, the landlord's consent to an assignment cannot be unreasonably withheld.

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

If the tenant has failed to pay rent, the common form of eviction proceeding is an action for forcible entry and detainer pursuant to Title 28 Virgin Islands Code Sec. 781. For other breaches of the lease, the eviction proceeds in the form of a civil action for breach and termination of the lease. The length of time for an eviction varies from a few weeks to several months or more depending on the nature of the breach and the defenses interposed by the tenant.

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

Pledging a leasehold interest as security for a financing is permitted without restriction as to the kind of leasehold that may be pledged. A pledge or assignment may be deemed a mortgage and require that the secured party's interest be judicially foreclosed pursuant to Virgin Islands foreclosure statutes.

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 requirements that security deposits be held in separate accounts.

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

There are no statutory or legal disclosures required to be made to all tenants except that all tenants must be served with a notice to quit prior to the filing of an action for eviction.

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

There are no taxes on rent that landlords are required to collect from tenants. Hotel and villa operators are, however, required to collect hotel tax from their guests. Like most business owners, commercial landlords are required to pay gross receipts taxes (if their receipts exceed the applicable exemption amount). Gross receipts taxes are payable on the gross rents collected but cannot be separately stated on a bill or invoice.

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

Landlords are statutorily prohibited from exercising self help to recover possession of their properties.

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

A remedy of acceleration of rent must be expressly stated and will not be implied. Whether expressly stated or not, the Landlord has the right, following a default, either to terminate the lease or to continue the lease in force and to sue for rent as it comes due. The landlord is subject to an obligation to mitigate damages by seeking alternative tenants for the space if the lease is terminated.

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.

Expedited remedies for tenant default for non-payment of rent are set forth at 28 V.I.C. Sec. 781; no specific lease provisions are required for a landlord to exercise these remedies. Except for non-

payment of rent and an action under the cited statute, there are no accelerated remedies available for breaches of a lease by the tenant. A civil trial without a jury is available if a jury waiver is included in the lease. Similarly, if the parties specifically agree in the lease to the arbitration/mediation of disputes, that remedy would be available as a matter of contract law under the lease.

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

Leases for a term of greater than one year must be in writing. Leases to be recorded (which is optional) must be notarized and witnessed by two persons who subscribe their names to the lease. Otherwise, there are no formal requirements for execution of a lease.

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 party who acquires an interest in real property that is subject to a lease that has not been recorded and for of which no memorandum has been recorded or for which the tenant was not in actual physical possession of the premises, acquires title free of the interest of the tenant if the acquiring party had no actual knowledge of the existence of the lease. Therefore, the lease itself or a memorandum thereof should be recorded if the tenant intends to protect itself against termination of the lease by persons acquiring title to the property from 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?

Absent specific provisions in a lease, there are no restrictions against transfers of properties subject to a lease. The obligations of a tenant following transfer will continue in full force and effect, and the tenant may be required to attorn to the new owner if the lease has been assigned.

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