



Questions:

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Jurisdictions:

1. Czech Republic (written by Peterka & Partners)
2. Belgium (written by Vanden Eynde Legal)
3. Greece (written by D. & F. Dimitriou & Associates)
4. Latvia (written by Loze, Grunte & Cers)
5. Singapore (written by Goodwins Law Corporation)
6. Spain (written by Brosa)
7. Sweden (written by Hellström)
8. Turkey (written by Ozcan & Natan)
9. Ukraine (written by Peterka & Partners)
10. USA (written by Wolf Block Schorr and Solis-Cohen LLP)

I. Czech Republic - PETERKA & PARTNERS**1) Definition of commercial lease (what kind of premises are included)**

A commercial lease, i.e. a lease of non-residential premises for business activity, arise on the basis of a written lease contract by which a landlord grants to a tenant certain non-residential premises for using and a tenant pay to a landlord agreed rent and related charges.

Under Czech law, non-residential premises are:

- a) a room or a complex of rooms that are, according to the decision of the building office, used for purposes other than residence, in particular, premises for manufacturing, trading, providing services, research, administrative activity, art and educational activity, archives, garages, stockrooms and the parts of public spaces of buildings

Appurtenances of apartments (accessory rooms and premises that are used with the apartment), laundries, drying houses, rooms for baby carriage and lofts are not non-residential premises.

- b) apartments authorised for usage as non-residential premises.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

The mandatory requirements of a lease contract of non-residential premises are:

- a) subject of the lease;
- b) purpose of the lease (a lease of non-residential premises usually results from the certificate of occupancy);
- c) purpose of business activity, if the lease is agreed for business purposes;
- d) the amount of rent and the amount of the reimbursement for performance provided in relation to the use of the non-residential premises (e.g. services provided, such as the supply of water, pavement cleaning, etc. There is a possibility to stipulate in the lease contract, instead of the exact amount of the rent and of the reimbursement, the method of its determination;
- e) period for which the lease contract is concluded, if the lease contract is concluded for the determined period.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

The most important obligation of a tenant is to use the non-residential premises in accordance with the lease contract, in particular within the extent agreed in the lease contract.

A tenant is obliged to notify the landlord of the need for repairs, which the landlord should effectuate, and enable the execution of these repairs. Otherwise, the tenant is responsible for the damage caused by a breach of this obligation. If a tenant intends to change the purpose of the business activity and if this change will have an impact on the use of the

non-residential premises, the tenant is obliged to notify this intention to the landlord and to acquire the landlord's written approval, provided that the parties have not agreed otherwise.

The parties can agree other obligations on or restrictions of a tenant within the lease itself, e.g. to contribute to the maintenance of the non-residential premises, not to sublet the premises, etc.

4) Whether and how the operating expenses of the property are passed to the tenant(s)

Under the law, a landlord is obliged to keep the non-residential premises in good repair. However, the parties can agree that the tenant is obliged to contribute to expenses related to the maintenance of non-residential premises or to participate in the performance of some services, e.g. a tenant may be obliged to pay charges related to the cleaning of the premises.

It is a common practice for the parties to stipulate in a lease contract the obligation of the tenant to pay, besides the rent and services charges, other expenses, such as management fees (for managing, operating and repairing the premises), a marketing fee (for promotion or for holding special events), etc. In these cases a tenant must consider whether these expenses are tax deductible.

The parties can also agree in the lease that the tenant is obliged, at its own expense, to obtain and maintain insurance of his liability for any damage which is caused in connection with activities carried out in the premises, and property insurance for both the premises and movable property within them

5) Provisions for the payment of rent including the review period, and increasing the rent

Generally, a tenant is obliged to pay to the landlord rent and service charges, which comprise water, electricity, gas, lightning, heating, etc. As mentioned above, the parties can agree that the tenant will pay to the landlord a management fee, marketing fee, etc. The parties may agree in the lease contract that the rent shall be automatically modified every year according to the inflation rate determined by the Consumer Price Index for the previous calendar year.

Rent is determined by agreement between the landlord and the tenant and depends, usually, on supply and demand. Rent, service charges and other fees are paid monthly in advance on the first day of the respective calendar month, provided that the parties have not agreed otherwise.

In the event that the tenant cannot use the non-residential premises due to the fact that the landlord is not fulfilling its obligations, the tenant has the right to a proportional discount on the rent.

6) Term of lease, conditions of termination

Generally, a lease contract on non-residential premises is terminated by a notice of termination. The lease contract can be conclude for a definite period or for an indefinite period.

The period of notice is three months and starts on the first day of the month following the month when the notice of termination was given, provided that the parties have not agreed otherwise.

a) Termination of a lease concluded for a definite period by a notice of termination

The legal regulation mention several grounds on the basis of which the landlord can terminate a lease contract before the expiration of concluded term. The parties can however exclude in the lease contract these grounds of the termination from applying or they can agree on some other grounds of termination, which are not mentioned in the legal regulation.

The parties can also exclude in the lease contract the requirement of written form of notice of termination.

The landlord can terminate a lease concluded for a definite period before its expiration, if:

- the tenant uses the non-residential premises in a manner contrary to the lease contract;
- the tenant is in default with the payment of the rent or of the payment of service charges;
- the tenant, who should, on the basis of a lease contract, provide certain services to the landlord as a counterpart for rent, does not provide these services duly and on time;
- the tenant or persons who use non-residential premises jointly with the tenant, grossly disturb the peace and order, despite written notification to desist;
- the use of the non-residential premises is connected with the use of an apartment and the tenant is required to vacate the apartment;
- there is a decision on the demolition of the premises or on changes to the premises that restrict the use of the non-residential premises;
- the tenant sublets the non-residential premises or its part to the subtenant without the approval of the landlord;
- the lease is in a building restituted to an entitled person according to the specific Acts (e.g. Act on mitigation of consequences of some possessive injustices);
- the tenant has changed the purpose of business activity without the prior approval of the landlord.

The tenant can terminate a lease concluded for a definite period before its expiration, if:

- he loses the capacity to exercise the activity for which he leased the non-residential premises
- the non-residential premises have become, without the fault of the tenant, unfit for the agreed use
- the landlord grossly violates his obligations

b) Termination of a lease contract concluded for an indefinite period by a notice of termination

A lease contract concluded for an indefinite period can be terminated by a written notice of termination by both, the landlord and the tenant, without the need to give reasons for the notice.

c) Other methods of terminating a lease contract of non-residential premises

If the parties do not agree otherwise, a lease expires on:

- the death of the tenant, if the heirs of the tenant do not notify the landlord that they will continue the lease;
- termination of the existence of the legal entity, as the tenant, without successor.

Moreover, the parties can terminate the lease contract for non-residential premises by way of the general means of civil law, e.g. withdrawal, merger of the landlord and the tenant in one person.

7) Sublease; assignment of a lease

Provided that the parties have not agreed otherwise, a tenant is entitled, with the prior written consent of the Landlord, to sublet the respective non-residential premises or their part for a definite period. The sublease contract must be in writing. The subtenant has all the rights and obligations that the tenant of the non-residential premises has.

The transfer of a lease is not possible under Czech law, however, a tenant can assign its rights and delegate its duties to another person, though only with the prior written consent of the Landlord. It is not possible, under the Czech law to agree the cancellation fee.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

A Landlord and a Tenant can agree that the value of the tenant's works within the respective premises (technical improvements) shall be depreciated by the tenant and that the landlord shall not increase the input price of the landlord's own tangible assets by the amount of the costs related to the tenant's works (technical improvements). On the termination of the lease the technical improvements shall be transferred to the assets of the landlord for consideration. The parties can stipulate in the lease that the value of the consideration paid by the landlord to the tenant for the technical improvements shall be at the level of the residual value of the technical improvements. Otherwise, if the consideration is lower than (or the technical improvements are transferred without consideration) the residual value of the respective technical improvements, the difference is considered as a tax non-deductible expense of the tenant.

Generally, the lease of real estate is VAT exempt and a landlord is not entitled to claim the input VAT deduction from related inputs (the services received related to the real estate or its purchase price). However, if the tenant is a VAT payer and such building is used for business activity only, the landlord may decide to impose VAT on the lease.

II. Belgium - Vanden Eynde Legal

1) Definition of commercial lease (what kind of premises are included)

The Belgian Civil Code regulates several types of agreements related to the lease of real estate.

The principal lease contracts are the contract for principal residence, the farming lease (for farm land), the commercial lease and the lease agreements in general.

We will not discuss here the leases for principal residence, nor the farming lease.

The lease for a retail trade is regulated by the law of 30/04/1951 (commercial lease) and is applicable to the lease agreements that are mainly destined by the lessee or by a subtenant for carrying out commercial retail activity craftsman activities in direct contact with the public.

Its scope is large and is applicable to both shops and supermarkets.

With regard to the occupation of other premises for commercial purposes (offices, warehouses, etc), the general rules of the Civil Code in relation to lease agreements are applicable.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

For leases for a period of less than 9 years, there are no formal requirements. For leases which exceed the period of 9 years, a notarial deed is required without any formalities and can even be concluded orally.

However for the lease of real estate as a special residence special provisions apply.

It is clear that in case of a lease, which is not laid down in writing, issues will arise on the one hand concerning the opposable character towards third parties (lessor privilege, tax authorities) and, on the other hand, issues of evidence relating to the scope of the parties' obligations.

Furthermore, requirements under tax law impose its registration, which supposes at least the submission of a written document.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

The principal obligations of the lessee are the payment of the rent on the agreed date and the correct occupation of the building.

Moreover, the lessee is bound to execute the contractual commitments which he has accepted.

The lessor has the obligation to deliver the leased goods to the lessee, to arrange for the main maintenance (major repairs) and to keep the lessee in peaceful possession.

4) Whether and how the operating expenses of the property are passed to the tenant(s)

They consist of two elements.

The first represents the charges relating to the services executed in favour of the lessee by the lessor or a common ownership; such as the common elevators, the caretaker services, the maintenance (major repairs) of the common parts, etc.

These charges must be presented in a detailed form have to be accompanied by documentary evidence.

The second element is the allocation between the normal repairs and the major repairs. These last repairs are the responsibility of the lessor, except as otherwise mentioned in the lease.

The lessor is also responsible for repairs caused by wear and tear.

The Civil Code stipulates general rules from which the parties can explicitly derogate.

If parties disagree, case law will define what is to be considered as “important repair”.

5) Provisions for the payment of rent including the review period, and increasing the rent

If the rent is not index-linked on a contractual basis (that is linked to the evolution of the cost of living), it will remain unchanged through the duration of the lease.

Parties can however explicitly stipulate that the rent will be linked to the cost of living or that according to a certain number of elements, this rent will be revised upwards or downwards.

The law of 13/04/1951 on the retail trade stipulates the revision of the rent at the expiry of each three year-period. In case of disagreement between the parties, the Judge will determine the new rent in all fairness.

The applicable conditions of this last legal provision are however very strict.

6) Term of lease, conditions of termination

The duration of the lease must be agreed between parties.

However, in the framework of the legislation on retail trade, the lease must run for a minimum of 9 years, but the lessee has the possibility to terminate the contract every 3 years.

In the same framework, the tenant of a commercial lease has a preferential right for the renewal of his lease. In other words, if he proposes a price equivalent to the one proposed by a third party, he will be authorised to continue the lease of the premises.

The lessor of a retail trade can only refuse this renewal for one of the reasons stated exhaustively in the law (personal occupation by the lessor, decision to give the building a non commercial destination).

If the lessor refuses the renewal, the lessee will be entitled to compensation for eviction.

The terms and conditions applicable to the termination of the rental period and to the occupation will be provided for in the contract, except in case of lease for retail trade

7) Sublease; assignment of a lease

Except when explicitly excluded from the contract, sublease is permitted.

In the framework of the legislation on retail trade, the law organises the notification of sublease to the lessor and the relations between the subtenant and the lessor.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

In general, no VAT is charged on the renting of real estate

There is however an important exception as regards warehouses.

Each party will be able to deduct under the applicable tax rules, the expenses which he has incurred in relation to the lease has exposed.

With regard to the taxation of the building itself, parties can freely agree that one of them will proceed to a total or partial payment.

In the absence of explicit agreement, taxes will be due according to the legal instrument imposing the taxation.

III. Greece - D. & F. Dimitriou & Associates

1) Definition of commercial lease (what kind of premises are included)

There is no precise “definition” of a commercial lease into the corresponding Presidential Decree 34/1995 that applies in the commercial lease. So, we use the lease definition provided by the Civil Code, art 574: “With the contract of lease the owner has the obligation to provide to the tenant the use of the object for as long as the contract applies and the tenant to pay the agreed rent”.

Most kinds of buildings, fields etc can be used for commercial use. In some areas, commercial leases are prohibited (e.g. residential areas). Now, to know if the lease is

commercial or not, it shows into the contract. If nothing is mentioned, then it is commercial if:

- a) The tenant is using it for commercial or educational purposes
- b) The tenant runs a clinic, hospital, medical-pharmacy or a nursing home
- c) The tenant is using it for providing services. This includes lawyers, doctors, notary publics, foundations etc.

When a commercial lease is established, it is also commercial for the “accessory premises” (warehouses, parkings etc).

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

Mandatory requirements are the choice of the parties: the parties can include anything they agree. The contract itself can even be oral (of course, a written contract is mostly used in practice). The contract has to be signed by a notary public if the lease is about to be agreed for longer than 12 years.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

Anything that the civil code imposes about leases in general, plus the impossibility to change the purpose of use, plus the sublease (see more under par.7).

4) Whether and how the operating expenses of the property are passed to the tenant(s)

All operating expenses are to be paid by the tenant. The owner pays the structural expenses and has to keep the premise “in good condition according to the use agreed”.

5) Provisions for the payment of rent including the review period, and increasing the rent

The rent has to be paid every period agreed on the contract. Same thing for the review. If nothing is mentioned into the contract, the rent is owed every 1st of each month. If nothing is mentioned about the review, this takes place every 2 years and is equal to at least six per cent of the objective value of the premise. Calculating this is quite complicated, so most contracts include an increase on a yearly basis.

6) Term of lease, conditions of termination

The commercial lease lasts 12 years by default (so, like under French law, it's an important choice for the owner to agree such lease [“droit quasi réel”]). If no duration is agreed, or if a duration of less than 12 years is agreed, then it is still valid for 12 years. Longer agreements are also possible and fully valid (see also under par.2). The contract can be terminated earlier than 12 years, as follows:

- a) From the owner, if he wishes to use it himself (but then, the contract should have lasted at least 3 years already). If the owner doesn't use the premises within 6 months, the tenant can claim to re-establish himself and ask for compensation. Second, if the owner wishes to build something else. In he has to wait at least 12 years (even if the contract is a longer period). Third, if he wants to live himself (condition: the owner must not own another property into the same region for at least one year before he asks that-and he has to live inside for at least 3 years). Fourth, if the tenant has been condemned irrevocably for bankruptcy.
- b) From the tenant: the tenant can evacuate the premises and end the contract earlier than agreed. Condition: he has to have stayed at least two years, notify about his decision the owner in written, and his takes effect 6 months later.

7) Sublease; assignment of a lease

The sublease is prohibited, unless it is mentioned into the (written) contract. The tenant can also transfer the contract (by contract between the tenant and the “new” tenant) to somebody of his choice (and simply notify in written the owner), if he gets heavily sick. The new tenant is obliged to comply with initial contract terms.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

3.6 % of the lease amount goes to the tax office (the owner pays that as tax). The tenant, by receiving a receipt, the corresponding amount is considered a business expense, thus deducted.

IV. Latvia - Loze, Grunte & Cers

1) Definition of commercial lease (what kind of premises are included)

If one party grants or promises the other party the use of some property for a certain payment for a certain period of time, then the legal relationships under the laws and regulations of the Republic of Latvia can be regulated as lease or tenancy. A contract, which grants the use of a fruit-bearing property in order to gain fruit thereof is a lease, but any other contract granting use (of, for example, residential premises), is a rental contract. Besides, practically always when a legal entity acquires the right to use for payment it is considered that the property is used for the business needs of the legal entity and the established legal relationships should be interpreted according to the lease regulations.

Given that the laws and regulations of the Republic of Latvia do not distinguish between *lease* and *commercial lease*, the term *lease* will be used below.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

In order to ensure validity of a lease contract, there should be an agreement between the lessor and the tenant on essential elements of the lease contract, i.e., its subject matter and the rent. The form and other provisions of the lease contract depend on the agreement

between the parties. Written form is advisable for proving the legal relationships. A written form of a lease contract is mandatory if the contract is intended to be registered with the Land Registry and as a result thereof, the tenant acquires rights in rem that are binding on third parties (more detailed information under 7).

3) Review of the common restrictions and obligations a tenant can expect to have imposed

The most important obligation of the tenant is to pay the rent when due under the contract. If any payments are delayed, the tenant has to pay a late charge, as prescribed by the contract or by statute, which is 6% p.a. Besides, the tenant has to use the subject-matter of the lease properly and as a good manager and he may use the property only for such purpose as was intended in leasing it. Upon the expiry of the lease contract, the tenant has to return the leased property with all its appurtenances, in as good a condition as possible. If the leased property is destroyed or damaged through no fault of the tenant, then his liability to return it ceases, unless he has specifically agreed to assume risk. Other obligations and restrictions of the tenant are the subject-matter of the agreement between the parties and may be described in a mutually executed lease contract.

4) Whether and how the operating expenses of the property are passed to the tenant(s)

Upon transfer of the property to the use by another person, the parties may freely agree as to which of the parties will bear the related charges. Unless otherwise agreed, the provisions of the law are applicable. The law sets forth a principle that also after execution of the contract the lessor has to proceed with performance of work and making of payments qualified as charges and encumbrances. However, if the tenant has made expenditures related to charges and encumbrances imposed on the leased property, the tenant may request a compensation for such expenditures to the extent such expenditures made for a property are considered necessary and useful, provided that the parties have not otherwise agreed.

5) Provisions for the payment of rent including the review period, and increasing the rent

The rent may be provided in cash, as well as in other fungible property. The rent must be actual compensation for the use of the property, and therefore it may not be set fictitiously. A transaction concluded contrary to this provision, with the purpose of evading the law or deceiving a third party, is not valid. If the purpose of a transaction is to show goodwill to an apparent tenant, it is deemed to be a gift.

The parties may freely agree on the terms of rent payment. The rent may be increased only if such provision is included in the lease contract and only in the manner prescribed by the contract. If the parties fail to reach mutual agreement on the increase of the rent, the initially established rent will be valid throughout the entire period of the lease contract. Even excessive loss does not entitle any party to withdraw from the lease contract.

6) Term of lease, conditions of termination

A lease contract limited only to a goal to be reached or a specified term terminates when the goal has been reached or the term has expired. Such goal or period of time is the subject-matter of free agreement between the parties. The parties may freely agree on the provisions upon occurrence of which the contract may be early terminated. However, each party, within 1 year after the execution of the contract, may unilaterally withdraw from the contract in case of excessive loss, provided that the party inflicting loss has acted in bad faith. An excessive loss of the lessor is a situation when the received rent does not cover even half of the benefit usually gained from the lease of such property, while an excessive loss of the tenant is a situation when benefit gained by the tenant from the use of the property is not equivalent even to a half of the rent payable in terms of value.

The lease contract terminates automatically, before the expiration of the term: (1) upon the leased property being destroyed; (2) upon termination of the right the lessor had to the subject-matter of the lease; (3) where confusion of rights takes place, i.e., if the tenant obtains the ownership of the leased property.

The lessor may require revocation of the contract if:

- (1) the rent has not been paid when due under the contract or within the term set by law (the consequences of such delay can be prevented by offering the payment before an action for setting aside the contract has been made);
- (2) the lessor has an unforeseen need to use the property himself;
- (3) the tenant damages the property by using it improperly or contrary to the contract;
- (4) if the leased property requires immediate and such extensive repairs that render it impossible to continue the contract;
- (5) the tenant has sub-leased the leased real property without the consent of the lessor.

The tenant may require revocation of the contract on the basis of law if:

- (1) the lessor delays the transfer of the property for so long that the tenant is no more interested in acquiring it for use;
- (2) if the lessor does not make the necessary repairs to the property or if the property is discovered to have such faults or defects as prevent from its full use or at least to a significant extent hinder its use, and as cannot be remedied;
- (3) characteristics of the subject-matter of the contract are harmful to health

A real property lease contract entered into for an indefinite period of time, terminates, unless otherwise agreed, only after six month prior notice that may be given by either party of its own volition. Revocation of the contract may only be claimed in the cases listed above.

7) Sublease; assignment of a lease

The tenant may sublease the leased property only subject to a direct consent given by the lessor. In the practice, if the parties have agreed that the tenant has a right to sublease the leased property, such agreement is set forth in the lease contract. Otherwise, if the tenant intends to sublease the leased property, each time consent of the lessor has to be obtained. If no consent is obtained, the law prescribes that the lessor is entitled to claim revocation of the contract. This means that if the tenant has subleased the leased property without consent of the lessor or cannot prove the existence of such consent of the lessor, the lease

contract does not automatically become invalid, but the lessor may bring a claim to court and request that the lease and respective sublease contracts be cancelled. Besides, it should be taken into consideration that the tenant may not transfer to a third party more rights than granted to the tenant under the initial lease contract. If the property is subleased, the relations following from the initial contract are not transferred in full to the subtenant, but each agreement exists absolutely separately and independently.

Throughout the operation of the lease contract, the lessor may dispose of the subject-matter of the lease. The acquirer then has to comply with the lease contract only if it is registered with the Land Registry, as upon its recording in the Land Registry the tenant acquires the right in rem that is also valid in respect of third parties. If the acquirer terminates the lease contract that is not recorded in the Land Registry, then the tenant may only request from the lessor such compensation for loss that is incurred by the tenant as a result of early termination of the contract. Please note that if the new acquirer intends to retain validity of the contract, the disposal of the property does not entitle the tenant to withdraw from the contract.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

The rent payments are deductible for the tenants. The leasehold improvements made by tenants are deductible during the lease period only in the amount and substance as provided in the lease contract. The capital expenses not provided in the lease contract are not deductible for corporate income tax purposes.

The owner is entitled to deduct depreciation on buildings, which is 10% per annum for tax purposes. Depreciation is not charged on land. The owner is not entitled to deduct depreciation for tax purposes of investment properties measured in their fair value.

V. Singapore - Goodwins Law Corporation

1) Definition of commercial lease (what kind of premises are included)

A lease is an interest in land. There is no legislation in Singapore defining what a commercial lease is. Basically, it means a lease of a commercial property (i.e., not a residential property) in Singapore. There is actually not much difference between a commercial lease or a residential lease, except as to what type of property the lease is comprised in. Whatever is stated about the commercial lease will, in most cases, apply equally to a residential lease.

Under the general law, section 53 of the Conveyancing and Law of Property Act provides that a lease, other than one for a period of seven years and below, must be by deed in the English language. Under the Land Titles Act, a lease of over seven years should be in the prescribed form and registered with the Singapore Land Authority, while leases of seven years and under will bind the title of the registered proprietor (i.e., owner of the property being leased out) without registration or notification.

In most cases, the lease is for a period of less than seven years. Typically, the lease is for a period of one, two or three years and therefore does not require registration with the Singapore Land Authority.

Other than the abovementioned two pieces of legislation, there are no other statutory provisions governing commercial leases. There is usually a contract or tenancy agreement between the two parties, the landlord and the tenant (sometimes called the lessor and lessee), stating the rights and obligations of both parties. The normal contractual rules will therefore apply.

Commercial premises include office space, shop space, factory or warehouse facilities.

The lease is subject to payment of stamp duty to the Inland Revenue of Singapore. The stamp duty payable is based on the amount of rent (and any other charges) payable to the landlord.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

There are no mandatory requirements of a lease contract for non-residential premises as the parties are free to contract on the terms of the lease. Typically, in order to give effect to the intention of the parties, the normal clauses in a lease contract would include the following:

- a) parties to the lease (i.e. names, identification numbers, addresses)
- b) subject matter of the lease (i.e. the address of the property)
- c) period of the lease
- d) the amount of rental for the premises and for the furniture and fittings, if applicable, and the amount of maintenance and service charges
- e) the amount of deposit payable, refundable on the expiry of the lease subject to certain conditions
- f) the purpose (or use) of the property, to be supported sometimes by a certificate from the relevant authority
- g) option to renew the lease

3) Review of the common restrictions and obligations a tenant can expect to have imposed

The most important obligation of the tenant is to pay the rental when it falls due. Other common restrictions and obligations of the tenant are:

- a) to use the property for the purpose it was intended for
- b) to keep the property in reasonable and tenantable condition, save for normal wear and tear
- c) to pay for all utilities and telephone charges
- d) not to use the common areas and lifts for other purposes
- e) not to use the property as gambling dens, illegal meeting points, residential purposes
- f) to service the air-conditioning regularly
- g) not to assign, transfer or sublet without the consent of the landlord
- h) to indemnify the landlord for any loss or damage caused by tenant

- i) not to be a nuisance to other occupiers of the building

4) Whether and how the operating expenses of the property are passed to the tenant(s)

This will be provided for in the lease contract. Typically, the operating expense of the tenant refers to the maintenance and service charges for the property. Normally, the property is part of a big building and the landlord has to contribute a rateable proportion to the upkeep of the entire building. The landlord will provide for this in the beginning of the tenancy with a proviso that if the maintenance and service charges increase, the tenant will have to bear the increase.

It is also now common for the landlord to put a clause in the lease contract providing that in the event of an increase in the property tax (normally paid by the landlord) by the Inland Revenue of Singapore, the tenant will bear the increase in property tax.

5) Provisions for the payment of rent including the review period, and increasing the rent

Unless otherwise provided for in the lease contract, rent is paid in advance on the first of the month. If there is late payment, interest will be charged based on the agreed rate stipulated in the lease contract.

Normally, the lease is agreed to be for a period between one to three years and there is no review of rent during the agreed duration. Before the period is over, the parties would normally agree as to the next period of lease as well as the new rent. If these two terms cannot be agreed, the lease will not be renewed when it expires.

6) Term of lease, conditions of termination

Again, these are terms to be agreed between the two parties at the beginning of the lease. The term of the lease is usually between one to three years, sometimes with an option to renew for a further term.

The most common type of lease is a fixed term lease. If both parties do not default on any provision in the lease contract, the lease comes to an end automatically on the expiry of the term. Sometimes, the parties may, by a term in the lease contract, agree that it may terminate at an earlier point of time if certain conditions are met. For example, if the property is destroyed by fire and is no longer habitable, the lease will come to an end.

If the tenant has defaulted in paying rent, the landlord may serve a notice to quit on the Tenant, thereby bringing the tenancy to a premature end. If the tenant defaults in the other provisions, despite being asked to rectify, the landlord can also serve a notice on the tenant asking him to quit the property. An example of a default will be if the tenant is using the property for another purpose other than what it was intended for.

7) Sublease; assignment of a lease

Usually, the lease will provide that the tenant is not to sublease, unless with the consent of the landlord. This consent is usually not given as there will be no direct relationship between the landlord and the subtenant.

Similarly as for assignment of a lease, the lease usually provides that the tenant is not to assign, unless with the consent of the landlord. The landlord is more likely to give consent to an assignment as the landlord will have a relationship with the assignee of the lease. Consequently, covenants which touch and concern the property are enforceable between them. The formalities for assignment of a lease of whatever duration is a deed in the English language, as provided in section 53 of the Conveyancing and Law of Property Act.

The interest of the landlord, the reversion, may be assigned as well.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

There is no technical appreciation of the premises and deductibility to be enjoyed by the tenant.

If the landlord is registered for goods and services tax (GST), the rent will be charged with the relevant GST rate as well and both the rent and GST will be paid to the landlord at the same time. Currently, the GST rate is 7%. If the tenant is also registered for GST, he will be entitled to claim that back from the tax authority.

Tax-wise, the tenant will be able to claim the amount of rent paid as an operating expense in his business in Singapore.

On the side of the landlord, the landlord will be taxed by the Inland Revenue of Singapore on the rent received as income tax.

VI. Spain - Brosa

1) Definition of commercial lease (what kind of premises are included)

Spanish Urban Leases Act 29/1994, of 24 November (hereinafter, ULA), rules the leases agreements on urban properties, distinguishing two categories of leases: (1) urban properties leased as dwelling and (2) urban properties leased for a use different than dwelling. According to article 3 of the above mentioned Act, the second category refers to leases of a building, with a fundamental use different from satisfying the tenant's permanent necessity of a house to live in (dwelling leases).

The same article 3 specifies that it will be especially considered as a lease for a use different than dwelling (a) the leases on urban property entered into for a seasonal period (summer season or any other), and (b) the lease agreements to exercise in the property an industrial, commercial, artisan, professional, recreational, welfare, cultural or educational activity, whoever the people who enter into those lease agreements are.

Thus, commercial leases would fall into the category of leases for a use different than dwelling, and would be the leases of properties to exercise an industrial, commercial, artisan, professional, recreational, welfare, cultural or educational activity.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

There are no formal requirements and it is not mandatory to make the agreement in writing. However, any of the parties can oblige to the other one to formalize the contract in writing, and in this case the law indicates that the contract shall include the identity of the parties, the identification of the property, the duration of the lease and the amount of the initial rent, as well as any other clauses that the parties would have agreed on.

It is mandatory that the tenant makes a legal deposit as a guarantee in the amount of two months of rent, and this deposit must be delivered to the corresponding regional authorities. The amount of the deposit shall not be reviewed during the first five years of duration of the lease, but each time the lease is extended the landlord or the tenant can request that such amount is reviewed to increase it or decrease it in order to adapt it to the amount of two months of rent. Where the agreed term of the lease exceeds five years, the review of the deposit during the time exceeding five years shall be ruled by the agreement between the parties, and in case of no special agreement on that, it will follow the same rule for reviewing the rent. The parties may agree on other guarantees additional to the abovementioned deposit.

Finally, jurisdiction for disputes on leases shall correspond to the courts of the place where the property is located.

Apart from that, and as opposed to dwelling leases, in which the tenant is much more statutorily protected, commercial lease are more flexible in terms of fair negotiation. Except for some mandatory articles of the ULA, commercial leases are ruled first by the agreement between the parties; in case of default of agreement between the parties, by Title III of the ULA; and in default of regulation included in such Title, by the Civil Code. The principal requirements that had to be included in this contract are the term of lease, the rent and review, a clause establishing the use as an office object of the contract, a deposit clause, penalty clauses, a assignment and sublease regulation, an acquisition pre-emptive right clause, and the resolution clauses, plus any other matter of choice of the parties. All this matters will be analyzed in this report.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

As indicated, the lease shall be ruled by what has been agreed between the parties (apart from the mandatory aspects mentioned above). In case that there is no special agreement on some aspects, Title III of the ULA establishes a subsidiary regime, which basically establishes the following:

- Unless otherwise agreed, right of the landlord to increase the rent in case of improvements in the premises executed by the landlord after five years of lease.
- Landlord's obligation to maintain the premises in good conditions for their use, except when the damage has been caused by the tenant. If the execution of such

works implies that the premises cannot be used, the tenant may terminate the lease or suspend it during the works.

- Tenant is obliged to make maintenance works which are necessary as a consequence of the ordinary daily use of the premises.
- Tenant is obliged to accept improvement works made by the landlord when such works cannot be reasonably postponed until the end of the lease, although tenant has one month since the communication of the works to decide to terminate the lease. In such case, the lease would be terminated two months after such decision.
- Without the landlord's approval, tenant cannot make works in the premises which modify the premises or affect their security or stability.
- Tenant's right of first refusal in case of sale of the premises.
- Tenant can assign the lease and totally or partially sublease the premises (more detailed in 7 below). In such cases, landlord is entitled to increase the rent (10% in case of partial sublease and 20% in case of total sublease or assignment of the lease). Tenant is obliged to communicate the assignment or sublease to the landlord within one month after the assignment or sublease.
- Tenant is entitled to be indemnified at the end of the lease if the tenant exercised a sale retail activity in the premises during the last five years and has communicated to the landlord at least four months before the termination his will to extend the lease for a minimum of five more years and under a market rent.

If the parties do not want that any of the articles establishing such regime does not apply, they have to agree it in writing. It is very common that landlords impose to tenants to waive the rights that the subsidiary regime grants to them (right of first refusal, right to assign or sublease without approval from the landlord, right to indemnity under some circumstances upon termination, etc).

4) Whether and how the operating expenses of the property are passed to the tenant(s)

The parties of the contract can negotiate this matter. As indicated above, landlord is obliged to execute the necessary works to maintain the premises in good conditions for their use, without the right to increase the rent for such works. Consequently, in principle the landlord shall pay these expenses, although the parties can agree that the tenant shall bear these costs.

In general, and in case of commercial leases, there is no specific obligation established in the ULA to bear the operating expenses for none of the parties, and the parties are free to agree what they want. In any case, it is quite common that the parties agree that the tenant pay these expenses.

5) Provisions for the payment of rent including the review period, and increasing the rent

Although in case of dwelling leases there are some rules on payment of rent (monthly payment during the first seven days of the month unless otherwise agreed) and its review, in case of commercial leases the parties are completely free to establish the moment and way of payment of the rent and its review or increase.

The most common provision regarding the review or increase of the rent is to agree on its annual review based on the variation of the National Retail Price Index during the previous twelve months.

6) Term of lease, conditions of termination

There is no minimum or maximum term established by law, neither a legal right to extend the lease. Thus, parties can freely agree any term.

It is not unusual to agree on a term, giving the option to the tenant to terminate the lease giving a written notice some time in advance (and maybe indicating a minimum mandatory term during which it is not possible to terminate it). It is also common to agree the automatic extension of the lease for additional years unless any of the parties communicates in advance its will not to extend the lease, and indicating a maximum term for the automatic extensions. In any case, all these possibilities need to be expressly agreed.

In case where there are no provisions on the extension of the lease, if the tenant continues to use the premises after the termination of the lease for at least fifteen days and the landlord accepts it, the lease shall be considered extended for an additional year if the parties had agreed a yearly rent and for an additional month if the parties had agreed a monthly rent.

Regarding the termination, the subsidiary regimen established in Title III of the ULA indicates that the landlord shall be entitled to terminate the lease in the following cases:

- Lack of payment of the rent or any other amount that the tenant is obliged to pay.
- Lack of payment of the mandatory deposit or its review.
- When the tenant performs annoying, unhealthy, harmful, dangerous or unlawful activities.
- Transfer of the lease or sublease of the premises without observing the requirements indicated in article 32 of the ULA.

The same regime establishes that in case of improvement works executed by the landlord, the tenant may decide to terminate the lease.

It is very common to agree on additional causes for termination, for instance the execution of any kind of works by the tenant without the previous approval from the landlord.

7) Sublease; assignment of a lease

Article 32 ULA establishes that when a business or professional activity is carried out in the premises, tenant is entitled to totally or partially sublease the premises or to assign the contract of lease without need to obtain the consent of the landlord. In these cases, landlord is entitled to increase the rent (10% in case of partial sublease and 20% in case of total sublease or assignment of the lease).

Both the assignment of the lease and the sublease will have to be notified by the tenant to the landlord in a formal form within one month after the assignment or sublease.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

Tenant of a commercial lease shall pay VAT (16%) on the rent and shall apply a withholding tax on the rent (although there are some exceptions to this withholding tax). The landlord must pay a local tax on real estate (I.B.I.) every year, on the value of the property, as the owner of the property. It is quite common that landlords demand that this tax is paid by the tenants.

VII. Sweden - Hellström

1) Definition of commercial lease (what kind of premises are included)

A unit which is, to a not insignificant extent, granted as a housing accommodation is a dwelling unit. All other units are non-housing premises. The legislation does not distinguish between commercial leases and other kinds of non-housing leases.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

There is no requirement of form.

There are, however, a number of mandatory rules regarding the relation between landlord and tenant. The period of notice cannot be shorter than nine months, for example. The rent must be determined in the agreement but under some circumstances it is allowed with a proviso stating how the rent is to be calculated.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

An agreement normally states the purpose of the lease. The tenant is not free to change the business activities conducted in the unit.

A tenancy agreement normally states the term of the lease and it is usually three years with an automatic prolongation if neither of the parties gives notice of termination.

It is common that the rent is increased according to an index clause during the term of the agreement.

The landlord and the tenant can agree that the tenant shall have the responsibility to keep the unit in a good condition, and such agreements are not unusual.

If a tenancy is terminated by the landlord without due cause the landlord is obliged to compensate the tenant economically. Note that this is the case even if the landlord gives notice of termination to the end of the term. The parties can agree that these rules will not apply. Such an agreement must be made on a separate document and approved by the regional rent tribunal.

4) Whether and how the operating expenses of the property are passed to the tenant(s)

It is allowed to pass on the costs for heating of the unit, its supply of hot water or electric current or charges for water and sewerage.

5) Provisions for the payment of rent including the review period, and increasing the rent

If the parties have not made any special agreement on the payment, the rent shall be paid monthly in advance.

The landlord can give notice of termination and claim a higher rent for a prolonged period. If the tenancy is not prolonged and if the conditions set up by the landlord are deemed not reasonable and conform to good practice in tenancy relations, the landlord will have to compensate the tenant with at least a sum equivalent to the rent for one year.

6) Term of lease, conditions of termination

The parties are free to decide the length of the lease contract. It is most common to have a term of three years, since the parties have more freedom in deciding the conditions if the term is at least three years.

7) Sublease; assignment of a lease

The main rule is that the tenant is bound to the lease during the whole term unless the landlord accepts a new tenant. There are exceptions, however.

- If the tenant is transferring his business to someone there is a possibility to get the regional rent tribunal's permission to transfer the tenancy.
- If the tenant asks the landlord for permission to transfer the tenancy and the landlord refuses without reasonable cause or doesn't answer within three weeks the tenant may give notice of cancellation of the tenancy agreement.

The tenant is allowed to let another person or company use the unit with him as long as it does not cause the landlord detriment.

The tenant is allowed to sublet the unit in its entirety if he has notable reasons for the sublet and the landlord does not have justified cause for refusing consent.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

It's up to the landlord to decide whether he should pay value added tax on the rent income. It is often beneficial for the landlord that the income is subject to value added tax.

VIII. Turkey - Ozcan & Natan

1) Definition of commercial lease (what kind of premises are included)

The lease is defined in Article 248 of Turkish Law of Obligations No. 818 (Official Gazette dated May 8, 1926, no. 366) as “A lease contract is a contract where the tenant is obliged to provide the lessee the usage of an object against a payment.”

There is no specific “definition” of a commercial lease in the relevant Law Regarding Lease of Immovable No. 6570 (Official Gazette dated May 27, 1955, no. 9013). Any lease contract related to buildings or independent flats that is registered for commercial use purposes is subject to this law.

Law of Condominium Ownership No. 634 (Official Gazette dated July 2, 1965, no. 12068) sets some limitations for residential areas. Accordingly, businesses such as hospitals, clinics, pharmaceutical laboratories etc. are not allowed at independent flats of residential buildings, even though these flats are accepted to be used for commercial purposes in the building operation plan. The commercial usage of flats registered as residences will be allowed subject to 100% approval of the flat owners in that building.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

There are mandatory rules especially for the termination procedure and post termination. Please see art. 6 below.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

General restrictions and obligations are set in Law of Obligations. Additionally Law Regarding Lease of Immovable sets restrictions, such as prohibition of sub-lease. Please see art. 7 below.

4) Whether and how the operating expenses of the property are passed to the tenant(s)

Operating expenses are to be paid by the tenant. Structural expenses for keeping the premise in good condition are the landlord’s obligation.

5) Provisions for the payment of rent including the review period, and increasing the rent

The rent may be paid in agreed intervals. Review or increase is also subject to agreement. The Supreme Court decision sets a common rule of increase according to market conditions, if no increase ratio is defined in the contract. Common practice is to set either a specific annual ratio or to address to Retail Price Index announced by the National Statistics Authority.

6) Term of lease, conditions of termination

There is no mandatory minimum or maximum term.

The contract is automatically renewed for a subsequent 1 year term unless terminated by the tenant with a 15 day prior notice. This notice period may be extended by mutual agreement.

The landlord does not have the right for termination without cause, unless the tenant gives a written commitment of evacuation for a certain date.

Other than the general terms in the Law of Obligations, the landlord has the right to claim for the tenant to evacuate the premise if:

- a) The tenant refuses to evacuate the premise although he has given a written commitment.
- b) There is a need for a business place of himself or his children (only after the expiration of the lease period).
- c) The building is going under a re-construction or a total renovation.
- d) The tenant fails to pay the rent on time at least twice in a year (only after the expiration of the lease period).

7) Sublease; assignment of a lease

Partial or total sublease is prohibited, unless agreed opposite in the contract.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

The rent payments are deductible for the tenants. The leasehold improvements made by tenants are deductible during the lease period only in the amount and substance as provided in the lease contract. The capital expenses not provided in the lease contract are not deductible for corporate income tax purposes.

The owner is entitled to deduct depreciation on buildings, which is 10% per annum for tax purposes. Depreciation is not charged on land. The owner is not entitled to deduct depreciation for tax purposes of investment properties measured in their fair value.

IX. Ukraine - PETERKA & PARTNERS

1) Definition of commercial lease (what kind of premises are included)

Ukrainian legislation does not provide for a definition of a commercial lease. However, the law distinguishes different types of lease on the basis of the parties thereto (physical persons or commercial entities, whether legal entities or private entrepreneurs) and on the basis of the characteristics of the leased object (residential premises or non-residential premises, including commercial premises).

Commercial lease is thus generally considered to constitute a lease between a landlord (lessor) and a tenant (lessee) on the basis of which a non-residential premise for a business or administrative purpose is transferred for usage during a certain period and for the agreed compensation (rent payment) by the landlord to the tenant.

Commercial lease may in principle be concluded with respect to a building or an identifiable and distinguishable part of a building.

Although Ukrainian law neither provides for a definition of commercial premises, nor for a definition of non-residential premises, the following types of premises are generally considered as commercial:

- a) hotels and other premises for temporary accommodation (e.g. motels, resorts, etc.);
- b) office premises and business centers;
- c) trade premises (including shops, supermarkets, warehouses, retail premises, etc.);
- d) public catering premises (e.g. cafes, bars, restaurants, etc.);
- e) garages, depots; farms and other agricultural buildings.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

A lease contract related to commercial premises must be concluded in a written form; failing such written contract, the commercial lease will be considered as invalid and void. Commercial lease contracts concluded for a period of 3 years or more are subject to notarization and state registration in Ukraine; due to formal requirements, the notarization must in practice take place by a Ukrainian notary.

Ukrainian legislation foresees a number of essential (mandatory) requirements to lease contract, the absence of which renders the lease contract invalid. Thus, the lease contract must imperatively provide the following provisions:

- a) parties to the lease contract (sufficiently identified);
- b) object of lease (description and value of the premises, including indexation);
- c) term of the lease;
- d) rent, including indexation;
- e) order of usage of amortization deductions;
- f) return of the lease property, conditions of its returning or redemption.

The conditions provided in the lease contract remain valid throughout the entire term of validity of the lease contract, even in the event that after its conclusion legislative changes would worsen the position of the tenant.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

Ukrainian legislation foresees general rights and obligations for the tenant; with the exception of imperative rules, the rights and obligations of the tenant may be further specified in the lease contract by the contractual parties.

Thus, the tenant must use the leased premises in accordance with their purpose and the stipulations of the lease contract; otherwise, the landlord may terminate the lease contract.

Moreover, the tenant must preserve the premises and use them with due care. Any damages caused by the tenant to the premises shall be compensated to the landlord. As the general rule and unless otherwise agreed in the lease contract, the tenant is obliged to undertake

current repairs of the premises at his own cost, whereas the landlord must perform at his own cost all capital repairs (i.e. complex structural works aimed at the improvement or recovery of the exploitation indices of the premise).

The tenant may change the technical characteristics and nature of the leased premises or sublease them only upon the prior consent of the landlord.

The tenant must return the leased premises upon the termination of the lease contract. In the event of delays in the return of the leased property, the tenant shall bear all risks of accidental destruction or damage to the premises.

Besides the obligations and restrictions imposed by legislation on the tenant, commercial lease contracts in Ukraine commonly impose the following obligations and restrictions on tenants: obligation to insure the premises against all damages, obligation to conclude contracts for provided services (guards, parking, cleaning, etc.), obligation to guarantee and support fire security, restrictions on the 24h/7d access to the premises, etc.

4) Whether and how the operating expenses of the property are passed to the tenant(s)

The parties may freely determine in the lease contract whether and if so, which operating expenses will be borne by the tenant.

In practice, besides the rent payments, the tenant bears a pro rata share of maintenance expenses and marketing expenses (especially with respect to premises in business centers and retail complexes), bears service charges (water, electricity, gas, heating), bears all insurance expenses (both related to the premises and to the movable objects installed in the premises), bears management charges, as well as auxiliary expenses (such as: fire security, protection, guards, parking, etc.).

Moreover, as mentioned above, the tenant bears all expenses related to the current repairs of the premises and may be required to also bear expenses for capital repairs (if agreed upon). On the other hand, any non-removable improvements made by the tenant to the premises upon the prior consent of the landlord should be compensated by the landlord upon the termination of the lease contract.

5) Provisions for the payment of rent including the review period, and increasing the rent

The amount of rent must be defined in the lease contract as a fixed amount, which the tenant must pay to the landlord regardless of the results of his commercial activity (turnover). In principle, rent has to be paid in monetary form; however, depending on the specific character of the commercial activity of the tenant, the rent may be (fully or partially) paid in nature.

The amount of rent and the conditions of its indexation (i.e. rent adjustment according to a defined index) must imperatively be provided in the lease contract; their absence entails the invalidity of the contract. However, the parties to the lease contract may freely determine the amount of the rent, which in practice is based on the market price.

The rent should be paid on a monthly basis, unless otherwise is stipulated in the lease contract.

The tenant enjoys the right to the reduction of the rent if the premises become considerably deteriorated due to objective circumstances resulting in a deterioration of the commercial use of the premises. Moreover, the tenant shall be exempted from rent payment for the entire period during which he cannot use the premises due to circumstances for which he is not responsible.

6) Term of lease, conditions of termination

As the defined term of lease constitutes an essential condition for the validity of a lease contract, a lease contract may not be concluded for an indefinite term. On the other hand, Ukrainian legislation does not establish maximum or minimum terms for lease of commercial premises. In practice, commercial lease contracts are concluded for 3 or 5 years, with options to prolong the lease (e.g. “3-6-9” formula or “5-10” formula).

If upon the expiry of the defined lease term the parties continue to execute the lease contract and neither party makes an explicit declaration on its termination within one month, the lease contract shall be considered to be extended on the same conditions and for the same term as initially agreed upon.

Moreover, the tenant who duly executes his obligations under the lease contract holds a preemptive right to the renewal of the lease contract upon the expiry of the initial term of lease.

A commercial lease contract terminates in the following cases:

- expiry of its term of validity;
- redemption (privatization) of the leased premises;
- liquidation of the tenant (note that it remains unclear under Ukrainian legislation whether the liquidation of the landlord, whether on the grounds of bankruptcy or on other grounds of liquidation, constitutes a ground of termination of the lease agreement);
- destruction of the leased premises;
- mutual agreement of the parties;
- prior notice on the termination by one of the parties, prior to the expiry of the lease term;
- decision of a court or arbitration court in the event of undue execution of the obligations by one of the parties.

Pursuant to legislation, the landlord may prematurely terminate the commercial lease contract in the following cases:

- the tenant uses the premises against their purpose or in violation of the lease contract;
- the tenant transferred the premises to a third person without the consent of the landlord (e.g. through sublease or assignment);
- the tenant does not duly pay the rent during 3 successive months;
- the tenant demonstrates negligence which threatens to damage the premises;
- the tenant had not undertaken capital repairs of the premises although he was held to do so under the terms of the lease contract;

- on other grounds defined in the lease contract, subject to a notice period the length of which must be defined in the lease contract.

Conversely, the tenant may prematurely terminate the commercial lease contract in the following cases:

- the landlord has transferred to him premises the quality of which does not correspond to the conditions of the lease contract and to the purpose of the premises as defined in the lease contract;
- the landlord does not execute his obligation to undertake capital repairs of the premises (unless this obligation was transferred to the tenant in the lease contract);

on other grounds defined in the lease contract, subject to a notice period the length of which must be defined in the lease contract.

7) Sublease; assignment of a lease

The tenant has a right to sublease the leased premises subject to the prior consent of the landlord thereto and provided that the lease contract stipulated the possibility of sublease; said prior consent may however be given beforehand in the lease contract itself. The term of the sublease may not exceed the term of the lease. All other conditions of the sublease are regulated by the same rules as those applicable to the lease contract.

Likewise, the rights and obligations of the tenant may only be assigned to a third party on condition that the landlord gives his prior consent thereto (eventually in the lease contract itself). In principle, the assignment of a commercial lease shall be undertaken in the form of a tripartite written assignment contract or addendum to the initial lease contract; in the event that the initial lease contract was notarized and registered, the assignment contract shall also be notarized and registered.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

The rent payment and all related expenses are tax deductible for the tenant if he can demonstrate that he uses the premises in the frame of his commercial activities.

The expenses incurred by the tenant on improvements of the leased premises (provided that they are not reimbursed by the landlord) are tax deductible in the amount not exceeding 10% of the total book value of premises.

In case of commercial lease without following buyout of the premises, only the landlord is entitled to depreciate the premises. As there is no fixed period for depreciation of premises the period of depreciation depends on rates of depreciation opted for by the landlord.

Lease payments are subject to income tax regulations: the tenant records the rent payments as his gross expenditures, whereas the landlord records the rent payments as his gross income.

Moreover, lease operations are subject to VAT taxation: the landlord is obliged to account VAT on the lease in case if he is registered as a VAT payer (which in certain cases is mandatory). Thus, even though the tenant would be a foreign legal entity, he might be

subject to pay VAT on the rent payments; in addition, in the event that he is registered as a VAT payer, the tenant will in principle be entitled to VAT credits in the amount of the paid VAT.

X. USA - Wolf Block Schorr and Solis-Cohen LLP

[Note: This outline is based on general principles of US common law. Certain responses might vary from state to state.]

1) Definition of commercial lease (what kind of premises are included)

Most states regulate the form of residential leases, namely, leases for a single-family residential unit. All leases other than residential leases, whether the property is office, industrial, warehouse, retail, vacant land or other non-residential use, would be considered a commercial lease.

2) Mandatory requirements related to the lease contracts (e.g. form, specific issues to be concluded)

Pursuant to the Statute of Frauds that is in effect in most states of the US, a lease having a term of more than two years must be in writing in order to be enforceable.

There is no required form of a commercial lease, and I am not aware of any requirements for mandatory provisions in a commercial lease (although it is conceivable that some states may have such requirements).

By contrast, in most states residential leases are required by law to be in a certain form or to be written in "plain language" or to contain certain provisions, but these are not addressed in this memorandum.

3) Review of the common restrictions and obligations a tenant can expect to have imposed

The landlord and tenant are free to negotiate all obligations and restrictions. Typical obligations in a lease would include the following:

- The obligation to pay rent.
- The obligation to use the property only for certain specified uses.
- The relative responsibilities of the landlord and tenant with respect to maintenance and repairs.
- Responsibilities of the tenant regarding the payment of real estate taxes, insurance premiums, utilities and other expenses of operating the building.
- Restrictions on alterations or improvements of the building.
- Restrictions on assignment of the lease or total or partial subleases of the premises.
- Requirements that the tenant must indemnify the landlord from damages and losses caused by the actions or inactions of the tenant.
- Occasionally (in retail leases), the lease will prohibit the landlord from entering into other leases for space in the same shopping center or building that might compete with the business of the tenant.

- Possible rights of the tenant to expand into additional space, or to be offered the first right to lease space being offered to other tenants. Occasionally a tenant may also be granted a right to purchase the property, or a first right to match other offers.
- Rights and obligations regarding fire and other damage to the building.

4) Whether and how the operating expenses of the property are passed to the tenant(s)

Again, these terms can be freely negotiated. Types of leases and arrangements regarding building expenses can vary as follows:

- A "gross lease," in which the tenant pays only a fixed rent and the landlord bears all costs of operating the building.
- A "base year" lease, in which the tenant pays a fixed rent plus annual contributions for operating costs, real estate taxes, utilities, insurance, etc. to the extent the cost of these items exceeds their cost in a "base year", which is usually the calendar year prior to the year in which the lease is entered into.
- A "net lease" in which the tenant pays all or most of the costs of owning and operating the building. When the obligations of the tenant are at their most extreme, the lease is called a "net net net lease" or "triple net lease". Even in these cases, however, it is landlord who would be responsible for structural problems of the building or replacement of the roof.

Where the tenant occupies only a portion of the building, the tenant will typically have a designated percentage of the building expenses, based on the proportion of the building occupied by that tenant.

5) Provisions for the payment of rent including the review period, and increasing the rent

The landlord and tenant are free to negotiate whatever provisions they deem appropriate regarding rent. For a lease that has a term of more than 2-3 years, it is typical that the rent will increase in subsequent years. In some cases the rental increase is in fixed increments. In other cases the rental increase is formulaic based upon changes in a cost of living index such as the Consumer Price Index.

6) Term of lease, conditions of termination

The parties can freely negotiate the term of a lease. It is not unusual for a lease to contain options for the tenant to extend or renew the term of the lease for one or more additional periods, at a rent specified in the lease or at a fair market rent to be determined by appraisal at the conclusion of the initial lease term. Other termination rights occasionally seen in leases are as follows:

- Occasionally a tenant has the voluntary right to terminate a lease before the expiration of the term, sometimes with a requirement that the tenant pay a termination payment to the landlord. Also, it is not unusual for the tenant to have the right during the term to reduce (or expand) the size of the premises covered by the lease.

- The landlord will have the right to terminate the lease in the event of a default by the tenant.
- Usually the lease will provide termination rights to either or both of the landlord and tenant in the case of a fire or casualty resulting in destruction of a material portion of the building, or in the case of an involuntary taking of the property by governmental power.

7) Sublease; assignment of a lease

There is a wide range of possible provisions on this topic, depending on the nature of the transaction and on the relative bargaining power of the landlord and tenant. In the case where the tenant is a very substantial company, the tenant may have the right to sublet all or any portion of the property freely, without the consent of the landlord, provided that the tenant remains liable for the performance of all obligations under the lease.

It is more typical, especially for a multi-tenant building, that the landlord has the right to approve assignments and subleases. In many cases a standard of approval will be negotiated, such as the creditworthiness of the successor tenant. In many cases the landlord is able to require that any profit made by the tenant on a sublease or assignment must be paid to the landlord or shared in some proportion with the landlord.

8) Important tax issues (e.g. technical appreciation of the premises and deductibility for tenants, etc.)

I am not a tax expert, and the tax considerations vary from state to state. For example, in Pennsylvania a lease having a term of 30 years or more is taxable under the real estate transfer tax laws in the same manner as a conveyance of the fee estate of the property.

Generally, for US federal income tax purposes, the payment of rent by the tenant is deductible as an expense by the tenant, and the receipt of rent by the landlord is included as ordinary income. Certain leases of long duration are deemed to be not operating leases, but "capital leases", meaning that the tenant is treated for tax and accounting purposes as having the primary risks and rewards of ownership of the property and thus is treated as the owner of the building. In such a case, the depreciation of the building is deductible by the tenant, and the value of the property is shown on the balance sheet of the tenant.

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