

# 20. Serbia

## Legal regulation

### The Law on Contract and Torts

#### Part 1

- Chapter 1 (Basic Principles)
- Chapter 2 (The origin of obligation): Section 1 – Contract

#### Part 2

- Chapter 11 (Lease)

The Law confers a broad contractual freedom within the limits set by the Basic Principles which permeate all Part 1 of the Law.

### The Law on Bankruptcy – Article 99

#### Form

Written form of lease agreement is not compulsory, however, in practice, the vast majority of leasing agreements are concluded in writing.

#### Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity.

#### Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period.

For fixed-term leases, there is rule that if after it's termination lessee continues to use the object of lease and the lessor does not oppose, it shall be considered that there is concluded indefinite time period lease, with the same conditions as previous fixed-term lease.

If the duration of lease is not agreed, nor if duration of lease cannot be determined by circumstances or local customs, that lease is considered as indefinite time period with the right of any contractual party to terminate it within the notice period of 8 days.

#### Maintenance / Repairs

Routine maintenance - lessee's responsibility, other maintenance and repairs - lessor's responsibility unless the parties agree otherwise.

The lessor is entitled to make changes of the subject of the lease which can interfere the use of subject of the lease only with the consent of lessee.

In the case of defects, the lessee has the right to ask the lessor a discount on rent, or in the case that use of the subject of lease is reduced to a significant extent, lessee can terminate the lease agreement.

## Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way.

If anything other is agreed, the rent is paid semi annually for the lease with duration of 1 year or more, or if the duration of lease is shorter, after the termination of lease.

## New ownership

Transfer of ownership does not automatically mean the termination of the lease, so there are different situations, as follows:

- If the subject of lease is in the possession of lessee in the moment of transfer the ownership, the new owner takes the place of the lessor;
- If the subject of lease is not in the possession of lessee in the moment of transfer the ownership, the new owner takes the place of the lessor if the new owner knew about the existence of lease. Otherwise, if the new owner did not know about the existence of lease, the new owner would not have any further obligations and the lessee shall be entitled to demand the compensation from the lessor.

## Lease termination

The contractual parties are entitled to negotiate the reasons for termination of lease agreement and the termination time period, otherwise the statutory provisions shall apply, i.e.:

- lease for indefinite time period: in principle, termination notice without giving reasons with 8 days notice period;
- lease for definite time period: by the expiration, with the possibility to convert in lease for indefinite time period (as it is described in Part "Duration").

In the case of death of the lessor or the lessee, the lease agreement shall be continued with the inheritor, except this rule is excluded.

In the case of bankruptcy, the lease agreement is not being terminated automatically, but Bankruptcy Trustee is entitled to opt whether Bankruptcy Trustee will terminate the agreement (with notice period of 30 days) or she/he will continue lease period.

## Compensation

There are no special provisions on compensation for leasing damage, so general provisions of The Law on Contract and Torts relating to compensation for damage apply.

# 21. Slovakia

## Legal regulation

Civil Code (sections 663-723) + Act No. 116/1990, Coll., on lease and sublease of commercial premises (hereinafter only as “**Act No. 116/1990**”)

Between these two, the Act No. 116/1990 is the *lex specialis* in relation to *lex generalis* – the Civil Code which means that the Civil Code can be used for relations resulting from the lease of non-residential premises only in the case which are not governed by the Act No. 116/1990.

The law confers a broad contractual freedom on the parties, especially when it comes to entrepreneurs.

## Form

The contract has to be concluded in writing and shall include the subject of the lease, purpose of the lease, the amount and the maturity of the lease, the method of payment and the lease period if there is no rental relationship for an indefinite time

## Object of the lease

According to the Act no. 355/2007 on the protection, promotion and development of public health, every entrepreneur is obliged to have the premises in which he / she will conduct business approved from the regional public health office based on the application for the placing of premises in service, which has to be submitted by the entrepreneur to the relevant regional public health authority.

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity.

The lease can be executed in relation to the existing premises if that has a permit for use from the relevant building office. In the case of the premises that does not yet exist, it is possible to conclude a future contract on lease of the non-residential premises.

The contract for the future contract is governed by the Civil Code in Section 50a. For the purposes of this provision, the contracting parties may undertake in writing to enter into a lease contract by the agreed time; they have to, however, agree on its essential elements of the contract,

## Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period.

If the lessee uses the leased premises even after elapse of the agreed lease period and the lessor does not call for the space to be cleared within 30 days, the lease is renewed on the same terms as it was negotiated originally. Lease agreed for more than a year is renewed for one year, lease agreed for a shorter period is renewed for that time.

## Maintenance / Repairs

Routine maintenance - lessee's responsibility, other maintenance and repairs - lessor's responsibility unless the parties agree otherwise.

The lessee is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the lessor. In the case of defects, the lessee has the right to ask the lessor for a discount on rent, which he is obliged to claim with the lessor within 6 months from the moment when the defect was discovered or could be ascertained.

### **Rent**

The amount of the rent is agreed by the contracting parties. There is no legislation that would stipulate the amount of the rent in any way. However, if the amount of the rent is not agreed, the lessee is obliged to pay the usual rent ("market price"). The lessor has the right of detention of the lessee's movables placed in the subject of the lease to secure the lessor's payable receivables on the rent.

Rent indexation is mostly attributed to official inflation.

### **New ownership**

In case of new ownership of the property it is only the lessee that may terminate the lease of the property if the contract was concluded for a certain period of time and the notice period was established by law or lease agreement. A lease of an immovable property (or part of the property) concluded for an indefinite period can not be terminated due to a change of ownership.

### **Lease termination**

If the lease is agreed for an indefinite time, both the lessor and the lessee are entitled to terminate the contract in writing without giving any reason, unless otherwise agreed.

The lease negotiated for a definite time ends with the expiration of the time agreed upon.

The lessor may terminate in writing the contract concluded for a definite time before the expiry of the time only for the reasons stated by the law.

The notice period shall be three months, unless otherwise agreed; it shall be calculated from the first day of the month following the receipt of the notice.

### **Compensation for the takeover of the customer base by the lessor or the new lessee**

Not regulated by the Slovak law

### **Tax**

The rent is subject of the VAT if the lessor is registered to such tax.

### **Jurisdiction**

For internal cases, the competent is the court of the defendant - in case of a natural person is the court in whose jurisdiction the natural person has his permanent address, in case of a legal entity is the court in whose jurisdiction the legal entity has its registered office.

Instead of the defendant's general court, in case of a dispute concerning the right in rem to the real estate the competent court is the court in whose jurisdiction the real estate is.

In international cases the Regulation Brussels I bis applies. According to its Article 24 the exclusive jurisdiction shall have the Court of the Member State in which the property is situated (except for temporary private use).

# 22. Spain

## Legal regulation

Law 29/1994, of November 24<sup>th</sup>, of Urban Leases, modified by Law 4/2013, of June 4<sup>th</sup> (Titles I, III).

Subsidiary, Civil Code (sections 1542-1574, 1580-1582).

The respective sections of the Law dealing with lease of the non-residential premises shall apply to the lease of business premises (shops, offices, warehouses, production premises).

The law confers a broad contractual freedom on the parties. The will of the parties will prevail upon Law (except of Titles I and IV that will be binding) and Civil Code, which will only be applied in defect of any contractual agreement.

## Form

Written form of lease agreement (“LA”) is not compulsory, however, in practice, the vast majority of LAs are concluded in writing.

LAs can be done through a private document or a public deed. Most of them are done in a private document, but in the event that any party wants or needs to register it at the Land Register, then it is compulsory to execute a public deed or to transform the private contract into a public deed.

## Object of the lease

Any real estate or part of it may be the object of a lease “*for a use different from the necessity of living*” if used (and usable) for the performance of a business, professional or commercial activity.

The Law specifies that this kind of contract is applied to any lease of a premise to be used for industrial, commercial, craft, professional, recreational, welfare, cultural or educational activities, whatever the parties are.

The fact that the property is being leased can be registered in the public register - the Land Register - at the initiative of any of the parties.

## Duration

The contracting parties may agree on the lease for any fixed term. If the time period is not agreed, the lease is deemed to be negotiated depending on how the rent amount is fixed in the contract (usually yearly).

If the lessee uses the leased premises after the agreed lease period and the lessor does not call for the premise to be cleared before termination or within 15 natural days after it, the lease is renewed for consecutive periods of time equal to the time of how the rent amount is fixed in the contract (usually one year), without maximum time limitation (i.e. renewal year after year).

## Maintenance / Reparations

Routine maintenance – According to the contractual agreement.

Subsidiary to the regulations agreed in the contract, the Law regulates the following:  
Lessor's responsibility to repair to maintain the premise in useful conditions, excepting damages caused by the lessee or damages that caused destruction of the premise.

The lessor is entitled to make investments and improvement works in the premise in case they can't wait until the termination of the contract. A compensation (lesser rent) is regulated for the lessee if these works last more than 20 natural days. No compensation at all if they last less than that.

Lessee must communicate any damage and any need of repairs to the lessor a.s.a.p.; in case of urgent repairs or preventive works to avoid imminent damages, those can be done directly by the lessee (prior notification to the lessor), and then the paid costs can be requested to the lessor.

Minor repairs must be done and paid by the lessee.

The lessee is entitled to make structural modifications and improvement works in the premise with the consent of the lessor. These works shall not diminish the security and stability of the premise.

In case the repair works or any works ordered by an Administration cause the premise to become uninhabitable, the lessee can suspend the contract (not paying the rent during this time) or rescind it, without a right to any compensation.

## **Rent**

The amount of the rent is agreed by the parties. There is no legislation that would stipulate or limit the amount of the rent in any way.

Law regulates that the lessee must pay two months of rent to the lessor as a guarantee (bail). Further guarantees are usually agreed between the parties (cash deposit, bank guarantee, guarantor, etc).

Rent indexation is not compulsory by Law, but mostly attributed by contract to official national general inflation ("IPC general nacional") or to another official index ("IGC": Índice de Garantía de la Competitividad: Competitiveness Guarantee Index)

## **New ownership**

Transfer of ownership does not automatically mean the termination of the lease; only in the event that the new owner fulfils the requisites of article 34 of Mortgage Law (a good faith buyer purchases from the registered owner and the charge (the lease) is not registered on the Land Register).

If it doesn't fulfil these requisites, the new owner will be bound to the rights & obligations negotiated in the lease until its end.

LAs often contain an obligation for the landlord to inform potential future owner of the full content of the lease, to destroy the buyer's "good faith" of buying a free and vacant premise.

Lessee has a Preferential Acquisition Right in case the lessor sells the premise, and law regulates it.

Nevertheless LAs usually exclude the lessee from this right.

Legally the lessee can transfer the lease contract or can totally or partially sublease the premise to a third party without consent of the lessor, giving notice within one month since these contracts happened. In these cases, the lessor has the right to increase the rent a 20% and 10% respectively.

Nevertheless LAs usually exclude the lessee from this right of cession and sublease, and hold them subject them to the prior consent of the lessor.

### **Lease termination**

The parties are entitled to negotiate the reasons for termination of LA besides the legal reasons of resolution (article 35 of the Law) or termination (end of lease time agreed).

Parties usually agree on a minimum compulsory period of lease within the total duration of the contract, and after that minimum period, lessee can freely decide to resolve the contract with some months' prior notice period agreed. A compensation is also sometimes agreed on for this right of resolution.

In case the lessee's death, if the premise has been leased for a business or professional activity, the inheritor will have the right to subrogate in the lease contract if he asks so to the lessor in writing within 2 month after the decease date.

### **Compensation**

The lessee is entitled to receive a compensation if the lease has lasted more than 5 years, the activity was related to a commercial activity selling to the public, and the lessee offered the lessor at least 4 months before termination the execution of a new contract for at least 5 more years with a rent "according to the market" (rent fixed by the parties or by an arbitrator in its case). The law specifies the calculation formula of the compensation (in case of conflict, calculated by an arbitrator).

Lease agreements usually exclude the lessee from this right of compensation after termination (article 34 of the Law).

### **Tax**

The rent of business, professional and commercial premises is subject to VAT.

### **Jurisdiction**

Spanish law entrusts the competence to the Civil Court ("Juez de Primera Instancia") of the location of the leased property, unless otherwise agreed in the contract (forum selection).

# 23. Sweden

## Legal regulation

Chapter 12 of the Swedish Land Code (1970:994) deals with lease of building. It covers both residential- and non-residential leases. Mandatory rules to protect the lessee apply to both types. A residential tenant has direct protection against termination and rent increases, whereas a non-residential tenant has indirect protection based on economic compensation. Such compensation applies to termination by lessor without valid cause, or if lessor, for extending the lease, demands rent or other terms in excess of “market level” or “good practice in lease relations”.

## Form

A lease agreement does not have to be in written form, but either party has a right to request that.

## Object of the lease

The Land Code distinguishes between different kinds of agreements for use of real property. The lease rules in chapter 12 apply only to use of a building or part of a building against consideration. If land is included, the rules apply only if the land is intended for small-scale horticulture or for other than agricultural purposes. All contracts for use of land may be registered by either party in the Cadastral Register. Only building or land leases may be contractually exempted.

## Duration

Lease agreements may be for a fixed period of time or for an indefinite period. A lease of a building is not legally binding beyond 50 years, or 25 years if the property is within a detail planned area, unless it runs for someone’s lifetime.

If an agreement is for an indefinite period, notice must be given to terminate. Even if it is for a fixed period, notice is required if the relation has lasted more than nine (9) months. If an agreement for a fixed period is not timely terminated by notice prior to expiry, or if the tenant remains for a month after expiry, without lessor requesting him to vacate, the lease is extended for an indefinite period. Failing notice, fixed term contracts are normally prolonged through a contractual renewal provision.

## Maintenance / Reparations

The responsibility for the initial condition and subsequent maintenance and repairs, is subject to agreement between the Parties. Usually it is contractually divided between the lessor and the lessee. If premises cannot be used for the intended purpose, due to damage to condition or authority decision, lessee is entitled to damages if lessor was negligent. If lessee’s right to contractual condition is infringed through damage to the property, lessee may be entitled to terminate, reduction of rent and, unless lessor exculpates himself, to damages.

## Rent

The rent must be agreed in the contract and be a fixed amount (normally an annual figure) or revenue based. Collective bargaining mechanisms are also possible. Heating, hot water, electricity, water and sewer, may be charged based on consumption. The rent can be indexed (often CPI) in contracts that run for minimum three (3) years and can include charges for cooling, property tax e t c. Failing such provisions, the rent will be fixed for the contract term.



### **New ownership**

A lessee is not allowed to unilaterally assign the lease. If premises were leased for business purposes, the lessee may assign the contract to someone who acquires his business, subject to permission by the Regional Rent Tribunal.

A written lease for a building or land will always survive and become binding on a new owner of the property, provided that lessee had taken possession before the transfer.

### **Lease termination**

Termination must be in writing if the lease relation has lasted for three (3) months, except where the lessee terminates to move out, where a written confirmation from lessor is sufficient. For non-residential leases, the notice period for both parties is minimum (9) months, provided the term of the lease exceeds nine (9) months.

### **Compensation upon termination**

If lessor terminates, or refuses to extend the lease, without a valid cause (e. g. serious breach or misconduct on the part of lessee, demolition or reconstruction of the building or other legitimate reason), lessee is entitled to economic compensation under section § 58 b. Compensation shall always amount to one (1) year's rent, or reasonable exceeding amount, if the economic loss is greater (due to approved alterations, loss of goodwill, customers e t c).

The right to be compensated vests when the lease relation has lasted for more than nine (9) months. Prior to that time, the right to be compensated can only be waived by lessee in writing and normally requires approval by the Rent Tribunal.

### **VAT**

Rent is not subject to VAT unless the property is voluntarily registered. The lessor is allowed to deduct and recover VAT only to the extent that his tenant's activities are subject to VAT.

### **Applicable law and jurisdiction**

Where the Land Code allows the parties to deviate from its provisions, it should also be possible to choose applicable law. Mandatory provisions in the Land Code are however not possible to avoid. Under sec. 6 art. 24 of the Bruxelles I Regulation (rev.) Swedish courts have exclusive jurisdiction.

An arbitration clause without possibility to challenge the award will not be upheld against a lessee with regard to his right under § 58 b. Composition- and procedural- rules for the tribunal are not accepted. Instead, the rules of the Swedish Arbitration Act (1999:16) shall apply.

# 24. Switzerland

## Legal regulation

Code of Obligations (art. 253 ff. CO), Ordinance on the Lease and the Ususfructuary Lease of Residential and Business Premises (OLRB).

## Form

Written form of lease agreement is not compulsory, however, in practice, the vast majority of lease agreements are concluded in writing.

## Object of the lease

Any real estate or part of it may be subject of a lease if it is used (and usable) for the performance of a business / business activity.

The lease can also be arranged in respect of premises which have to be created, provided that the subject of the lease can be sufficiently identified.

The fact that the property is leased can be entered under priority notice in the land register. The effect of such entry is that every future owner must allow the property to be used in accordance with the lease (art. 261b CO).

## Duration

Leases may be concluded for limited or indefinite duration (art. 255 para. 1 CO). If the time period is not agreed, the lease is deemed to be of indefinite duration. If the parties agreed on a time period, the lease ends without notice on expiry of the agreed duration.

## Maintenance / Reparations

The lessee must remedy defects which can be dealt with by minor cleaning or repairs as part of regular maintenance and, depending on local custom, must do so at his own expense. Other defects and maintenance, which are not attributable to the lessee and which he is not obliged to remedy at his own expense: Lessor's responsibility.

## Rent

The amount of the rent is agreed by the parties. There is no legislation that would stipulate the amount of the rent in any way. However, the amount of the rent should not be unfair. Rents are unfair where they permit the landlord to derive excessive income from the leased property or where they are based on a clearly excessive sale price (art. 269 CO). The law states a few exceptions on when the rents are not generally held to be unfair (e.g. if they fall within the range of rents customary in the locality or district, if they are justified by increases in costs etc.).

Note if the parties agree to link rent to an index, the lease must be contracted for at least five years and the benchmark is the Swiss consumer prices index.

## New ownership

Transfer of ownership does not automatically mean the termination of the lease. Where after concluding the contract the landlord alienates the object or is dispossessed of it in debt collection or bankruptcy proceedings, the lease passes to the acquirer together with ownership of the object (art. 261 para. 1 CO). However, in particular case the new owner has the right to terminate the lease. The new owner may serve notice to

terminate a lease as of the next legally admissible termination date if he claims an urgent need of such premises for himself, his close relatives or in-laws (art. 261 para. 2 lit. a CO).

### **Lease termination**

A party may terminate the lease of a commercial property by giving 6 months' notice expiring on a date fixed by local custom or, in the absence of such custom, at the end of a three-month period of the lease (art. 266d CO). However, the parties may negotiate a longer notice period; a shorter notice period than 6 months is not allowed.

### **Compensation**

Any compensation for the takeover of the customer base by the lessor or the new tenant is subject to negotiations.

### **Tax**

The rent is subject of the VAT if the lessor chooses to voluntarily opt to register the property for VAT (option). The consequence of the option is that persons entitled can deduct the input tax and transfer the tax incurred in connection with their supplies to customers (see art. 22 VAT Law).

### **Jurisdiction**

For internal cases the Swiss law entrusts the competence to the Court of the location of the real estate forming subject of the lease. In Switzerland, litigation is usually preceded by an attempt at conciliation before a conciliation authority. In disputes relating to the tenancy and lease of residential and business property, the conciliation authority comprises a chairperson and an equal number of representatives of each of the parties.

# 25. Turkey

## Legal regulation

The Code of Obligations (§§ 299–379)

The respective sections of the Code of Obligations shall apply to both the lease of the private and the business premises.

The law does not confer a broad contractual freedom on the parties, in particular regarding legal relationships of the parties considered unequal. On the other hand, enforcement of a group of those kinds of provisions (“postponed provision/s”) have been postponed until 01.07.2020 for the leaseholders that are a merchant or a legal entity.

## Form

Written form of lease agreement (“LA”) is not compulsory, however, in practice, the vast majority of LAs are concluded in writing as a consequence of evidentiary reasons.

## Object of the lease

Any real estate or part of it that may be usable either as a residence or a closed shop may be subject of a lease. The fact that the property is leased can be expounded in the public register - the Land Registrations, at the initiative of the owner / landlord or with his consent.

## Duration

The contracting parties may agree the lease for a fixed term (for definite time period) or for indefinite time period. If the time period is not agreed, the lease is deemed to be negotiated for indefinite time period.

## Maintenance / Reparations

Routine maintenance and cleanliness - leaseholder’s responsibility, other maintenance and repairs - landlord’s responsibility. The leaseholder is entitled to make changes (investments) of the subject of the lease and write off such realized investments only with the consent of the landlord. In the case of major defects, (besides the right to terminate the LA) the leaseholder has the right to apply the provisions regarding defect of debtor (§§ 117–126) or liability arising from the fact that subject of the lease has subsequently become defective (§§ 305-308). In the case of minor defects, the leaseholder has the right to apply the provisions regarding liability arising from the fact that subject of the lease has subsequently become defective. If the subject of the lease has subsequently become defective, the leaseholder has the right to ask the landlord either rectification or a discount on the amount of the lease. In any case the leaseholder’s right to compensation is reserved.

## Rent

The amount of the lease is agreed by the parties. There is no legislation that would stipulate the amount of the lease in any way. However, if the amount of the lease is not agreed, the leaseholder is obliged to pay the usual lease cost (“market price”). The amount of lease can be annually increased and *Producer Price Index* is the maximum amount rate of increase. LAs concluded in foreign currencies shall have a fixed rent for five years (Yet this is a postponed provision).

The landlord has the right of detention of the leaseholder’s movables placed in the subject of the lease to

secure the landlord's payable receivables. Provisions regarding the amount of deposit as well as its deposit in a bank account are in line with European examples (Yet this is a postponed provision). Agreements on the payment of the amounts, differ from the rental and ancillary costs (in particular penalties on default of lease payment or call for payment of future leases) are invalid (Yet this is a postponed provision).

### **New ownership**

Transfer of ownership does not automatically mean the termination of the lease, but if the new owner needs to use the premises for its own residential purposes or commercial activities then has the right to terminate the LAs either with a notification in a month following transfer (but in this case leaseholder shall file an eviction action after six months following transfer) or filing an eviction action in a month following the anniversary of LAs. If the LA expounded to the Land Registrations then the new landlords have to obey the terms and conditions of the LA and this risk will be prevented.

### **Lease termination**

The Contracting Parties are entitled to negotiate the reasons for termination of LA and the termination time period, otherwise the statutory provisions shall apply, i.e.:

The leaseholder may unilaterally terminate the LA without a reason, provided that a notice served 15 days before the anniversary of LAs.

Fixed term LAs are extended automatically and the landlord can first terminate the contract after eleven years extension period provided that the landlord has notified the leaseholder in writing at least three (3) months prior to the anniversary of LAs. In unlimited LAs, the landlord may terminate the contract only ten years after its conclusion

The Code of Obligations contains numerous detailed provisions on the cancellation of the LAs.

The landlord may terminate the lease as a result of (a) breach by the leaseholder, (b) lack of payment of the lease amount, (c) the need of a new owner (d) the need of the owner (e) the need to reconstruct or repair the subject, (f) the bankruptcy of the leaseholder, (g) the extraordinary circumstances. The leaseholder can also terminate the lease as a result of (a) breach by the landlord, (b) extraordinary circumstances.

### **Compensation**

The Code of Obligations contains numerous detailed provisions on the compensation in connection with the LAs.

# 26. United Kingdom

This summary is based on the laws of England and Wales.

## Legal Regulation

The law confers a broad contractual freedom on the parties however certain landlord and tenant business protection legislation applies (unless specifically agreed to be excluded) to business tenants which means they have a right to a new lease on similar terms at the end of the contractual term and pending agreement of that new lease they can continue to occupy on the basis of the existing lease.

## Form

The general rule is that to take effect at law, a lease must be made as a deed. Statute prescribes the formalities for creation of a deed and so the lease must be in writing and executed in the appropriate manner to the particular legal entity. Exceptions include a lease for a term of less than three years when a written form of lease is not compulsory.

## Object of the lease

To be a valid lease the tenant must have exclusive possession and the extent of the land contained in the lease must be properly identifiable. This is generally done by way of a plan and for leases to be registered there is a compulsory form of plan which is Land Registry compliant and must be adhered to. The lease creates an estate in land as well as a contract between the parties.

Different forms of lease are used for residential and business premises.

## Duration

To be a valid lease the term must be certain i.e. fixed. If the lease falls within the business protection legislation it continues indefinitely at the end of the contractual term if the business tenant remains in occupation until the landlord successfully opposes the grant of a new lease (see „Lease Termination“ below) or until a new lease is entered into (or the tenant vacates).

All leases granted for a term in excess of 7 years or assignments of leases with more than 7 years to run are registrable. Registration is voluntary but legal title does not pass to the tenant unless the lease is registered.

## Maintenance/Reparations

Lease of whole building – external, internal and structural repair is generally the tenant’s responsibility unless the parties agree otherwise. The parties sometimes contractually agree that a schedule of condition is appended to the lease recording the state and condition at the beginning of their lease which will limit the repairing obligations to that state and condition.

Lease of part – internal repair is generally the tenant’s responsibility. Structural and external repair and common areas is usually the landlord’s responsibility but the landlord can recover the cost from all tenants in the building via service charge. In the case of defects if there is „full“ repairing obligation the tenant will be liable to make good although the parties are free to negotiate that these are excluded from the repairing obligation or the obligation to pay service charge. The tenant may also be offered the benefit of warranties from any third party contractor or professional where the building has recently been built or refurbished.

## Rent

The amount of the rent is agreed by the parties. There is currently no legislation that stipulates the amount of the rent in any way. Generally the parties agree in the lease that the rent is reviewed on a five yearly upwards only basis to open market value calculated on the basis of the number of negotiated assumptions and disregards. For some types of properties (for example care homes, hospitals, cinemas and casinos) it is more usual to see rent increase annually by indexation (mostly attributed to retail or consumer prices inflation) or on a five year compounded basis. For some retail leases there may also be turnover rent provisions.

## New ownership

Transfer of ownership („assignment“) does not mean the termination of the lease and the new tenant and the landlord will be bound by the negotiated obligations in the lease. It is usual in the market for the outgoing tenant to guarantee the incoming tenant's obligations until the lease is subsequently assigned.

## Lease Termination

The termination provisions are freely negotiated between the parties. The parties can agree a specific or rolling „break date“ during the term and the notice period. If a landlord exercises its contractual right to terminate during the term it cannot validly do so unless it also can prove one of the facts in the business protection legislation exists (e.g. that the landlord intends to redevelop or occupy the property itself). If the lease is not „excluded“ from that legislation the tenant can remain in occupation at the end of the term as if the lease is continuing pending agreement of the new lease. The landlord can only determine the tenant's rights for the old lease to continue if it can prove one of the grounds for termination contained in the business protection legislation referred to above (i.e. redevelopment or occupation by the landlord).

## Compensation

If the landlord does exercise its statutory rights to oppose the grant of a new tenancy referred to above the tenant is entitled to receive compensation. Although called ‚compensation‘ in the legislation the sum payable does not reflect the tenant's actual losses instead it entitles the tenant to be paid a sum amounting to a multiple of the rateable value of the premises.

## Tax

The general principle is that commercial property is not subject to VAT unless the landlord waives the exemption (i.e. exempt)




## Jurisdiction


Jurisdiction follows the location of the property forming the subject of the lease. To avoid any conflict of laws, the lease will specify that it is governed by the law of England and Wales and the parties will be subject to the jurisdiction of the courts of England and Wales in the event of any dispute.<sup>3</sup>





# APPENDIX key contacts

Jurisdiction	Firm Name	Key Corporate Contact	Telephone	Email
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