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# Overview of retail lease agreements

Selected Countries

November 2017

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# A CMS perspective

This guide summarises the main provisions applicable to retail lease agreements across a number of the CMS jurisdictions.





# Applicable law

## Albania

Leases are regulated by the Law n. 7850, dated 29.7.1994 "Albanian Civil Code" (K.C.).

## Austria

Leases are regulated by:

- The Austrian Tenancy Act (MRG) which is tenant friendly with a broad scope of application. Partial application of the MRG is possible, e.g. for certain newly built buildings.
- The Austrian Civil Code (ABGB): with a subsidiary scope of application.

The leasing of business premises may be subject to the MRG, depending on issues such as the year of construction or the building specifications. This question has to be assessed on a case-by-case basis.

## Belgium

Leases are regulated by the law of 30 April 1951 on retail leases, which provides mandatory rules from which the parties cannot deviate (the Law). For all issues that are not explicitly governed by the Law – such issues being limited in practice and relating, for example, to rent guarantees, maintenance and repair obligations, indexation and insurance – the Belgian Civil Code will apply, taking into account that most of its provisions are not mandatory. The competence to regulate retail leases in Belgium was recently transferred to the 3 regions; one may therefore expect changes in the near future".

## Bosnia and Herzegovina

The leasing of retail premises is governed by the Bosnia and Herzegovina Law on Leasing of Business Buildings and Premises (LLBP) and the Obligation Act ("Official Gazette of the Socialist Federal Republic of Yugoslavia" no. 29/78, 39/85, 45/89, 57/89, "Official Gazette of RBiH" no. 2/92, 13/93, 13/94 and "Official Gazette of FBiH" no. 29/03, 42/11) (the "Obligation Act").

The LLBP is a "*lex specialis*", while the Obligation Act is a "*lex generalis*" which provides general rules. As a consequence, the provisions of the LLBP prevail, given that the provisions of a special law derogate from the provisions of a general law.



There are, however additional requirements for lease agreements where the landlord is a public authority (e.g. the State, an autonomous province, a municipality, or a public entity). Such lease agreements are subject to specific execution procedure provided for under the Law on Public Assets (Official Gazette of the Republic of Serbia, no. 72 / 2011, 88 / 2013, 115 / 2014, 104/2016 – other law and 108/2016). In most such cases, the landlord is obliged to conduct a tendering procedure and obtain consent for conclusion of the lease agreement from the competent authority (e.g. Republic Property Directorate). However, lease agreements where the landlord is a public authority could be concluded by direct negotiation as well, in the event specific situation falls under designated exceptions to the tendering procedure. Generally, the rights and obligations of the parties in these cases are also governed by the Law on Contracts and Torts, with the few specific rules provided for under the Law on Public Assets. The situations where the landlord is the public entity is not very common for retail lease agreements.

### Bulgaria

Leases are regulated by the Bulgarian Contracts and Obligations Act, the Bulgarian Commercial Act, the Bulgarian Value-Added Tax Act and the Bulgarian Code of Civil Procedure.

### China

Leases in China are mainly regulated by:

- The Contract Law of the People's Republic of China (the PRC Contract Law).
- The Law of the People's Republic of China on the Administration of Urban Real Estate (the PRC Urban Real Estate Law).
- The Interpretation on Several Issues Concerning Specific Application of Law in the Trial of Cases on Disputes over Lease Contracts of Urban Houses by the Supreme People's Court (the Lease Contract Interpretation).

Depending on the location of the leased property, the retail lease agreement may in addition be subject to certain local regulations.

### Colombia

There are three applicable legal regimes for lease agreements in Colombia.

The Civil Code regulates the general legal framework of lease agreements. It regulates some mandatory issues and works as a supplementary rule regarding all the

issues not governed by any other specific law (such as the Commercial Code or the Urban Housing regulation) or the contract.

The Commercial Code regulates the lease of commercial establishments (a set of goods organized by businessmen to achieve company purposes).

The Urban Housing Lease has a special regulation under Law 820/2003.

### Croatia

Leases are regulated by the Lease and Sale of Business Premises Act (Lease Act). What is not covered by the Lease Act is regulated by the Civil Obligations Act (the Obligations Act).

The rules apply in the following order:

- provisions of specific retail lease agreements (provided that such provisions are not contrary to the mandatory provisions of the Lease Act and the Obligation Act);
- provisions of the Lease Act;
- provisions of the Obligations Act.

### Czech Republic

Act No. 89/2012 Coll., the civil code, as amended (the Civil Code).

### Dubai, United Arab Emirates

Leases of property in onshore Dubai are regulated by Dubai Law 26 of 2007 Regulating the Relationship Between Landlords and Tenants in the Emirate of Dubai, as amended by Dubai Law 33 of 2008. In addition, rent cap legislation was introduced by Law 43 of 2013 which not only applies to onshore Dubai but also applies in the freezone of the Dubai International Financial Centre. Other than Dubai Law 43 of 2013, the landlord/tenant relationship in the DIFC is largely unlegislated and matters generally rest on contract. There are some minor provisions in DIFC Real Property Law No. 4 of 2007 which relate to leases in the DIFC. Federal Law No. 5 of 1985 on the Civil Transactions Law of the UAE (the Civil Code) also applies to onshore Dubai.

### France

The law applicable to retail lease agreements is tenant-friendly in that it aims to ensure the stability of the commercial operation in the premises by granting, under certain conditions, the tenant the right to renew the lease or receive a termination indemnity.



The law applicable to retail leases was reformed by the Pinel Act which was promulgated on 18 June 2014 (the Pinel Act).

Retail lease agreements are mainly governed by Articles L. 145-1 to L. 145-60 of the French Commercial Code and Article 1708 to 1762 of the French Civil Code.

### Germany

German Civil Code (BGB).

### Hungary

Leases are regulated by Act V of 2013 on the Civil Code and Act LXXXVIII of 1993 on the leasing and alienation of flats and other premises.

### Italy

Leases are regulated by:

- Law 392/78 (the Lease Law);
- the Italian Civil Code (Articles 1571 to 1606)

The Lease Law was amended in 2014 so that all of its mandatory provisions, which are originally designed to protect the tenant, may now be derogated from – including to the benefit of the landlord – by written agreement between the parties, but only in the case of so-called “large leases”, i.e. leases with an annual rent exceeding EUR 250,000. The comments in this guide are made on the assumption that there is no derogation from the provisions of the Lease Law.

This guide is limited to lease agreements for retail properties and does not cover business leases (*“affitto di azienda”* or *“affitto di ramo d’azienda”*).

### Luxembourg

Retail lease agreements are governed by Articles 1762-3 to 1762-8 of the Luxembourg Civil Code as well as the common rules applicable to all leases.

On 03 September 2015 the Bill of Law number 6864 (the Bill of Law) which will amend the law applicable to retail leases was introduced to the Chamber of Deputies and should be voted on during the last quarter of 2017. The Bill of Law is still subject to amendments.

The current legislation to retail lease agreements is not really tenant-friendly, as the lack of protection for the tenant may lead to abusive situations, notably due to the fact that the protection of the preferential right of renewal is very limited.

### Monaco

Leases for premises in which a commercial activity is being held for at least three consecutive years are regulated by law n°490 of 24th November 1948 on commercial, industrial or art craft use.

### The Netherlands

Retail lease agreements are usually executed based on an ROZ model (the ROZ is the Real Estate Council of the Netherlands). The input is therefore based on the Dutch Civil Code and the latest ROZ model for retail space. As some of the stipulations arising from the Dutch Civil Code are semi-mandatory – meaning that the tenant can declare stipulations against its interests to be void, unless the court has given its approval to said stipulations – the ROZ model does not deviate from the Dutch Civil Code.

### Poland

Polish Civil Code.

### Portugal

Retail Lease Agreements (‘Non-Residential Leases’, according to the Portuguese Civil Code), are regulated by the Portuguese Civil Code and Law 6/2006, with the amendments arising from Law 31/2012, of 14 August and from Law 79/2014, of 19 December, as well as the amendments arising from the Law 42/2017 of 14 June and from Law 43/2017, of 14 June.

Portuguese law is divided into residential and nonresidential lease agreements. Within the residential lease agreements, there are two types of leases: (i) fixed-term and (i) open-ended. Parties are free to establish whatever they deem more appropriate in the agreements, as non-residential lease agreements are under-regulated in the law. Nevertheless, in certain cases, the rules of residential lease agreements can be applied alternatively to non-residential lease agreements.

### Peru

The Peruvian legal framework for retail lease agreements is the Civil Code (CC).

### Romania

The Romanian legal framework for retail lease agreements was modified on 1 October 2011 when a new Civil Code was enacted. Without completely amending the old framework, the new Civil Code brought a more modern and commercially-oriented perspective regarding lease agreements. Commercially, the Romanian market usually follows the triple-net institutional standards of lease agreements, whereby all expenses incurred by the landlord (e.g. insurance, land tax, costs for maintenance of the common areas, project management fees, etc.) are recovered from the tenants through the service charges.

The matter is regulated by the Romanian Civil Code and, in particular, by Articles 1777–1828, Article 902 and Article 1271.

### Russia

Leases are regulated by the Civil Code of the Russian Federation (the Civil Code) and other Russian laws and regulations (for example, the Federal Law on State Registration of Rights to Immovable Property and Transactions Therewith and the Tax Code of the Russian Federation).

## Serbia

Serbian legislation does not differentiate between different types of leases (e.g. commercial, retail, residential), meaning that all those types of leases are regulated by the same law – the Law on Contracts and Torts (*Official Gazette of the Socialist Federal Republic of Yugoslavia, nos. 29/78, 39/85, 45/89 – Decision of the Constitutional Court of Yugoslavia and 57/89, Official Gazette of the Federal Republic of Yugoslavia, no. 31/93 and Official Gazette of Serbia and Montenegro, no. 1/2003 – Constitutional Charter*).

There are, however additional requirements for lease agreements where the landlord is a public authority (e.g. the State, an autonomous province, a municipality, or a public entity). Such lease agreements are subject to specific execution procedure provided for under the Law on Public Assets (*Official Gazette of the Republic of Serbia, no. 72 / 2011, 88 / 2013, 115 / 2014, 104/2016 – other law and 108/2016*). In most such cases, the landlord is obliged to conduct a tendering procedure and obtain consent for conclusion of the lease agreement from the competent authority (e.g. Republic Property Directorate). However, lease agreements where the landlord is a public authority could be concluded by direct negotiation as well, in the event specific situation falls under designated exceptions to the tendering procedure. Generally, the rights and obligations of the parties in these cases are also governed by the Law on Contracts and Torts, with the few specific rules provided for under the Law on Public Assets. The situations where the landlord is the public entity is not very common for retail lease agreements.

## Slovakia

The leasing of premises is regulated by two main Acts of Parliament in the Slovak Republic: Act No. 116/1990 Coll. on Leasing and Subleasing Business Premises (hereinafter referred to as the “Leasing of Business Premises Act”) and Act No. 40/1964 Coll. Civil Code (hereinafter referred to as the “Civil Code”). The Leasing of Business Premises Act applies to lease relationships between landlord and tenant. Only if some matters are not regulated by this special Act will the general provisions of the Civil Code about leases apply.

## Slovenia

The matter is regulated by the Business Buildings and Business Premises Act (hereinafter ZPSP), the Obligation Code (hereinafter OZ) and the Value Added Tax Act (hereinafter ZDDV).

## Spain

Retail lease agreements (non-residential leases according to the Spanish Urban Lease Act) are, in the first place, imperatively governed by titles I and IV of the Spanish Urban Lease Act. Any other aspects not included in those titles of the Act are regulated by agreement between the parties. In the absence of an agreement between the parties, title III of the Spanish Urban Lease Act and the Spanish Civil Code apply.

## Switzerland

The matter is regulated by the Swiss Code of Obligations (the CO) and the Ordinance on the Leasing and Usufructuary Leasing of Residential and Business Premises (the OLRB).

## Turkey

Leases are regulated under the Turkish Code of Obligation numbered 6098 (TCO).

## Ukraine

The matter is regulated by the Civil Code of Ukraine dated 16 January 2003 No. 435-IV and the Commercial Code of Ukraine dated 16 January 2003.

## United Kingdom

In England and Wales leases are regulated by English common law and in particular by the Landlord and Tenant Act of 1954. In Scotland, leases are based on the common law.

There is some protection for retail tenants under the Tenancy of Shops (Scotland) Act 1948.

The law of Northern Ireland is closely related to the law of England and Wales.





# Duration

## Albania

According to the K.C., lease agreements shall not be executed for a period longer than thirty years, unless otherwise provided by the law.

Where it has been executed for a longer period or for an indefinite period, it is valid only for the above duration.

Lease agreements for residential buildings cannot be executed for a period exceeding five years.

The time period for chattels made available as equipment for an immovable property item shall be equal to the rental duration of the latter.

## Austria

There is no minimum or maximum duration. Most retail leases in practice are usually between five and ten years and often contain extension options.

## Belgium

As a rule, the initial retail lease agreement must have a minimum duration of nine years. In the case of a sublease, the duration of the sublease agreement may not exceed the duration of the main lease.

In the event that the duration of the lease exceeds nine years, the lease agreement must be executed in the form of a notary deed in order to render the duration exceeding nine years enforceable against third parties (i.e. a potential buyer of the leased premises).

## Bosnia and Herzegovina

There is no minimum or maximum duration. Leases can therefore be granted for a limited or an unlimited period, but the term usually varies from one to five years. It is also standard practice for a renewal provision to be included in a lease agreement.

## Bulgaria

There is no minimum or maximum duration as far as retail leases (such as retail leases) are concerned.



In principle, the maximum duration of leases is capped at:

- ten years when the agreement is concluded by the property owner itself, and
- three years when the agreement is concluded by a representative of the property owner (e.g. a proxy or any other type of legal representative) and no authorisation for entering into long term lease agreements has been granted by the property owner.

However, retail lease agreements may be concluded for a term longer than ten years. If the landlord is a company (as opposed to an individual), it is common practice (and advisable) for its main governing body (the company's sole beneficial owner, the general assembly, etc.) to adopt an express resolution endorsing the specific long-term lease in order to overcome the three-year limitation mentioned above.

### Colombia

There is no rule that regulates a minimum or maximum duration term for retail leases. Despite this, if the parties do not include the duration in the contract, it will be understood, for all effects, that the lease will last indefinitely.

In the Urban Housing lease, if the parties to the contract do not expressly stipulate the duration of the contract, Law 820 provides that the duration is one year.

### China

There is no statutory minimum duration. The maximum duration is twenty (20) years. In case of expiration of the lease term, the lease agreement may be renewed upon agreement, but the renewed lease term shall not exceed 20 years as of the date of renewal.

Where a lease term is over six (6) months, the lease agreement shall be made in written form. If the parties do not conclude an agreement in written form, the lease shall be deemed as a lease with an indefinite term.

### Croatia

There is no mandatory minimum or maximum duration.

Retail lease agreements can be concluded for a definite or an indefinite term, the latter being terminated by serving a period of notice usually agreed by the parties. In the absence of such an agreement, the Lease Act provides for a 30-day notice period.

In addition, the Lease Act prohibits any party from terminating indefinite lease agreements within one year of the date of conclusion of the lease agreement, unless otherwise agreed by the parties.

In practice, the duration of retail lease agreements commonly varies from one to five years (and from ten to fifteen years for anchor tenants in shopping centres).

In order to establish a long-term relationship between a landlord and a tenant beyond the initial lease term, a future option for extension of the lease is usually agreed between the parties.

### Czech Republic

There is no minimum or maximum duration. Retail lease agreements are usually concluded for a period of five to seven years.

### Dubai, United Arab Emirates

leases generally must be no shorter than 6 months (in order to be registerable) but there is no maximum. In practice, retail leases tend to be between 1 and 5 years with long leases (over 10 years) being uncommon due to the increased registration costs.

### France

The minimum duration is nine years and the maximum duration is 99 years. In practice, most retail leases are entered into for an initial term of nine years.

### Germany

There is no minimum duration. The maximum duration is 30 years.

### Hungary

Generally, the lease term is between three and ten years. The most common term is five years.

### Italy

The minimum duration varies according to the activity to be carried out in the leased premises by the tenant:

- six years, if the premises are used to carry out any commercial or professional activities (including offices, retail, industrial, etc);
- shorter terms may be agreed if the activity to be carried out in the premises is, by its nature, a temporary one (e.g. relocation of a business pending refurbishment of premises that are usually occupied).

The maximum duration is 30 years.



## Luxembourg

### Current legislation

Currently, duration is not legally defined. It is left to the parties' discretion. But usage applicable where the agreement is silent is set at 3 years.

Nevertheless, market practice has set the duration of retail lease agreements to 3 – 6 – 9 years, renewable by a period of three years.

### Bill of Law

The last version of the Bill of Law provides that the retail lease agreement may be concluded for a fixed or indefinite period. If the agreement does not mention any duration, it is deemed to be concluded for an indefinite period.

## Monaco

Lease agreements will typically have durations of three, six or nine years, although the maximum duration under the initial lease (prior first renewal) is not limited to these durations.

Parties may terminate the lease at the expiry of each period subject to prior notices and under the conditions set by the law.

## The Netherlands

In the event that the parties agree to a lease term that is not longer than two years, the lease agreement will terminate at the end of the agreed lease term.

If the parties agree to a lease term of between two and five years, the lease agreement applies for a period of five years by operation of law. Unless the parties agree on termination of the lease agreement by mutual consent, the tenant terminates the lease agreement towards the end of the initial term or the court rules in favour of an action to terminate the lease agreement by the landlord, the lease agreement will renew by operation of law for a subsequent term of five years.

Such court action by the landlord can only be successful on limited statutory grounds.

If the duration of the initial lease term is longer than five years but shorter than ten years, the agreed initial lease term applies and it will renew by operation of law with a term of ten years minus the agreed initial lease term.

Unless the parties agree on termination of the lease agreement by mutual consent, the tenant terminates the lease agreement towards the end of the renewal term or the court rules in favour of an action to terminate the lease agreement by the landlord, the lease agreement will renew by operation of law for an indefinite period of time. Such action by the landlord can only be successful on limited statutory grounds, although they are broader than at the end of the first five-year term. This is a semi-mandatory statutory provision.

## Poland

The duration of the retail lease agreement is freely negotiated between the parties. There is no minimum duration for retail lease agreements, but its initial term may not exceed the maximum duration of 30 years. In cases in which parties do not expressly specify the duration of the retail lease agreement, the law establishes that lease will have duration of five years.

## Portugal

The duration of the retail lease agreement is freely negotiated between the parties. Nevertheless, in cases where the parties are unable to agree on the duration of the agreement or do not expressly specify a duration, the lease will have a duration of five years. There is no minimum duration for retail lease agreements, but its initial term may not exceed the maximum duration of 30 years.

As parties can freely establish the rules regarding termination of the lease agreement, the duration of the lease is not a legal key issue. In this sense, currently there is not a "usual period of duration" of retail lease agreements; this matter is established by the parties according to the business to be developed at the leased property and to the rules settled for termination of the lease.

## Peru

There is no minimum and a maximum of 10 years.

It should be taken into account that the lease may be terminated, in accordance with Article 1705 of the CC, in the following cases:

- When the landlord is defeated in court over the right he had.
- If it is deemed necessary for the preservation of the property that the tenant returns it in order to repair it.
- Due to the total destruction or loss of the leased property.
- In the event of expropriation.
- If, within ninety days of the tenant's death, his or her heirs who use the property inform the landlord that they will not continue the lease.

Furthermore, other legal precepts exist in Peruvian legislation, such as the right of usufruct and surface rights, which are granted for longer periods of time than those of the lease, and which also allow the use, enjoyment, and exploitation of retail projects, among others.

The right of usufruct does not have a minimum term and can be granted for 30 years at most unless it is a real estate property of the State with historic heritage value, or subject to restoration with funds provided by persons or legal entities, in which case the right can be established for up to 99 years. The usufruct right grants the beneficial owner the right to use and enjoy the property. (Art. 1001 of the CC).

Surface rights do not have a minimum term, and they can be granted for a maximum term of 99 years. Such rights grant the surface right holder the separate property of the buildings constructed by the tenant for its exploitation and for the term of the right granted. (Art. 1030 of the CC).

### Romania

There is no minimum duration. The maximum duration is 49 years. Any lease concluded for more than 49 years is reduced automatically to the maximum duration of 49 years.

### Russia

There is no minimum or maximum duration. If a lease agreement does not specify a term, then it is deemed to have been concluded for an indefinite period.

### Serbia

The Law on Contracts and Torts provides that a lease agreement may be concluded for either a definite or an indefinite term. But it does not prescribe the minimum or maximum duration of agreements concluded for a definite term.

Lease agreements concluded for a definite term are considered to be converted into a lease for an indefinite term if the tenant continues to use the leased premises after the expiry of the initially agreed definite term.

However, the lease agreement concluded for a period of 10 years or more, could be annotated in the relevant real estate registry.

### Slovakia

Slovak law does not provide any general limitation on the duration of retail leases. The term of the lease should be agreed by the parties in the lease agreement concerned.

According to the Civil Code, if a lease agreement does not specify a term, then it is deemed to have been concluded for an indefinite period.

### Slovenia

There is no minimum duration. The maximum duration is stipulated as indefinite.

### Spain

There is no set minimum or maximum duration. The parties are free to agree these periods at their own discretion.

If a term is not definite in the lease agreement, the lease is deemed to be signed for yearly periods if an annual rent has been fixed, for months if the rent is monthly, or for days if it is daily. In all such cases, the lease expires when the period has lapsed, without the need for any special action by the parties.

Notwithstanding the above, the typical length for retail leases is between ten and 15 years for large surface areas and between five and ten years for retail premises, without prejudice to the right of either party to terminate the lease agreement early by giving prior written notice to the other party.

### Switzerland

There is no minimum or maximum duration.

The lease may be concluded for an indefinite or a definite term.

Lease agreements that cannot be terminated by either party for a period of more than 25 to 30 years might be deemed by the court to be excessive and therefore reduced to a duration that the court does not deem excessive.

Retail leases are usually for a period of at least 10 years.

### Turkey

There is no minimum or maximum duration. Leases can therefore be granted for a limited or an unlimited period of time. In practice, most retail leases are usually concluded for a period of five to ten years and mostly contain extension options.

### Ukraine

There is no minimum or maximum duration. The parties are therefore free to determine the term of the lease at their own discretion.

If the lease is concluded for three or more years, it must be notarised and the tenant's lease title must be registered in the State Registry of Proprietary Rights to Immovable Property.

### United Kingdom

There is no minimum or maximum duration in England and Wales. The parties are therefore free to determine the term of the lease at their own discretion.

Retail leases vary from periods of five to 25 years. In England the tenant has a right to renew under the law, unless the landlord can prove statutory grounds or unless the renewal right has been excluded by agreement before the lease agreement starts. In Scotland leases cannot be longer than 175 years.





# Early termination by the landlord

## Albania

The landlord has the right to terminate the lease agreement at any time if:

- the tenant uses the premises in a manner contrary to what was set out in the lease agreement or causes considerable damage to the premises;
- the tenant does not pay due rent within the period envisaged by the lease agreement as from the date of a written notice;
- the landlord, due to reasons for which he cannot be held liable, cannot use the premises in which he used to perform his activities and, therefore, intends to use the premises occupied by the tenant.

Finally, the lease agreement may be terminated (i) for reasons which the parties have determined themselves in the lease agreement and (ii) by mutual agreement between the parties.

## Austria

### MRG

- Definite period: the lease may be terminated by the landlord in the event of vastly disadvantageous use by the tenant or delay in the payment of the rent.
- Indefinite period: the lease may only be terminated by the landlord for a compelling cause as legally defined and exhaustively listed in the MRG.

### ABGB

- Definite period: the lease may be terminated by the landlord in the event of vastly disadvantageous use by the tenant, delay in the payment of the rent or destruction of the whole building.
- Indefinite period: ordinary termination is possible (usually, termination dates and notice periods are stipulated in the agreement; if not, the notice period is three months, and the termination dates are at the end of each quarter).

## Belgium

If the lease agreement specifically provides such, the landlord may terminate the lease at the expiry of each three-year period, with a one-year notice period, provided that the landlord wishes to conduct a business in the leased premises for himself or his family, either directly or through a private company. In such a case, the landlord must, however, pay the tenant an eviction indemnity equal to two years' rent.

### Bosnia and Herzegovina

According to the LLBP, lease agreements concluded for an indefinite period can be terminated by mutual agreement of the parties and by a notice of termination. Termination of lease agreement by a notice of termination is only possible upon expiry of a one-year period starting from the date when the lease agreement was entered into. Unless otherwise agreed upon, the notice period six months.

The termination by a notice on termination of the lease agreement concluded for indefinite period is executed via court. The lease agreements concluded for a definite period cease to exist by expiration of agreed period of the agreement.

A landlord may withdraw from a lease agreement at any time, regardless of the contractual or legal provisions in that respect:

- if the tenant uses the premises continuously in a manner that is contrary to the lease agreement or causes considerable damage to the premises, without the necessary diligence, after a formal notice to remedy has been sent to the tenant by the landlord;
- if the tenant does not pay the rent within two months after a formal notice to remedy was sent to the tenant by the landlord.

In that case, the landlord is obliged to deliver a written statement to the tenant determining the date on which the premises must be handed over to the landlord (at least 30 days in the future). If the tenant does not hand over the premises within this period, the landlord may request the judicial handover of the premises.

### Bulgaria

The landlord may request early termination in cases where the tenant is in breach of contract (e.g. failure to pay the rent or service/occupation charges, to use the property for the agreed purpose, to look after the property with due care, etc.). If the agreement is for an indefinite term the landlord may request early termination by one month's prior written notice to the tenant.

The parties to the lease agreement may also agree other specific grounds for early termination by the landlord.

### China

According to the PRC Contract Law and the Lease Contract Interpretation, the landlord is entitled to

terminate the lease agreement early:

- Where the tenant fails to use the leased property in the prescribed methods or in light of the nature thereof, thus causing losses to the leased property; or
- Where the tenant sublets the leased property without the consent of the landlord; or
- Where the tenant fails to pay or delays the payment of the rent without justified reasons. In this case, the landlord may require the tenant to pay the rent within a reasonable time limit. If the tenant fails to pay the rent within the time limit, the landlord may terminate the contract.

In addition, as a general rule, a retail lease agreement can be terminated by either party at any time if the other party fails to fulfil its obligations rendering it impossible to realize the objectives of the agreement. Also, a retail lease agreement may be terminated for reasons which the parties have defined in the underlying lease agreement or by mutual agreement between the parties.

### Colombia

Regulation does not specify a landlord's right of early termination, except in the case of a breach of contract by the tenant. Nevertheless, parties may establish such a right within the contract.

However, in the Urban Housing Lease, the landlord may terminate the contract before the stipulated date, without having to compensate the tenant, if one of these conditions is satisfied:

- The tenant does not pay the stipulated rent.
- The tenant does not pay the public utilities bills and as a consequence are temporarily disconnected by the Municipality.
- The tenant subleases the property without the landlord's consent.
- The tenant constantly disturbs the peace and tranquility of the neighbours and/or commits criminal activities.
- The tenant builds facilities without the landlord's consent or seriously damages the property.
- The tenant violates the building's bylaws.

### Croatia

The landlord has the right to terminate the lease agreement at any time if:

- the tenant uses the premises in a manner contrary to what was set out in the lease agreement or causes considerable damage to the premises;



- the tenant does not pay due rent within a period of 15 days as from the date of a written notice;
- the landlord, due to reasons for which he cannot be held liable, cannot use the premises in which he used to perform his activities and, therefore, intends to use the premises occupied by the tenant.

In addition, the retail lease agreement, whether concluded for an indefinite or a definite term, can be terminated by either party at any time if the other party does not fulfil its obligations.

Finally, the lease agreement may be terminated (i) for reasons which the parties have determined themselves in the underlying lease agreement and (ii) by mutual agreement between the parties.

### Czech Republic

Usually, the landlord is entitled to terminate a retail lease agreement if (i) payment by the tenant is delayed, (ii) the tenant breaches the lease, or (iii) the tenant is insolvent.

### Dubai, United Arab Emirates

There are statutory provisions which allow landlords to terminate leases early if (i) the tenant is in repeated breach which has not been cured following notice to do so, (ii) the tenant sub-leases the property without the consent of the landlord, (iii) the tenant leaves the property unoccupied with no valid reason for more than 30 consecutive days, or 90 non consecutive days within the same year, unless otherwise agreed, (iv) the property is condemned, or (v) competent government authorities require demolition or reconstruction of the property as per urban development requirements in Dubai. The parties are also free to agree contractual rights of early termination.

### France

The possibilities for early termination by the landlord are extremely restricted. The landlord may terminate the lease upon expiry of each three-year period only in the circumstances listed in Articles L.145-18, L.145-21, L.145-23-1 and L.145-24 of the French Commercial Code to build or rebuild the premises or to carry out certain restoration work, for example.

### Germany

There is no possibility (other than due to the tenant's breach) of early termination by the landlord for lease agreements entered into for a definite period.

In the case of lease agreements entered into for an indefinite period, both parties may terminate at the end of any calendar quarter, subject to six months' written notice.

### Hungary

Early termination by the landlord is only possible in the case of a breach of contract by the tenant.

### Italy

There is no landlord's right of early termination except in the case of:

- breach of the lease agreement by the tenant;
- opposition of the landlord to the renewal of the lease (limitations apply for the first renewal).

### Luxembourg

Current legislation

The landlord may terminate the lease immediately in the event of non-execution of the contractual obligations of the tenant.

In agreements concluded for an indefinite period, the landlord is entitled to terminate the lease by observing a six-month notice period if no other period of notice is provided in the lease agreement. The landlord may terminate the lease immediately in the event of non-execution of the contractual obligations of the tenant.

Bill of Law

The last version of the Bill of Law expressly provides that the landlord may terminate the lease immediately in the case of non-execution of the contractual obligations of the tenant.

The landlord may terminate the lease by observing a six-month notice period in the cases of:

- personal occupation by the landlord;
- abandonment of the lease for similar commercial purposes; and
- reconstruction or transformation of the leased building.

### Monaco

Lease agreements will have a duration of three, six or nine years. The parties may terminate the lease at the expiry of each three-year period subject to prior notices and under the conditions set by the law.

### The Netherlands

The lease agreement may be terminated by the landlord only in the case of unforeseen events that are not at the landlord's risk and are of such grave nature that the expect the continuation of the lease agreement.

In that case, a court needs to grant a claim to set aside the lease agreement, which will only happen in exceptional circumstances.

This is a semi-mandatory statutory provision.

### Peru

According to the provisions of Article 1697 of the CC, the Parties may conventionally agree to the early termination of the lease, among others, for the following reasons:

- If the tenant does not pay the rent for two months and 15 days. If the rental periods are longer than a





month, then after one period plus 15 days of non-payment. If the periods are shorter than a month, then two periods plus 15 days of non-payment.

- If the property is used for something other than what it was leased for.
- For subleasing or assigning the lease to a third party against the express agreement, or without the written consent of the landlord.
- If the tenant fails to meet any of his or her obligations.

### Poland

The landlord may terminate lease agreements concluded for a definite term if the tenant is in arrears regarding payment for two rental periods despite a grace period of one month.

Additionally, the landlord may terminate the lease agreement with immediate effect if (i) the tenant uses the premises contrary to the lease or contrary to the purpose of the premises and does so despite written notice from the landlord, (ii) the tenant neglects the premises to such an extent that the premises are at risk of being damaged or (iii) the tenant grossly or persistently violates the house rules or, by its inappropriate behaviour, renders the use of other premises burdensome.

The lease agreement may provide for other specific possibilities for early termination by the landlord.

### Portugal

Parties are free to stipulate the rules that apply to the early termination of retail lease agreements. Should the parties not provide for the early termination's regime, the law establishes that the rules stated for residential

lease agreements shall apply, which means the following:

- If the lease agreement is submitted to a fixed term: the landlord cannot terminate the lease before the end of its initial term or the end of each renewal period.
- If the lease agreement is submitted to an indefinite period: the landlord can terminate the lease based on: (i) works of remodelling or profound restoration; or (ii) without any justification, at any time, by giving written notice to the tenant within at least two years before the date at which the lease should be considered terminated.

Furthermore, if the parties do not expressly specify the duration of the retail lease, the lease is considered to be submitted to a fixed term of five years and landlord cannot terminate the lease before the end of its initial term.

The landlord may also terminate the agreement by means of a written communication in case of the following breaches by the tenant: (i) if the tenant opposes works ordered by public authorities or (ii) in the case of a delay of two or more than three months in the payment of rents, charges or other expenses arising per se out of the lease agreement.

### Romania

There is no legal provision granting the landlord the right to terminate the lease agreement early at will. However, the landlord can either terminate the lease agreement:

- due to the tenant's breach of contractual obligations, based on the lease agreement and/or the Civil Code; or
- at will, provided that such a right was granted specifically to the landlord in the lease agreement.

As per market practice, lease agreements stipulate the tenant's material obligations. If any of these material obligations are breached, the landlord is entitled to terminate the lease.

In other cases, any breach of undertaking by the tenant could give the landlord grounds for termination. Usually, such breaches lead to termination upon simple notice, without the intervention of the courts or any other formality. However, in most cases, the lease agreements also provide for a remedy period in favour of the tenant. Only the tenant's failure to cure the breach in a given period would finally entitle the landlord to terminate effectively.

### Russia

The parties to a lease agreement may agree specific grounds and a procedure for early termination by the landlord, including early termination without recourse to a court.

If no specific provisions were agreed between the parties, the Civil Code will apply: the landlord may terminate the lease agreement early only if it goes to court and only then if there is a material breach of the lease agreement by the tenant. Material breaches that may form grounds for early termination of a lease agreement by the landlord are listed in the Civil Code:

- the tenant uses the property in substantial violation of the terms and conditions of the agreement or of the designated purpose of the property, or does so on repeated occasions;
- the tenant causes the premises to substantially deteriorate;
- the tenant fails to pay the rent for more than two consecutive instalments;
- the tenant fails to perform major repairs on the premises within the time limits fixed by the lease agreement or within reasonable time limits, if it is provided that major repair work is the tenant's duty.

In the above cases, the landlord must send a written notice to the tenant to remedy the situation within a reasonable period of time, prior to applying to a court. A lease agreement concluded for an indefinite period may be terminated by the landlord, subject to three months notice served on the tenant.

### Serbia

The Law on Contracts and Torts provides that lease agreements concluded for an indefinite term may be terminated at any time (except an inopportune time), while definite-term lease agreements may only be terminated on statutory grounds and on the grounds specified in the relevant lease agreement.

In accordance with the Law on Contracts and Torts, a lease agreement may be terminated by the landlord if the tenant:

- does not use the rented premises in an appropriate manner;
- does not pay the rent within 15 days after the landlord's notice; sublets the property without the landlord's consent.

### Slovakia

The parties to a lease agreement may agree specific grounds and a procedure for its early termination by the landlord. If no specific provisions were agreed by the parties, general rules prescribed by the Leasing of Business Premises Act will apply.

Under the Leasing of Business Premises Act, the landlord may terminate the lease agreement, agreed for a definite period, if:

- the tenant uses the business premises contrary to the terms of the contract;
- the tenant is late paying rent or service payments by more than one month;
- the tenant, who is obliged to provide services to the landlord instead of rent, does not provide such services properly and in a timely manner;
- the tenant or the person using business premises with the tenant, seriously violates the peace or order in the premises, despite a written warning;
- use of office space is linked to use of the flat and the tenant is ordered to vacate the flat;
- it is decided to demolish or make changes to the building, which will prevent the use of the business premises;
- the tenant subleases the business premises or its part to a sub-lessee without the consent of the landlord.

The landlord and tenant are entitled to terminate the contract without giving reasons in writing, unless otherwise agreed, if the lease agreement is concluded for an indefinite period.

### Slovenia

According to the ZPSPP, the landlord can terminate the lease agreement at any time if:

- the tenant uses the premises contrary to the contract provisions or in a manner which causes significant damage;
- the tenant does not pay the rent for two months after the landlord's reminder to do so;
- the landlord cannot use business premises in which he performs its business activities, is not at fault for that situation, and needs business premises that are leased to the tenant for itself.

The parties can agree on any further reasons for early termination by the landlord in the lease agreement.

### Spain

In practice, the landlord has the right to terminate the agreement if the tenant breaches any of the terms of the agreement.

If the parties have not agreed anything in this respect, the Spanish Urban Lease Act allows the landlord to terminate the lease for the following reasons:

- failure of the tenant to pay the rent or, where applicable, any of the amounts whose payment has been assumed by or agreed to be the responsibility of the tenant;
- failure of the tenant to pay the amount of the deposit or its modification;
- if the tenant assigns or subleases the leased property in breach of the Spanish Urban Lease Act, unless otherwise agreed in the lease agreement;
- if the tenant carries out activities in the premises that cause a nuisance, or are unhealthy, harmful, dangerous or illegal;
- if the tenant intentionally causes damage to the premises or carries out work without the consent of the landlord.

### Switzerland

The landlord may terminate a lease with an indefinite term by giving six months' notice, expiring on a date fixed by local custom, or, in the absence of such a custom, expiring at the end of a three-month period of the lease. The landlord may terminate any lease if (i) the tenant is in arrears with payments, (ii) fails to comply with its duty of care and consideration, (iii) is declared bankrupt or (iv) in other cases where performance of the contract becomes unreasonable.

### Turkey

For indefinite term lease agreements, the landlord may terminate the lease agreement at the end of any six-month rent period, with three months' prior notice.

In addition to that, whether the lease agreement is concluded for a definite or an indefinite term, the landlord may terminate the lease agreement at any time due to significant circumstances (i.e. just cause), which make the continuance of the rental relationship unbearable for the landlord. The termination may only be valid if it is made in writing. The judge shall consider the financial results of the termination and grant a penalty accordingly.

### Ukraine

The landlord may initiate early termination of the lease if the tenant:

- uses the premises in violation of the lease's conditions and their designated use;
- transfers the premises for use to a third party without obtaining prior consent from the landlord;
- puts the premises at risk of damage because of its negligent conduct;
- fails to carry out major repairs to the premises by the due date, where the obligation to do so rests with the tenant under the lease;
- has delayed payment of the rent for three months in succession.

Apart from the specific cases stated above, early termination of the lease may also be initiated by either party (i.e. tenant and/or landlord) on the following general grounds: (i) substantial violation of the agreement by either party, and (ii) essential change in the conditions which were crucial for the parties when executing the lease agreement.

### United Kingdom

The landlord is entitled to terminate the lease agreement early if this is specifically permitted by the lease (known as forfeiture), and this will usually be exercisable in the event of the following:

- the tenant has not paid the rent due under the lease agreement;
- the tenant is in breach of its covenants;
- the tenant is insolvent.

In Scotland, in addition, if rent is not paid for two years, the landlord can also terminate by operation of law.

In England, in addition to the above, the parties may agree that the landlord has the benefit of a break right but this would be subject to proof of statutory grounds (such as redevelopment) unless the lease is contracted out of security of tenure.





# Early termination by the tenant

## Albania

The tenant has the right to terminate the lease agreement at any time if the landlord, within a reasonable period determined by the agreement, does not bring the premises up to the condition in which they should be handed over or maintained.

Generally, either party can terminate a lease agreement at any time if the other party does not fulfil its obligations.

Finally, the lease agreement may be terminated (i) for reasons which the parties have determined in the lease agreement and (ii) by mutual agreement between the parties.

## Austria

### MRG

- Definite period: the lease may be terminated by the tenant if the object is unsuitable for the agreed use;
- Indefinite period: ordinary termination is possible (usually, termination dates and notice periods are stipulated in the agreement; if not, the notice period is three months and the termination dates are at the end of each quarter).

- Definite period: Lease object unsuitable for the agreed use;
- Indefinite period: ordinary termination possible (usually, termination dates and notice periods are stipulated in the agreement; if not, notice period: 3 months, termination dates: end of each quarter).

## Belgium

The tenant is entitled to terminate the lease at the expiry of each three-year term, subject to six-months notice.

The parties may jointly agree to terminate the lease at any time by mutual consent. In order for such mutual termination to be enforceable, the termination must be recorded in a notary deed or be acknowledged before a Justice of the Peace.

## Bosnia and Herzegovina

According to the LLBP, lease agreements concluded for an indefinite period can be terminated by mutual agreement of the parties or by a notice of termination. In addition, a tenant may withdraw from a lease agreement any time, notwithstanding the statutory or agreed provisions on agreement duration, if a landlord within an adequate period given by a tenant does not conduct maintenance necessary to restore the premises to a state in which he is obliged to hand them over to a tenant. In relation to this type of termination, a tenant may also terminate a lease agreement if a landlord does not conduct necessary regular maintenance on a business premise, for which the landlord is obliged, a tenant may after notifying the landlord on necessity of maintenance terminate the agreement if a landlord does not conduct regular maintenance.

According to Obligation Act, a tenant has a right of termination of a lease agreement if at time of handover a premise has certain deficiencies which may not be remedied.

A tenant may also terminate a lease agreement in case a title of ownership over the premise is changed.

## Bulgaria

The tenant is entitled to early termination if:

- the premises are not handed over to the tenant in a state suitable for the agreed use;
- the landlord fails to carry out the necessary repairs;
- the agreement is for an indefinite term, by one month's prior written notice to the landlord.

The parties to the lease agreement may also agree other specific grounds for early termination by the tenant.

## China

According to the PRC Contract Law and the Lease Contract Interpretation, the tenant is entitled to terminate the lease agreement early:

- If, due to causes which are not attributable to the landlord, part or all of the leased property is damaged, or lost. In this case the tenant may request a reduction of the rent or not to pay the rent. If the damage to or loss of part or all of the leased property makes it impossible to realize the purpose of the contract, the tenant may terminate the contract; or
- Where the leased property endangers the safety or health of the tenant; even if the tenant knows the leased property does not comply with quality

- requirements when concluding the contract, the tenant may terminate the contract at any time; or
- If the leased property is unusable due to seizure by authorities or dispute over the ownership of the leased property.

In addition, as a general rule, a retail lease agreement can be terminated by either party at any time if the other party fails to fulfil its obligations rendering it impossible to realize the objectives of the agreement.

Also, a retail legal agreement may be terminated for reasons which the parties have defined in the underlying lease agreement or by mutual agreement between the parties.

## Colombia

Regulation does not state a tenant's right of early termination, except in the case of a breach of contract by the landlord. Nevertheless, parties may establish such a right within the contract.

In the Urban Housing Lease, the tenant may terminate the contract before the stipulated date, without having to compensate the landlord, if one of these conditions is satisfied:

- The landlord does not pay for the public utilities, having the obligation to do so.
- The landlord's behaviour affects the tenant's right to use the property.
- The landlord does not guarantee the tenant's rights determined by Law

If none of these conditions are satisfied and the tenant wants to terminate the contract before the stipulated date, he must notify the landlord 3 months before leaving and compensate the landlord with the payment of three additional months of rent.

## Croatia

The tenant has the right to terminate the lease agreement at any time if the landlord, within a reasonable period of time determined by the tenant, does not bring the premises up to the condition in which they should be handed over or maintained.

In addition, a retail lease agreement, which was concluded for an indefinite or a definite term, can be terminated by either party at any time if the other party does not fulfil its obligations.



Finally, the lease agreement may be terminated (i) for reasons which the parties have determined themselves in the underlying lease agreement and (ii) by mutual agreement between the parties.

### Czech Republic

Usually, the tenant is entitled to terminate a retail lease agreement if (i) it is impossible to use the premises for the agreed purpose, or (ii) the landlord has committed a material breach of the lease.

In practice, the lease agreement often contains a tenant's break option after three years, subject to the tenant serving notice of termination and paying compensation for early termination in a timely manner.

### Dubai, United Arab Emirates

The parties are free to contractually agree early termination rights. In addition, the tenant could apply to the appropriate authorities for early termination on account of persistent breach by the landlord, or if the property is incapable of being used for the purpose for which it was let.

### France

The tenant is entitled to terminate the lease at the expiry of each three-year period, subject to serving a six-months prior notice.

Following the implementation of Pinel Act, for retail premises, tenants can only waive their break-option right(s) if the lease is entered into for an initial term of more than nine years or if the lease pertains to premises for specific use ("*locaux monovalents*").

### Germany

There is no possibility (other than due to the landlord's breach) of early termination by the tenant for lease agreements entered into for a definite period.

In the case of lease agreements entered into for an indefinite period, both parties may terminate at the end of any calendar quarter, subject to six months' notice.

### Hungary

Occasionally there are unilateral break options in the case of longer leases (eight to ten years) in favour of the tenant, which are usually in the middle of the term (after three to five years).

In addition, there might be provisions under which the tenant can terminate the lease if the vacancy ratio of the shopping centre exceeds a certain level.

### Italy

The parties may freely agree on the tenant's right to terminate the lease early at any time, by giving prior written notice. When such a right is granted, it is often also agreed that it can only be exercised after an initial

minimum (guaranteed) term and it is in certain cases subject to payment of an early termination indemnity.

In any case, the tenant may at any time terminate the lease, on six months' notice to the landlord for "serious reasons" ("*gravi motivi*"). Serious reasons must be objective, unforeseeable and outside the control of the tenant.

### Luxembourg

The tenant may terminate the lease immediately in the case of non-execution of the contractual obligations of the landlord.

In agreements concluded for an indefinite period, the tenant is entitled to terminate the lease by observing a six-month notice period if no other period of notice is provided in the lease agreement.

### Monaco

The tenant is entitled to terminate the lease at the expiry of each period, subject to serving a three-months' notice, unless the lease provides for a longer notice.

Absent this prior notice, the lease is automatically renewed for at least three years.

### The Netherlands

The lease agreement may be terminated by the tenant only in the event of unforeseen events that are not at the tenant's risk and are of such grave nature that the landlord cannot, on the basis of reasonableness and fairness, expect the continuation of the lease agreement.

In that case, a court needs to grant a claim to set aside the lease agreement, which will only happen in exceptional circumstances.

As giving the tenant early termination rights is to its benefit, it is possible to agree otherwise. The standard ROZ model does not contain such a provision, but the parties are free to include one.

### Peru

According to the provisions of Article 1697 of the CC, the Parties may conventionally agree to the early termination of the lease if the landlord fails to meet any of his or her obligations, among others.

### Poland

The tenant may terminate a lease agreement concluded for a definite term if any defects in the premises constitute a danger to the health of the tenant or persons employed by it.

The lease agreement may provide for other specific possibilities for early termination by the tenant.



## Portugal

The Parties are free to stipulate the rules that apply to the early termination of retail lease agreements. Should the parties not provide for the early termination's regime, the law establishes that the rules stated for residential lease agreements shall apply, which means the following:

- If the lease agreement is submitted to a fixed term: after the expiration of 1/3 of the initial term of the lease agreement, the tenant can terminate it at any time, by giving written notice to the landlord within at least:
  - (i) 120 days before the date at which the lease should be considered terminated if the fixed term of the contract is one year or more;
  - (ii) 60 days before the date at which the lease should be considered terminated if the fixed term of the contract is one year or more;
- If the lease agreement is submitted to an indefinite period: after six months of actual duration of the lease agreement, the tenant can terminate it at any time, by giving written notice to the landlord within at least:
  - (i) 120 days before the date at which the lease should be considered terminated if, at the time of the written notice, the lease has one year or more of actual duration;
  - (ii) 60 days before the date at which the lease should be considered terminated if, at the time of the written notice, the lease has less than one year of actual duration.

Furthermore, if the parties do not expressly specify the duration of the retail lease, the lease is considered to be submitted to a fixed term of five years and the tenant is entitled to terminate the lease by giving written notice to the landlord within at least one year before the date at which the lease should be considered terminated.

The parties may negotiate the early termination of a retail lease agreement. However, should the parties fail to stipulate the early termination regime or the duration of the agreement, the duration is deemed to be five years and the tenant may only terminate the agreement on one year's notice.

If no termination provision is agreed, the rules regarding residential lease agreements entered into for a definite period will apply. In such a case, the tenant may terminate the lease agreement after one third of the lease period has elapsed by giving notice to the landlord:

- 120 days prior to the termination date, if the initial term of the agreement is one year or more;
- 60 days prior to the termination date, if the initial term of the agreement is less than one year.

## Romania

There is no legal provision granting the tenant the right to terminate the lease agreement at will. Therefore, similarly to the landlord's termination rights, as described above, such rights and the conditions in which they can be exerted are subject to contractual negotiations between the parties.





## Russia

The parties to a lease agreement may agree specific grounds and a specific procedure for its early termination by the tenant, including early termination without recourse to a court.

If no specific provisions were agreed between the parties, general rules prescribed by the Civil Code will apply: the tenant may terminate the lease agreement early only through the courts and only due to a material breach of the agreement by the landlord. The material breaches that may serve as grounds for early termination are listed in the Civil Code:

- the landlord fails to provide the premises for the tenant's use or prevents the use of the premises by the tenant;
- the premises have defects which prevent their use and which were not specified by the landlord during the conclusion of the agreement, were not known to the tenant in advance and are not so obvious that the tenant should have discovered them by inspection of the premises;
- the landlord fails to perform major repairs to the premises within the time limits fixed by the agreement or, in the absence of time limits in the agreement, the landlord fails to perform major repairs within a reasonable time;
- the premises become unsuitable for their use due to circumstances beyond the control of the tenant.

A lease agreement concluded for an indefinite period may be terminated by the tenant serving three months' notice served on the landlord.

## Serbia

In accordance with the Law on Contracts and Torts, a tenant may terminate the lease agreement if:

- the use of the premises is substantially diminished;
- the landlord has sold the leased premises;
- a third party claiming the right of ownership over the leased premises is limiting the tenant's rights under the agreement;
- the leased premises have some deficiency that cannot be eliminated.

In addition, in accordance with the general rule mentioned above, a tenant may terminate a lease agreement concluded for an indefinite term at any time (except an inopportune time). Definite-term lease agreements may also be terminated by the tenant on the grounds specified in the lease agreement.

## Slovakia

The parties to a lease agreement may agree specific grounds and the procedure for its early termination by the tenant. If no specific provisions were agreed by the parties, the general rules prescribed by the Leasing of Business Premises Act will apply.

Under the Leasing of Business Premises Act, the tenant may terminate a lease agreement for a definite period if:

- the tenant loses its capacity to operate the business activity for which the business premises have been rented;
- without it being the tenant's fault, the business premises are no longer in working order;
- the landlord grossly violates its statutory obligations.

The landlord and tenant are entitled to terminate the contract without giving reasons in writing, unless otherwise agreed, if the lease agreement is concluded for an indefinite period.

## Slovenia

According to the ZPSPP, the tenant can terminate the lease agreement if the premises are not released in due time under the conditions laid down in the agreement.

The tenant can also terminate the agreement if the landlord does not carry out a repair that is needed in order to achieve the intent of the agreement. The parties can agree on any further reasons for early termination by the tenant in the lease agreement.

A notice period cannot expire before one year has elapsed if the lease contract is concluded for an indefinite period.

## Spain

In practice, the tenant generally has the right to terminate the lease agreement if the landlord breaches any of the terms of the agreement.

In addition, the tenant would usually have a right to terminate the agreement after a period agreed between the parties by giving prior notice to the landlord.

## Switzerland

The tenant may terminate a lease with an indefinite term by giving six months' notice, expiring on a date fixed by local custom, or, in the absence of such a custom, expiring at the end of a three-month period of the lease.

The tenant may terminate any lease (i) in the event of a defect that renders the premises unfit or significantly less fit for their designated use, that is not attributable to the tenant and that it is not obliged to remedy at its own expense or (ii) in other cases where performance of the contract becomes unreasonable.

## Turkey

For indefinite term lease agreements, the tenant is entitled to terminate the lease agreement at the end of any six-month rent period, with three months' prior notice.

The tenant may terminate the lease agreement at any time due to significant circumstances (i.e. just cause), which make the continuance of the rental relationship unbearable for the tenant. The termination may only be valid if it is made in writing. The judge shall consider the financial results of the termination and grant a penalty accordingly.

In the absence of such a just cause, , as per the TCO and the precedents of the Turkish Supreme Court, a reasonable penalty shall be served against tenants who terminate a definite term lease agreement early. This penalty shall be determined in accordance with certain circumstances, such as the required time period for the re-lease of the property and the reasonable efforts of the landlord in order to re-lease the property. However, generally the penalty is determined as three (3) months rent.

## Ukraine

The tenant may initiate early termination of the lease if the landlord:

- transfers premises on terms which do not meet the conditions of the lease and the designated use of the premises;
  - has not carried out major repairs to the premises, where the obligation to do so rests with the landlord; and
  - fails to inform the tenant about existing rights of third parties with respect to the premises
- the tenant is entitled to terminate a lease agreement early if such right is expressly provided by a lease agreement.

## United Kingdom

The tenant is entitled to terminate the lease agreement early if this is specifically permitted by the lease.

There may be certain pre-conditions to be agreed between the parties, such as payment of rent up to the break date and giving the property back free of sub-tenants.



# Right of renewal and eviction indemnity

## Albania

The tenant, who has properly executed the obligations envisaged in the lease agreement, has the right to be preferred to other potential tenants at the same conditions.

The rent shall be renewed as long as, upon its expiry, the tenant is granted the use of the rented property in the absence of objection from the landlord. The new rent shall be regulated under the same conditions as the previous one, however, the duration shall be determined similarly to the rents limited to a time period.

There is no eviction indemnity in case of non-renewal by the landlord, unless otherwise agreed.

## Austria

There is neither a right of renewal nor a right to eviction indemnity payable by the landlord unless otherwise agreed in the lease agreement.

## Belgium

Upon the expiry of the initial lease term, the tenant has the right to request the renewal of the lease for a period of nine years in order to continue the same business in the leased premises. Such renewal may be requested up to three times. The landlord, however, has the right to refuse the renewal by paying an eviction indemnity, the amount of which is determined by the Law and depends on the reason for such refusal.

The procedure for requesting renewal of the lease is strictly regulated by the Law. The tenant must notify the landlord of his renewal by bailiff's summons or registered letter, no earlier than eighteen months and no later than fifteen months before the expiry date of the lease agreement. Failing strict compliance with this requirement, the tenant cannot exercise its right to renew the lease.

The landlord may only refuse the renewal on one of the legal grounds provided in the Law (own use, use of the premises for a non-retail activity, rebuild, material breach or legitimate interest).



In such cases, the landlord will be entitled to refuse the lease, by paying in most cases an eviction indemnity of one or two years' rent.

In other instances, the landlord will only be allowed to refuse the renewal if it pays compensation covering the complete damage suffered by the tenant as a result of the relocation of its premises, with a minimum of three years' rent.

The landlord may also accept the renewal, subject to other terms and conditions, including the rent. In the absence of an agreement between the parties on such new terms, the Justice of the Peace will determine the new terms and conditions, including the rent on the basis of the then prevailing market conditions. The procedure for accepting or refusing renewal is strictly regulated by Law; in case of non-compliance, the landlord may be deemed to have accepted the renewal at the conditions proposed by the tenant.

The landlord may also rely on the competing offer of a third party for a higher rent to refuse the renewal. If the tenant wants to stay in the premises, it will have to agree to match the competing offer.

If the tenant remains in the leased premises after the expiry of the lease agreement and has not introduced its request for renewal in due time, a new lease agreement is deemed to be concluded for an indefinite period of time and the landlord is entitled to terminate the lease at any time subject to 18 month notice.

### Bosnia and Herzegovina

According to the LLBP, if the landlord does not request initiation of coercive enforcement of order or judgement within 60 days from the date when he acquired such a right, the lease agreement will be considered implicitly renewed for an indefinite period, under the same conditions it was initially concluded.

There is no eviction indemnity payable by the landlord unless otherwise agreed in the agreement.

### Bulgaria

If after the expiration of the lease term the tenant continues to use the property with the knowledge and consent of the landlord, the agreement is deemed extended for an indefinite term.

If the tenant continues to use the property although the landlord has objected to the use, the tenant owes

compensation to the landlord and shall perform all its obligations arising out of the terminated lease agreement.

The landlord owes the tenant a compensation if the latter is deprived from the use of the property before the expiration of the lease term due to a transfer of the property to a third party.

### China

There is no statutory automatic right of renewal. Subject to agreement the right of renewal is defined in the retail lease agreement. If the tenant continues to use the leased property after the expiration of the lease term and the landlord does not raise any objection, the agreement is deemed to be extended for an indefinite term.

There is no eviction indemnity payable by the landlord upon the expiration of the lease term unless otherwise agreed in the retail lease agreement.

### Colombia

In the leasing of commercial establishments, the tenant has a renewal right over the term of the contract if he has occupied the premises for two or more years and has used them for the same commercial purposes, except in the following cases:

- If the tenant has breached his obligations.
- If the landlord decides to live in the premises or decides to start a new business in the premises. In this case, the new business must be completely different from the one the tenant developed in the premises under the lease contract.
- If the landlord has to rebuild the premises or make necessary repairs that imperatively require the premises to be vacant.

In such cases the landlord has to notify the tenant at least six months before the termination date. If the landlord does not duly notify the tenant or if he subsequently does not allocate the premises for the purposes stated to the tenant, he must compensate and indemnify the tenant for the damage caused to him.

In the Urban Housing Lease, any party willing to terminate the contract before the stipulated date must notify the other party 3 months before the termination date. If the interested party does not notify the other of his decision to terminate the contract 3 months before the termination date, the contract is automatically renewed.





### Croatia

There is neither a right of renewal nor an eviction indemnity payable by the landlord unless otherwise agreed in the lease agreement.

For years, it was considered that a lease should be seen as renewed for an indefinite period of time, if the landlord does not oppose the tenant's continued use of the premises after the expiry of the original definite period of the lease term. However, the Supreme Court has taken the view that this automatic renewal does not apply to retail premises. It remains to be seen if this view will change the practice of Croatian courts in general.

### Czech Republic

Retail lease agreements often contain a tenant's renewal option for up to five years after the expiry of the lease term and subject to the tenant giving notice of renewal in a timely manner. Indemnity is not usually agreed between the parties in the event that the landlord does not comply with its obligation to prolong the lease. However, damages could be claimed by the tenant under the Civil Code.

Besides the contractual option to renew, the Civil Code stipulates that if the tenant stays in the premises and the landlord does not request that the premises be vacated within one month after the expiry of the lease term, it is deemed that the lease agreement has been renewed for one additional year (or if the original lease term was shorter than one year, then for an equivalent period).

### Dubai, United Arab Emirates

Unless the parties have validly terminated the lease at its natural expiry, the lease will continue for the same duration or 1 year, whichever is less. In the DIFC,

renewal must be agreed between the parties, either at the time of renewal or as a provision of the lease.

### France

The tenant has a right of renewal upon expiry of the lease. Should the landlord refuse to renew the lease, the landlord must pay an indemnity to the tenant ("*indemnité d'éviction*") unless (a) there is a serious and legitimate cause not to renew or (b) the premises must be demolished for health and safety reasons.

The tenant is allowed to stay in the premises until the termination indemnity has been paid in full.

### Germany

There is neither a right of renewal nor an eviction indemnity payable by the landlord unless otherwise agreed in the lease agreement.

### Hungary

There is no mandatory provision regarding the right of renewal and eviction indemnity. However, the lease agreement often grants the right of renewal to the tenant upon expiry of the lease agreement, usually in the form of a unilateral extension option for another short to medium term (three to five years). In such cases of a unilateral option, the landlord usually has no right to refuse the extension of the lease.

### Italy

The tenant has a right of renewal upon expiry of the first six-year term (or a longer initial term agreed by the parties). Upon expiry of the initial term, the lease will be renewed automatically for an additional period of six years (or the longer period agreed in the lease), unless one of the parties notifies the other party in writing,

twelve months in advance, of its intention to prevent the renewal. However, whilst the tenant is entitled to prevent the renewal for any reason, the landlord may prevent the renewal only for specific qualifying reasons: (i) the need to use the premises as the landlord's (or his/her immediate family's) home, (ii) the use of the premises as a place of business by the landlord (or his/her immediate family) or, in case of properties owned by public or similar entities, the use of the premises for institutional purposes and (iii) the performance of qualifying works on the premises (e.g. demolition and reconstruction or complete renovation).

The tenant may be entitled to receive an indemnity for loss of goodwill and compensation for any unlawful exercise by the landlord of its right to prevent renewal.

Indemnity for loss of goodwill:

In the event that (i) the lease is terminated by landlord for reasons other than breach of the agreement by the tenant, and provided that (ii) the premises are used by the tenant as retail premises, the tenant would be entitled to receive an indemnity from the landlord equal to eighteen months' rent.

Moreover, the tenant would be entitled to a further indemnity in the same amount if the premises are used by the landlord or a third party to carry out the same business as that previously carried out by the tenant in the premises, provided that these activities start within one year after termination of the tenant's activity (exceptions apply, such as premises located in train stations, airports, hotels, resorts, etc).

Compensation for unlawful exercise by the landlord of the right to prevent renewal:

If the landlord prevents the renewal of a lease at the end of the initial term for one of the qualifying reasons described above and the reason stated by the landlord fails to materialise or proves not true, the tenant would be entitled to either (i) the reinstatement of the lease and the reimbursement of removal costs and any other expenses incurred, or (ii) compensation for damages in an amount not exceeding forty-eight months' rent.

Finally, the tenant is also entitled to a right of first refusal in the event that the landlord intends to grant a new lease for the premises to a third party.

## Luxembourg

Current legislation

A tenant in occupation for more than three (3) years and less than fifteen (15) years has the right of renewal on his retail lease agreement unless:

- the landlord receives a superior real and genuine offer from a third party;
- there are legitimate grievances towards the tenant;
- personal occupation is required by the landlord;
- the lease is abandoned for similar commercial purposes; and

— reconstruction or transformation is required.

The current legislation does not provide any obligation to pay an eviction indemnity to the tenant.

Bill of Law

For a period of nine (9) years the tenant has an absolute right of renewal on the retail lease agreement.

After nine (9) years of lease the landlord may refuse the renewal of the lease without any justification by paying an indemnity to the tenant or by accepting the offer of a third party who undertakes to pay the eviction indemnity to the tenant.

## Monaco

In principle, the tenant has a right of renewal upon expiry of the lease.

The renewal of the lease agreement will be for the same duration as the initial lease, between three and nine years.

If the landlord refuses the renewal, he must pay an indemnity to the tenant unless there is a serious and legitimate cause not to renew.

## The Netherlands

See the section regarding minimum and maximum duration. The lease agreement renews by operation of law, unless the court grants an action for termination by the landlord. For the other ways of terminating the lease agreement, the tenant's consent is required.

## Poland

There is neither a right of renewal nor an eviction indemnity payable by the landlord.

## Peru

There is no automatic renewal unless it has been conventionally agreed.

Eviction compensation: Penalties are established in Peru in case the tenant does not comply with returning the property on time and in the conditions established. This issue is further explained in the *Reinstatement of the Premises* section.

## Portugal

As the main terms and conditions of retail lease agreements are freely negotiated between the parties, retail lease agreements may include any clause that the parties deem appropriate regarding the renewal of the lease agreement.

If nothing has been agreed, the retail lease agreement shall be subject to the habitational rules, i.e., the contract is deemed as automatically renewing for equal amounts of time unless otherwise is agreed between the parties. Portuguese Law does not provide for any eviction indemnity payable by the landlord.

## Romania

There is neither any right of renewal nor an eviction indemnity payable by the landlord unless otherwise agreed in the lease agreement.

## Russia

Unless otherwise agreed, the tenant has a pre-emptive right to enter into a new lease agreement from the expiry of the existing one, provided that:

- the tenant applies in writing for a new lease agreement within a reasonable period prior to the expiry of the lease term or within a period specified by the lease agreement; and
- the tenant is not in breach of the terms and conditions of the existing lease agreement.

However, the Civil Code does not grant the right to conclude a new lease agreement on the same commercial conditions as the previous one.

The pre-emptive right is valid for one year from the expiry of the lease term. In the event that the landlord refuses such renewal, and if the landlord has entered into another lease agreement with a third party within one year of the expiry of lease term, the tenant will have two options:

- claim the transfer of the tenant's rights and obligations under the lease agreement concluded between the landlord and the third party – and compensation for losses suffered in connection with the landlord's refusal – through the courts; or
- only claim the compensation for losses suffered in connection with the landlord's refusal through the courts.

If no new lease agreement was concluded, and if the tenant continues to use the premises after the expiry of the lease term without any objection from the landlord, the lease agreement is deemed renewed on the same terms and conditions for an indefinite period of time.

## Serbia

There is neither any right of renewal nor an eviction indemnity payable by the landlord unless otherwise agreed in the lease agreement specifically provided under the law. However, the tenant might claim damages for unlawful eviction under the general rules applicable to reimbursement of damages.

## Slovakia

If the parties do not agree otherwise, the tenant does not have the right of renewal upon expiry of the lease agreement.

It is standard practice for renewal provisions to be agreed in the lease agreement. The renewal provisions can be conditional on the tenant giving notice to the landlord that the tenant is interested in renewing the lease agreement.

It might also be agreed vice versa, which means that the lease will be automatically renewed if the tenant does not send notice that he does not want to renew the lease agreement.

## Slovenia

In the event that the lease agreement was concluded for a definite period and the tenant stays in the premises after the expiry date, then provided the landlord does not issue a removal requirement order, it is considered that the lease agreement has been renewed for an indefinite period of time.

However, there is no eviction indemnity payable by the landlord, unless otherwise agreed.

## Spain

As indicated above, the duration of retail leases is freely agreed between the parties. The parties may therefore agree anything they deem appropriate regarding the renewal of the lease agreement.

If nothing has been agreed in this respect, the lease expires when the period of time has lapsed, without the need for any special action by the parties, although the lease would be deemed extended if, upon expiry, the tenant remained in possession of the leased property for fifteen days and the landlord did not require the tenant to leave the premises within those fifteen days.

This extension would be for periods of one year if a yearly rental is fixed, for periods of one month if the rent is monthly, or for days if the rent is owed daily. The Spanish Urban Lease Act does not establish any eviction indemnity payable by the landlord to the tenant if the landlord refuses to renew the agreement, although an eviction indemnity can be agreed between the parties and included in the lease agreement.

On the other hand, the Spanish Urban Lease Act establishes that the tenant of any premises where a retail activity has taken place during the last five years has the right to compensation from the landlord as long as the lease has expired and the tenant has expressed – at least four months in advance of the expiry – the wish to renew the lease for a minimum of five additional years at market rent. In practice, this right is expressly waived by the parties.

## Switzerland

There is neither any right of renewal nor an eviction indemnity payable by the landlord.

However, in practice, the tenant can seek extension of the lease of up to six years if termination would cause a degree of hardship for the tenant that cannot be justified by the interests of the landlord. Such extension of the lease is not possible if the lease is terminated (i) because the tenant is in arrears with payments, (ii) fails to comply with its duty of care and consideration or (iii) is declared bankrupt.



### Turkey

There is a right of renewal by the tenant for a ten-year extension period. According to the Article 347 of the TCO, unless the tenant makes a notification for termination at least fifteen days before the expiration date, the lease contract will automatically be prolonged for one year under the same terms and conditions, for up to ten years.

The landlord may not rely on the expiration date of the contract to bring the contract to an end. However, after ten years of prolongation, the landlord may terminate the contract by giving the tenant three months without the need for a just cause.

In addition, according to Article 355 of the TCO, once the landlord succeeds in evacuating the tenant from the property for any given reason, the landlord may not lease the property in question to the same tenant for three years. If the landlord fails to comply with these provisions, he becomes liable to pay the former tenant an indemnity not less than an amount equal to the total rent for the preceding year.

### Ukraine

Upon expiry of the term of the initial lease agreement, the tenant has a priority right to execute a new lease agreement for a new term.

However, implementation of this priority right is subject to the following conditions:

- the landlord intends to continue to lease out the premises;
- the tenant duly performed its obligations under the initial lease agreement;
- the tenant has duly notified the landlord about its desire to execute a new lease agreement. Such notification should be given prior to the expiry of the initial lease, either within the term established by the initial lease agreement or, if the initial lease is silent about the term of such notification, within a reasonable period of time; and
- the tenant and the landlord have agreed on the conditions of a new lease (i.e. lease payments, term of the lease, etc.).

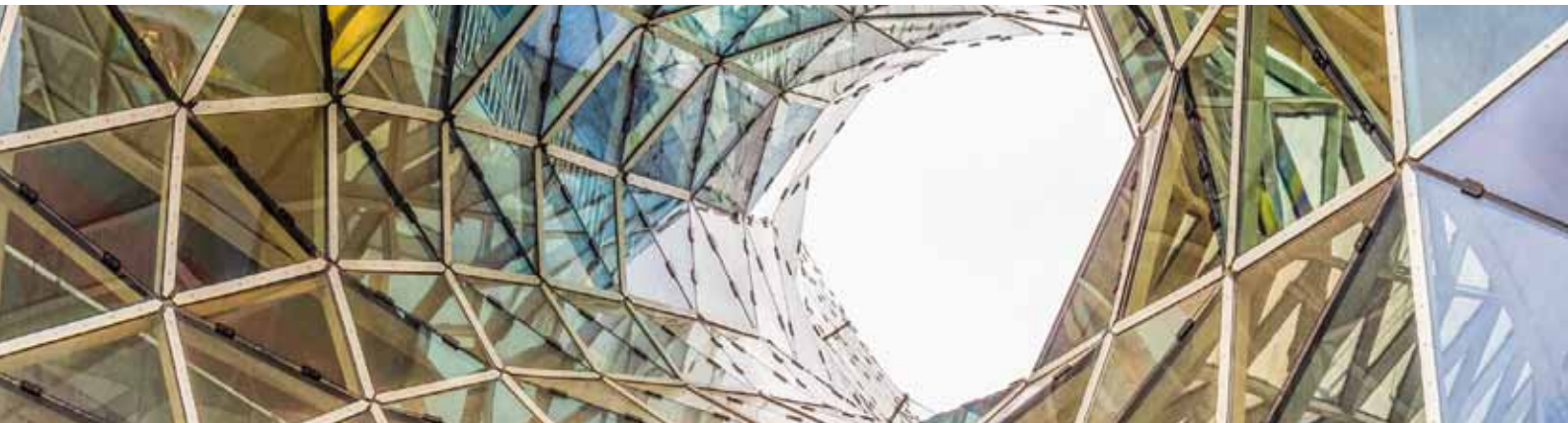
The law does not establish any specific payments (i.e. eviction indemnity) payable by the landlord if the tenant is refused consent to execute a new lease.

### United Kingdom

In England and Wales the application of a right of renewal will depend upon whether the lease is contracted within or outside the security of tenure provisions of the Landlord and Tenant Act 1954. If the lease is within the 1954 Act, there is a right to renew upon expiry, unless the landlord is able to prove one of certain grounds under the Act as to why the renewal should not take place. If the lease is contracted out of the 1954 Act, the lease will come to an end unless a renewal is negotiated. In any event, there is no eviction indemnity payable.

In Scotland there are no automatic rights of renewal although retail tenants may make applications to the court in limited circumstances.





# Revision of the rent

## Albania

There is no rent revision procedure unless otherwise agreed in the lease agreement between the parties.

## Austria

MRG (full application)

In principle, the rent cannot be revised. However, the tenant is legally entitled to sell or lease its business to a third party. In that case, the rent (for the new tenant) may be increased.

A material change of control concerning the tenant's business may also result in an increase in the rent.

MRG (full and partial application) and ABGB: The rent may be revised under general principles of civil law, e.g. *laesio enormis*. If the tenant's rights are negatively impacted (e.g. because of inadequate protection from noise and dust), the tenant is entitled to reduce the rent as long as the negative impact disturbance lasts.

## Belgium

At the expiry of each three-year term, the tenant or the landlord is entitled to submit a request to a Justice of the Peace to revise the applicable rent, provided that the tenant or landlord prove that, due to new circumstances, the normal rent of the leased premises is at least 15% higher or lower than the original rent as determined in the lease agreement. The Court will then decide on the principles of equity, taking into account the factual circumstances but without paying attention to the favourable or unfavourable output that is exclusively attributed to the tenant.

A claim for rent revision can only be introduced during the last three months of the ongoing three-year term.

## Bosnia and Herzegovina

Rent revision procedure per se does not exist, however the tenant can request a proportional decrease of the lease amount if the landlord does not handover the premises in the condition as it was agreed upon in the agreement.

## Bulgaria

There is no rent revision procedure unless otherwise agreed in the lease agreement.

## China

In principle, the rent agreed in the relevant retail lease agreement is fixed unless otherwise agreed by the parties. However, according to the PRC Contract Law, under any of the following circumstances, it is possible to revise the rent:

- Where repairs to the leased property affect the tenant's ability to use the leased property, rent shall be correspondingly reduced or the lease period shall be correspondingly extended.
- Where a third party claims rights, making it impossible for the tenant to use or obtain proceeds from the leased property, the tenant may request a reduction of the rent or not to pay the rent.
- If, due to causes which are not attributable to the tenant, part or all of the leased property is damaged or lost, the tenant may request a reduction of the rent or not to pay the rent.

Some lease contracts also contain clauses which allow the landlord to increase the rental on a yearly basis up to a certain percentage.

## Colombia

There is no provision in the regulation concerning a revision of the rent for retail lease agreements. Nevertheless, the parties usually agree a clause for that purpose.

In the Urban Housing lease, the landlord has the right to annually increase the value of the rent in accordance with Colombia's inflation rate in the past year.

## Croatia

There is no rent revision procedure unless otherwise agreed in the lease agreement.

However, under certain circumstances, the Lease Act provides for the possibility of modification of the rent:

- The landlord is entitled to modify the rent in order to perform repairs to retail premises for the purpose of decoration or reduction of energy and maintenance costs, provided that the landlord notifies the tenant in writing two months in advance of the type of works to be performed, the duration of works and the new amount of the rent. In that event, the tenant is entitled to terminate the lease agreement within one month after receiving the notification from the landlord.

- The tenant is entitled to ask for a proportionate reduction of the rent in certain circumstances (such as the partial limitation of the agreed use of the premises).

## Czech Republic

There is no rent revision procedure unless otherwise agreed in the lease agreement. However, in practice, the revision of the rent under a retail lease agreement may be linked to the renewal option.

## Dubai, United Arab Emirates

Unless otherwise agreed pursuant to the terms of the lease agreement (eg fixed rental amounts for the duration of the lease term or rent reviews linked to open market review at pre-agreed times and upon pre-agreed criteria), the rent can be amended by either the landlord or the tenant at renewal of the lease subject to strict criteria. Either party can request the rent to be amended upon renewal provided at least 90 days' notice is given to the other party and provided the Government rental calculator entitles the party seeking the revision to the change). The Government rental calculator permits upward revision in situations where the passing rent is sufficiently below market rent. By way of example, if the passing rent is between 11 % and 20% below market rate the landlord would be entitled to a 5% uplift. If the passing rent was between 21% and 30% below market rent the landlord would be entitled to a 10% uplift. If the passing rent was between 31% and 40% below market rent the landlord would be entitled to a 15% uplift. If the passing rent was between 41% and 50% below market rent the landlord would be entitled to a 20% uplift. The maximum permitted uplift in any one lease year is 20%, provided the requisite notice has been given. The law does not specifically cater for revision by the tenant but in a falling market the tenant is permitted to request a reduction, provided the requisite notice is given. If the landlord refuses then the tenant is entitled to have the rent fixed by the Rent Committee.

## France

The rent may be revised in the following circumstances:

- Each party may request that the rent be set at the rental value every three years. However, the amount of the revised rent may not exceed the variation in the applicable index (ILAT or ILC).
- Each party may request that the rent be set at the rental value every three years if changes in the local commercial factors result in an increase in the rental value of more than 10% (the above-mentioned cap rule does not apply).



Each party may request that the rent be set at the rental value if the operation of the indexation clause increases or decreases the rent by more than 25% with respect to the previously fixed rent (the above-mentioned cap rule does not apply).

### Germany

There is no rent revision procedure unless otherwise agreed in the lease agreement.

In retail lease agreements, the parties may sometimes agree to revision clauses providing for the rent to be adjusted to market level after ten, fifteen or twenty years. Theoretically, the parties are free to negotiate any kind of rent revision clause, provided that the rental adjustment is not arbitrary or typically unfavourable to one party.

### Hungary

Except for indexation and in cases agreed between the parties, it is not possible to revise the rent, although standard practice includes the concept of turnover rent, which is usually for larger tenants.

### Italy

The Lease Law regulates exclusively the possibility to review the rent, through a pre-determined indexation mechanism, to reflect inflation.

In practice, various mechanisms are sometimes used to seek a de facto revision of the rent, such as stepped increases in the rent and variable rent.

Although not explicitly prohibited, such mechanisms have on several occasions been held to be invalid by the Italian courts when they are used to avoid the limitations on indexation of the rent.

### Luxembourg

Current legislation

The retail lease agreement may be amended by mutual agreement of the parties or in case of renewal of the agreement following a superior offer made by a third party.

Bill of Law

The last version of the Bill of Law does not provide anything regarding the revision of the rent.

### Monaco

Each party may request the revision of the rent, either at the end of each triennial period providing they prove that the rent is no longer in line with the value of such premises and features, or at the term of the lease subject to proving a change in the general economic conditions in Monaco or in the premises' specific conditions.

However, the parties cannot revise the rent before the expiry of a three-year period.

### The Netherlands

If the rent is not in line with the rent for similar retail spaces, both parties can bring an action before the court to revise the rent. If a lease agreement with an initial definite term applies, this action can be brought before the court upon the expiry of the term. Upon the expiry of the initial term, a request for rent revision can be brought before the court at least five years as from the day on which the parties agreed to the rent or an action to revise the rent was brought before the court.

This is a semi-mandatory statutory provision.

### Poland

The landlord is entitled to review the rent at any time upon one month's notice. Retail leases usually exclude the application of that provision. Instead, the parties usually provide for indexation based on the consumer prices index.

### Peru

In practice, the CPI (Consumer Price Index published by the Bureau Of Labor Statistics of the United States Labor Department) is usually agreed upon to review the monthly compensation.

### Portugal

The most common basis for rental review is the Consumer Price Index (CPI), published by the Portuguese National Statistics Institute. This review is annual. Likewise, it is also common to agree that the rent will be reviewed after the term and before the renewal of the agreement, in order to adjust the rent upwards or downwards according to the market rent.

### Romania

Art. 1271 of the Civil Code provides for a hardship clause, which is applicable to any agreement (including lease agreements). However, such a clause does not apply automatically; it can only be applied by the Court, in the case of an exceptional change of circumstances which could not reasonably have been foreseen.

However, the hardship clause does not apply if the debtor undertook the hardship risk in the lease agreement. Market practice is that, usually, lease agreements contain the tenant's waiver of the right to claim hardship in court.

Moreover, even if such a waiver is not expressly provided in the lease agreement and the tenant would be entitled to invoke the hardship clause in court, the burden of proof is the tenant's and the decision to enforce the hardship clause is left at the sole discretion of the courts. Therefore there is no actual guarantee that the



tenant could in fact obtain protection under a hardship clause, even if, theoretically, the Civil Code grants the tenant such a right.

### Russia

There is no rent revision procedure unless otherwise agreed in the lease agreement.

The Civil Code provides that, unless otherwise agreed, the amount of rent may be adjusted by mutual agreement of the parties within periods specified by the agreement, but no more frequently than once a year. However, this rule is not mandatory and parties may adjust the rent more frequently than once a year by their mutual agreement.

Nevertheless, in the event that the lease agreement provides for the landlord's right to adjust the rent unilaterally, such adjustment may be performed no more frequently than once a year. In addition, if the results of such unilateral adjustment show that the rent essentially increased and became substantially higher than average market rental rates for similar premises, the court – in the event of a dispute – can reject the landlord's claim for that part of the rent which exceeds the average.

### Serbia

Rent can be revised based on a general provision of the Law on Contracts and Torts regulating termination or amendment of an agreement due to hardship. Based on this provision, if events have rendered performance by one party more onerous after conclusion of the agreement than would reasonably have been anticipated when the agreement was concluded, i.e. if its performance has become excessively burdensome due to an event beyond the party's reasonable control which it could not reasonably have been expected to have taken into account, the relevant party may ask the courts to grant termination or renegotiation of the agreement.

### Slovakia

There is no rent revision procedure unless otherwise agreed in the lease agreement.

Retail lease agreements usually provide for indexation of the rental payments, to be increased annually by a certain percentage in accordance with the rate of inflation, or in accordance with some other index agreed by the parties. Such index clauses are commonly used in business practice and do not require the signing of any amendments to the lease agreement annually.

### Slovenia

There is no rent revision procedure as the rent is considered a key element of the lease agreement.

### Spain

There is no rent revision procedure unless otherwise agreed in the lease agreement. However, the landlord is authorised to increase the rent when performing improvement works in the premises and in the case of assignment or subleasing of the lease agreement by the tenant.

### Switzerland

The landlord may increase the rent at any time with effect from the next contractual termination date. The rent review is restricted by the criteria listed in the CO (no excessive income, within the range of rent amounts customary in the vicinity; increase in costs or additional services by the landlord not exceeding the pre-tax yield required to cover costs in the case of recently constructed buildings; balancing out certain previous rent decreases, balancing out inflation, not exceeding the levels recommended by landlord's/tenant's associations).

Furthermore, the rent review is generally limited to changes in these criteria since the last rent review.

### Turkey

There is no rent revision procedure. It is subject to the terms of the lease agreement.

### Ukraine

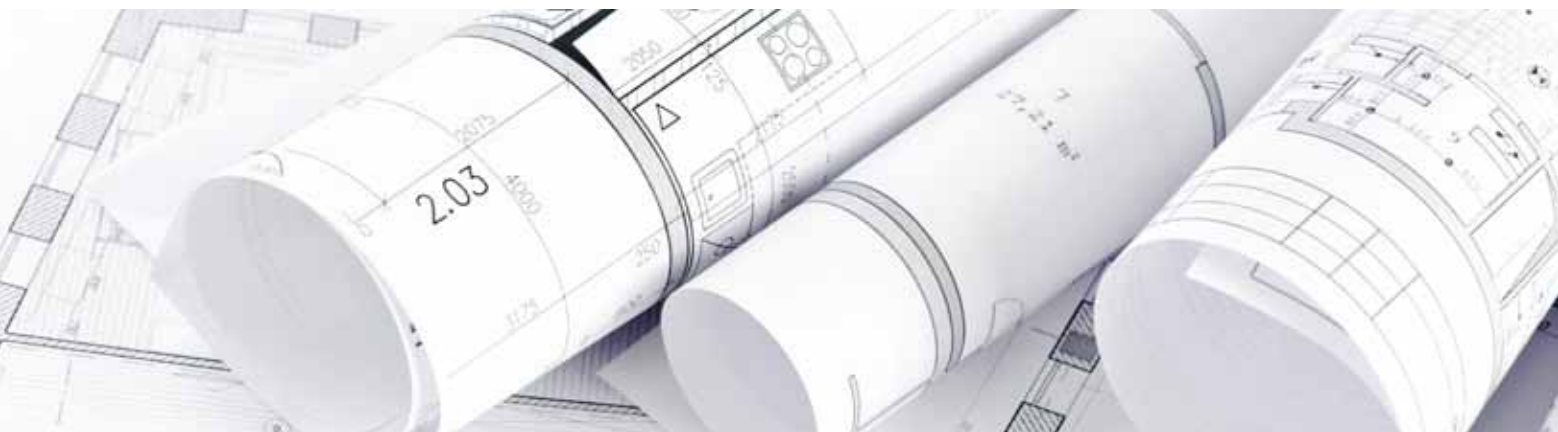
The tenant may demand revision (reduction) of the rent if:

- the ability to use the premises has been substantially decreased (limited) and/or the condition of the premises has deteriorated due to circumstances beyond the control of the tenant; and
- the landlord has failed to inform the tenant about existing rights of third parties with respect to the premises (i.e. mortgage, etc.).
- the amount of rent may be adjusted by mutual agreement of the parties. In addition, a lease agreement may provide for a periodic review or adjustment (indexation) of the rent payable under a lease.

### United Kingdom

Any lease for more than five years will usually be subject to five-yearly reviews of the rent. The rent is usually reviewed to market rent and is reviewed upwards only, taking into account various assumptions and disregards.

It is also becoming more common to see annual rent reviews increased by reference to the retail prices index, or the consumer prices index (published by the ONS).



# Fitting-out works

## Albania

There are no mandatory provisions regarding fitting-out works. The matter is left to the parties' discretion. If during the lease agreement, the rented property needs urgent fitting-out works, the tenant must allow the fitting-out works. If the rented property is not repaired within a reasonable time, the tenant is entitled to a reduction of the rent.

## Austria

There are no mandatory provisions regarding fitting-out works. The landlord is obliged to provide the premises in a condition suitable for the usual and/or agreed use.

## Belgium

The tenant is entitled to execute all alteration works in the leased premises that are suitable for its business where the costs do not exceed three years' rent, even if the lease agreement provides that the tenant may not carry out any alteration works to the leased premises without the prior consent of the landlord. Such works may not, however, jeopardise the security, neatness or aesthetic value of the building.

The tenant must inform the landlord in advance of all intended alterations and must submit the related plans and specifications. The landlord may only oppose the alterations for legitimate reasons ("justes motifs"/"wettige redenen"). Unless the landlord has notified the tenant within thirty days after receipt of the tenant's notification that it opposes the alterations proposed by the tenant, the landlord is deemed to have accepted the proposed alterations.

## Bosnia and Herzegovina

In most retail lease agreements, the tenant's right to alter or improve the premises is limited. Structural alterations are frequently prohibited and non-structural alterations usually require the landlord's prior consent.

With the consent of the landlord, the tenant can execute, at its own expense, all improvements that are useful for the proper functioning of the premises. If such improvements cannot be removed from the premises, the tenant may claim compensation for the improvements or a reduction of the rent for a period of time.

At the end of the lease, the tenant is obliged to return the premises either in the condition agreed with the landlord, or in their original condition.

In addition, the landlord may require the removal of any alteration. The tenant may have to pay compensation to the landlord.

### Bulgaria

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion.

They may agree on a scale /way in which the fitting-out works will be carried out. The only limitations would be that the fitting-out works may not alter the agreed use of the property or jeopardise its integrity.

It has been standard practice more recently for the landlord to undertake to carry out the fitting-out works in retail premises under a signed bonus/ discount arrangement.

### China

The landlord is obliged to provide the premises in a condition suitable for the usual and/or agreed use. The tenant may, with the consent of the landlord, make improvements to, or affix attachments to the leased property. Where the tenant makes improvements to, or affixes attachments to the leased property without obtaining the consent of the landlord, the landlord may demand that the leased property be restored to its original condition, or may demand compensation for any losses sustained. If the tenant makes fitting-out works with the consent of the landlord, when the lease term expires or the contract terminates, unless otherwise stipulated by the parties, the fitting-out works that have not formed attachment may be dismantled by the tenant; if damages have been caused to the leased property due to dismantlement, the tenant shall restore the leased property to its original state.

In practice, it is common in China that premises are provided by the landlord without fit-out and lease agreements usually provide for a fitting-out period during which no rent is charged by the landlord.

### Colombia

The landlord is not obliged to reimburse those fitting-out works which he has not agreed to pay for. The tenant might remove and take out with him all materials used for construction as long as taking them away does not affect the property.

In addition, the landowner is not obliged to compensate the tenant for useful improvements. Therefore, the tenant may dismantle these improvements from the premises upon vacating it, as long as the premises are not damaged by such a removal.

The tenant has the right to obtain compensation for any essential improvements made by him on the premises, as long as the following conditions are met: the improvements were not needed as a consequence of his negligence, and the tenant gave notice to the landlord in due time of the improvements required.

Finally, the tenant is obliged to carry out ordinary maintenance of the premises and is obliged to repair any damaged caused by him or any third party related to him.

### Croatia

There are no mandatory provisions regarding fitting-out works.

Usually, the parties use the underlying lease agreement to agree on the terms and manner for fitting-out works as well as the way in which the fitting-out costs are to be divided/settled.

### Czech Republic

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion.

In practice, if the parties agree that the tenant will execute the fitting-out works, the parties usually provide that (i) the tenant is authorised to depreciate the fitting-out works in its accounts, (ii) the fitting-out works will not increase the value of the premises, (iii) the tenant will maintain and repair the fitting-out works, and (iii) the tenant will remove the fitting-out works at the end of the lease.

### Dubai, United Arab Emirates

There are no formal legislative provisions regarding fitting out. The landlord is bound to provide the property in a condition suitable for which it is intended to be used. Notwithstanding that provision, it is quite common for the premises to be handed over in a 'shell and core' condition and the tenant fits out with the landlord's consent, which consent is normally not to be unreasonably withheld for non-structural fit out/alterations.



## France

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion.

The lease agreement will frequently require that prior consent be obtained from the landlord for any fitting-out works.

## Germany

There are no mandatory provisions regarding fitting-out works obligations. The tenant is obliged to execute the works with due diligence.

## Hungary

The landlord must hand over the premises in a shell and core condition, and the tenant is obliged to perform the fitting-out works.

## Italy

In principle, the Civil Code would allow the tenant to carry out fitting-out works in the premises without the consent of the landlord which would only be required for structural works capable of substantially altering the premises.

In practice, fitting-out works and, more generally, any works to be carried out by the tenant in the premises are regulated in the lease agreement and the prior consent of the landlord is usually required (often with the obligation for the landlord to act reasonably and in a timely manner).

## Luxembourg

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion.

## Monaco

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion, and to the provisions of the Civil code.

## The Netherlands

There are no statutory obligations applicable to the tenant regarding fitting-out works. The parties are fully free to make their own arrangements. As a rule of thumb, the tenant is responsible for the maintenance, repair and renewal of fitting-out works that the tenant has installed itself.

## Poland

There are no mandatory provisions regarding fitting-out works.

## Portugal

In retail lease agreements, the parties may freely agree whatever they deem more convenient in the lease agreement. Usually, the parties agree that the tenant may perform fitting-out works and other works required by law or by the lease agreement.

Generally, it is forbidden for the tenant to execute any work that may affect the structure, safety or configuration of the premises, except where otherwise agreed between the parties.

## Peru

### Needed Improvements

These are improvements that are intended to prevent the destruction or deterioration of the property. The tenant is entitled to reimbursement of the current value of the improvements required at the time of the refund.

### Useful Improvements

These are improvements that increase the value of the asset and its rental value. The tenant is entitled to reimbursement of the current value of any useful improvements existing at the time of the refund.

### Leisure Improvements

These are improvements for decoration, look, and comfort. The tenant has the right to remove leisure enhancements that can be removed without causing damage unless the owner chooses to pay the current value of the improvements.

## Romania

There are no mandatory provisions regarding fitting-out works. Usually, however, the costs and performance of the fitting-out works are contractually undertaken by the tenant. The tenant usually provides the landlord with a fitting-out plan that the landlord must approve in advance.

## Russia

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion.

The parties may agree that the tenant must perform the fitting-out works. In that case, the lease agreement usually provides that specification and design documents must be approved by the landlord in advance.

On the other hand, the fitting-out works may be performed by the landlord during the lease term or prior to its commencement. In that case, specification and design documents are to be prepared by the tenant and approved by the landlord in advance. The tenant must pay the landlord for the fitting-out works performed by the latter or this payment may be included as part of the rent under the lease agreement.

## Serbia

There are no mandatory provisions regarding fitting-out works. As this issue is not regulated by the Law on Contract and Torts, the parties may freely agree on the scope of fitting-out works, their price and each party's share in their funding.





### Slovakia

The tenant is only entitled to make changes to the premises with the landlord's consent. The tenant may only demand reimbursement of any associated costs if the landlord undertook to do so. Unless the agreement stipulates otherwise, the tenant is only entitled to demand reimbursement of the costs after the termination of the lease and after the deduction of the depreciation caused by the changes made, which has appeared in the meantime due to the use of the business premises. If the landlord granted its consent to the change but did not undertake to reimburse the costs, the tenant may demand consideration for the increase in the value of the business premises after the termination of the lease.

If the tenant makes any changes to retail premises without the landlord's consent, it is obliged to restore the premises to their original state at its own expense after the termination of the lease. If the landlord faces incurring considerable damage due to the changes made to the premises, it is entitled to withdraw from the agreement.

### Slovenia

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion.

In practice, it is usual for the tenant to fit out the premises so that they are suitable for occupation as declared in the lease agreement.

### Spain

There are no mandatory provisions regarding fitting-out works. In practice, the parties agree that the tenant may perform any work necessary to adapt the premises to its activity. This includes the possibility to install office signs outside the premises to identify and make the premises visible.

In addition, the tenant is usually prohibited from executing any work that may affect the structure, security or configuration of the premises, except with the prior consent of the landlord.

### Switzerland

The tenant may not renovate or alter the premises without the landlord's written consent. In practice, lease agreements contain further provisions regarding some form of security to be furnished by the tenant as well as the tenant's obligation to fight any builder's lien (Bauhandwerkerpfandrecht) requested in connection with its fitting-out works.

### Turkey

There are no mandatory provisions regarding fitting-out works. With the consent of the landlord, the tenant can execute, at its own expense, all improvements that are useful for the proper functioning of the premises. If such improvements cannot be removed from the premises, the tenant may claim compensation for the improvements or a reduction of the rent for a period of time.

At the end of the lease agreement, the tenant is obliged to return the premises either in the condition agreed with the landlord, or in their original condition. In addition, the landlord may require the removal of any alteration. Otherwise, the tenant may have to pay compensation to the landlord.

### Ukraine

There are no mandatory provisions regarding fitting-out works. In practice, the parties consult with each other to agree on the order in which the fitting-out works are carried out (as well as the obligations of the party responsible for the fitting-out works).

### United Kingdom

There are no mandatory provisions regarding fitting-out works. The matter is largely left to the parties' discretion.

Fitting out works will usually be documented by a licence for alterations. In most cases, the tenant will be permitted to carry out internal non-structural works and install signage and shop fronts but not any structural works. Often the landlord's consent is required, which must not be unreasonably withheld. The tenant is usually required to reinstate the premises to their original condition at the end of the lease.



# Reinstatement of the premises

## Albania

The tenant is obliged to maintain the premises in the condition they were in at the beginning of the lease. However, the tenant cannot be held liable for deterioration of the state of the retail premises, devices and the equipment resulting from their regular use.

Upon termination of the lease agreement, the tenant is obliged to reinstate the premises to the condition in which they were handed over by the landlord, meaning that the tenant must reinstate all the alterations, unless otherwise agreed by the parties.

## Austria

There is no obligation on the tenant under the law regarding the reinstatement of the premises in a case of force majeure. The tenant must compensate or reinstate for damage caused by it.

The tenant is obliged to return the premises in their condition as at the beginning of the lease, taking ordinary wear and tear into account

## Belgium

Unless otherwise stipulated in the lease agreement, the landlord cannot, at the expiry of the lease, claim the removal of the alteration works carried out by the tenant, if such works have been executed at the cost of the tenant and with the express or tacit approval of the landlord (or by virtue of a Court's decision). The landlord may, however, object to the removal of the alteration works by the tenant. In such a case, the landlord has the option of (i) indemnifying against the value of the material and labour costs, or (ii) paying an amount equal to the surplus of the leased premises as a consequence of the works concerned.

If alteration works are carried out by the tenant without the permission of the landlord or a Court's decision, the landlord, both during the lease and at expiry may (i) claim restoration of the premises to their original condition at the tenant's expense, or (ii) keep the alteration works without having to pay any indemnity to the tenant.

The parties are free to deviate from these provisions of the Law which are not mandatory.

### Bosnia and Herzegovina

The tenant is not responsible for damage to the premises that is caused by normal wear and tear. For any other damage, the tenant is obliged to repair the premises at its expense. If the tenant does not comply with this obligation, the landlord can deduct the expense of these damages (caused by the tenant or any other person using the premises) from the deposit paid in advance by the tenant.

### Bulgaria

As a matter of statutory obligation, the tenant must indemnify the landlord for all damage caused by the tenant, its employees or its subtenants, other than those resulting from the normal use of the premises.

It is standard practice in the case of retail leases for the tenant to reinstall the premises to a specific state (e.g. in the state in which they were handed over or even to carry out basic repairs such as painting of the walls/ceilings or repairs to the floors at the tenant's expense).

### China

The tenant is required to return the premises to the landlord in their initial condition, taking ordinary wear and tear into account, unless otherwise agreed.

### Colombia

In all commercial, civil and Urban Housing leases, the tenant is obliged to return the premises to the landlord in the same condition in which it was handed over at the beginning of the lease, subject to normal wear and tear.

### Croatia

The tenant is obliged to maintain the premises in the condition they were in at the beginning of the lease. However, the tenant cannot be held liable for deterioration of the state of the retail premises, devices and the equipment resulting from their regular use.

Upon termination of the lease agreement, the tenant is obliged to reinstate the premises to the condition in which they were handed over by the landlord, meaning that the tenant has to reinstate all the alterations, unless otherwise agreed by the parties.

The tenant is entitled to take away the alterations that have been installed / built in the premises, if doing so would not damage the retail premises and if such installations were not previously taken into account by the landlord in reducing the rent.

### Czech Republic

After the end of the lease, the tenant must return the premises to the landlord in the same condition as they were in on the day when they were taken over by the tenant at the beginning of the lease, allowing for ordinary wear and tear.

### Dubai, United Arab Emirates

The law provided that the tenant must vacate the premises and handover in the condition which they were at the commencement of the lease, ordinary wear and tear excepted.

### France

There are no mandatory provisions regarding the reinstatement of the premises. The matter is largely left to the parties' discretion.

Lease agreements usually provide that any fitting-out works and generally any work carried out by the tenant to improve the premises become the property of the landlord upon expiry of the lease without any compensation, unless the landlord requires that the premises be reinstated to their original condition.

### Germany

All modifications made during the lease term usually have to be reversed at the end of the term at the tenant's expense.

### Hungary

The tenant must reinstate the premises to the condition at the time of the original handover, subject to normal wear and tear. The only exception is if the landlord wishes to keep certain items of the tenant's fitting-out works.

### Italy

In principle, the tenant is required to return the premises to the landlord in the same state in which it was delivered at the start of the lease, allowing for normal wear and tear.

In addition, the tenant would have the right (i) to obtain compensation for the improvements made in the premises with the consent of the landlord and (ii) to remove the improvements at the end of the lease, unless the landlord opts to retain them and compensate the tenant for them.

However, as a matter of fact, given that the provisions of the Civil Code are not mandatory, the reinstatement obligations are usually regulated in the lease agreement.



It is standard practice for the tenant to be obliged to return the premises to their initial condition unless the landlord opts to retain the changes (usually at no cost).

### Luxembourg

There are no mandatory provisions regarding the reinstatement of the premises. The matter is largely left to the parties' discretion.

### Monaco

There are no mandatory provisions regarding the reinstatement of the premises.

The matter is largely left to the parties' discretion and to the provisions of the Civil code.

### The Netherlands

The tenant is obliged to reinstate the premises to the same state in which they were delivered at the commencement of the lease agreement. This does not apply to changes or additions that were approved by the landlord or normal wear and tear.

This is not a semi-mandatory stipulation. The standard ROZ model stipulates that the tenant is obliged to reinstate the premises to the same state as they were delivered at the commencement of the lease agreement, except normal wear and tear.

### Peru

The tenant must return the property to the landlord at the expiration of the lease term, in the condition in which the property was received, with no deterioration other than that of its ordinary use.

If after the expiration of the lease term, the tenant does not return the property, the landlord is entitled to demand its return and collect the agreed penalty or, failing that, a compensation equal to the rent of the previous period, up until its actual return.

### Poland

The tenant is obliged to return the premises in a non-deteriorated condition, allowing for normal wear and tear. If the tenant improves the premises, the landlord, unless otherwise agreed, may either keep the improvements against due compensation for their value at the time of the return or demand that the previous condition be restored.

### Portugal

The parties may agree otherwise, but usually, at the end of the retail lease agreement, the tenant must return the premises to the landlord in their original state, free of people and goods.

If the tenant does not comply with what is stated above, the landlord may keep the works executed by the tenant without paying any compensation.

### Romania

The tenant is legally obliged to reinstate the premises to their original condition, except for normal wear and tear, upon termination of the lease.

### Russia

Upon the expiry of the lease or its early termination, the tenant must return the premises to the landlord in their initial condition, allowing for normal wear and tear, unless otherwise agreed.

Usually the premises should be vacated by the tenant and returned to the landlord under a transfer and acceptance certificate on the last day of the lease term. If the tenant fails to return the premises by the agreed date, the landlord may charge the tenant rent for the whole period of the delay and demand compensation for losses and the payment of a penalty.

The transfer and acceptance certificate should specify all the defects discovered by the landlord in the premises during the inspection. If such defects were caused through the operation of the premises by the tenant, the tenant must compensate the landlord.

If there are any inseparable improvements to the premises made by the tenant, the tenant is entitled to claim compensation for their costs only in the event that such improvements were performed with the prior consent of the landlord. Otherwise, the improvements will be transferred to the landlord at the end of the lease term together with the premises without any compensation.

On the other hand, any separable improvements of the premises are considered the property of the tenant who must remove them from the premises by the end of the lease.

### Serbia

The tenant is obliged to deliver possession of the premises to the landlord in a vacant state and in good order, taking normal wear and tear into consideration. If the tenant had made some improvements or additions to the leased premises during the lease period, it is obliged to reinstate the leased premises to the initial condition. However, if these cannot be removed without damage to the premises, the landlord may decide to compensate the tenant for their value and keep them.



## Slovakia

If the lease agreement terminates or expires, the tenant must return the leased business premises in a condition corresponding to the agreed manner of their use, and if the manner of such use was not expressly agreed, in the condition in which the tenant took over the business premises, all while taking normal wear and tear into account.

Usually the premises should be vacated by the tenant and returned to the landlord under the transfer and acceptance certificate on the last day of the lease term.

The transfer and acceptance (or returning) certificate should specify all the defects discovered by the landlord in the premises in the course of its inspection. If such defects were incurred as the result of operation of the premises by the tenant, the latter has to compensate the landlord with relevant amounts.

If the tenant makes any changes to the premises without the landlord's consent, he is obliged to restore the business premises to their original state at his expense after the termination of the lease. If the landlord faces incurring considerable damage due to the changes made to the premises, it is entitled to withdraw from the agreement.

## Slovenia

Unless otherwise agreed, the tenant shall return the premises in the same condition in which they were received.

## Spain

Upon the expiry of the lease agreement, the tenant must leave the premises and reinstate them to the landlord without any request being necessary. In that respect, the landlord may demand that the tenant returns the property to its original state or, on the contrary, that it keep the works executed by the tenant during the term of the agreement without any compensation for the tenant.

## Switzerland

If the landlord has consented to alterations by the tenant, the landlord may request restoration to the original condition on expiry of the lease, but only if this restoration was agreed in writing. At the end of the lease, the tenant may demand compensation for the then depreciated value of the improvements, unless this compensation was excluded by express agreement.

The tenant must hand back the premises in their original condition, allowing for ordinary wear and tear. It is up to the landlord to examine the condition of the premises and notify the tenant of defects for which the tenant is responsible. Landlords who fail to do so forfeit their claims, except in the case of defects that are not recognisable as such in an examination according to customary practice.

## Turkey

The tenant is obliged to maintain the premises in the condition they were at the beginning of the lease agreement. However, the tenant cannot be held liable for deterioration of the state of the retail premises, devices and the equipment resulting from their regular use.

Upon termination of the lease agreement, the tenant is obliged to reinstate the premises to the condition in which they were handed over by the landlord, meaning that the tenant has to remove all alterations, unless otherwise agreed by the parties.

The tenant is entitled to take away any fixtures that have been installed / built in the premises as long as doing so would not damage the retail premises and if such installations were not previously taken into account by the landlord in reducing the rent.

## Ukraine

The tenant is obliged to reinstate the premises if it is the tenant's fault that the premises are in a deteriorated condition. The detailed order of such reinstatement may be determined by the parties to the lease. If reinstatement of the premises is impossible, then the landlord may claim compensation for damages.

## United Kingdom

Usually the tenant has to reinstate the premises to their condition prior to the tenant occupying the premises. This includes removing any alterations and fitting out works which the tenant may have carried out. In England, the landlord can be required to pay compensation for improvements, although this is unusual and the landlord will prefer reinstatement. If the tenant does not reinstate then the tenant must compensate the landlord for the cost, but this compensation is capped by reference to the loss in value of the premises.



# Sublease and transfer of the lease

## Albania

The tenant is entitled to sublease, unless the lease agreement in question specifically prohibits subleasing. The lease agreement can be transferred to a new tenant only with the landlord's prior consent.

## Austria

MRG (full application)

- The tenant is legally entitled to sell or lease his business to a third party. In that case, the rent for the new tenant may be increased. A material change of control concerning the tenant's business may also result in an increase in the rent.
- Partial subleases are possible. The landlord has a right of termination in the event of a full sublease and if the sub-rent is inadequately high compared to the principal rent.
- Transfer of the lease agreement: the landlord's consent is required unless otherwise agreed in the lease agreement.

ABGB

- Subleasing is possible unless otherwise agreed in the lease agreement.
- Transfer of the lease agreement: the landlord's consent is required unless otherwise agreed in the lease agreement.

## Belgium

Even if the lease agreement provides that the tenant cannot sublease the premises or transfer the lease as a rule, the tenant may in any event transfer the lease (as a whole) or sublease the premises (as a whole), provided that such a transfer or sublease occurs simultaneously with the transfer or sublease of the business of the tenant.

However, if the landlord or his/her family resides in a part of the premises, the prohibition of such a sublease or transfer remains valid.

The tenant who wishes to carry out such a transfer or sublease has to notify the landlord about the draft of the sublease or transfer agreement. The landlord has to inform the tenant about the lawful and substantiated reasons for its refusal.

In the case of a transfer or a sublease, the original tenant remains jointly and severally liable with the transferee or subtenant for all obligations arising from the initial lease.

### Bosnia and Herzegovina

The tenant cannot sublease in whole or part without the express consent of the landlord. In that case, the tenant has to guarantee that the subtenant will comply with the designated purpose of the premises as agreed in the lease agreement. In addition, the Obligation Act provides that the landlord is entitled to claim obligations of a tenant (usually rent and charges that are not paid in time) against a subtenant.

The express consent of the landlord is also required for the transfer of the lease.

### Bulgaria

In principle, the tenant may sublease parts of the premises without the landlord's prior consent. However, this possibility is discretionary, i.e. the parties may waive this option. It is often the case that the landlord insists on its prior written consent being sought in any event. Subleasing the entire property requires the landlord's prior written consent.

Transferring the lease requires the landlord's prior written consent as well.

In the case of a sublease, the initial tenant is bound by its obligations vis-à-vis the landlord under the original lease agreement.

### China

The tenant is entitled to sublease the premises or transfer the lease only with the landlord's consent. Where the tenant subleases the leased property, the lease agreement between the landlord and the tenant shall continue to be in effect, and if the sub-tenant causes damage to the leased property, the tenant shall provide compensation for the losses sustained. Where the tenant sublets the leased property without the consent of the landlord, the landlord is entitled to terminate the lease agreement.

### Colombia

As a general rule, the tenant cannot sublease or transfer the lease without the express consent of the landlord. This applies both for the civil rental lease and the urban housing lease.

In the civil rental lease, once the landlord's consent is obtained, the subtenant or the assignee/transferee must meet all obligations arising from the initial lease, in the same terms originally agreed.

In the urban housing lease, if the tenant subleases or transfers the lease without the agreement of the landlord, the landlord has the right to (i) terminate the contract and demand the restitution of his property, or (ii) sign a new lease with the actual tenants -in this case the initial lease will cease to apply. If the transfer is authorized by the landlord, all the obligations arising from the initial lease -including the reinstatement of the premises- are applicable to the assignee/transferee.

In the leasing of commercial establishments, the tenant has the right to sublease half of the premises without the landlord's consent.

### Croatia

The tenant is only entitled to sublease the whole premises or parts thereof provided that the parties stipulated accordingly in the lease agreement. Subleasing is otherwise prohibited.

The lease agreement can be transferred to a new tenant only with the landlord's consent which has to be explicit and in writing.

When subleasing, the tenant has to guarantee that the premises will be used in a manner agreed in the lease agreement. In addition, the Obligations Act provides that the landlord is entitled to settle the receivables he is owed by the tenant (usually unpaid rent) by claiming those amounts from the subtenant.

### Czech Republic

The tenant may sublease the premises and transfer the lease agreement only with the consent of the landlord.

### Dubai, United Arab Emirates

Unless otherwise agreed between the parties, subleasing and transfer (assignment) are not permitted under the law unless the landlord's consent is obtained. Ordinarily, conditions regarding the landlord's consent are built into the lease agreement.

### France

Any subleasing of the premises is prohibited, unless otherwise provided in the lease agreement or unless approved by the landlord.



The tenant may transfer the lease, unless otherwise provided in the lease agreement.

It should be noted that the tenant has the right, by law, to assign its lease to the buyer or successor of its business as a going concern ("*fonds de commerce*"). Any contractual prohibition of this right contained in the lease agreement is considered void. The lease may only set forth formalities to be carried out for a valid transfer (for instance the obligation for the assignment to be in the form of a notarial deed).

### Germany

The tenant may in whole or part sublease the premises with the consent of the landlord which may only be refused for good cause. Usually the parties regulate this subject in the lease agreement.

The transfer of the lease is automatic by operation of law only in the case of a transfer of real property. In all other cases, transferring the lease is only possible with the consent of the other party.

### Hungary

The landlord's consent is required for the subleasing of the premises in whole or part, unless otherwise agreed by the parties. The same applies to the transfer of the lease.

### Italy

A sublease and transfer of the lease by the tenant would require the landlord's prior consent. In practice, lease agreements may provide for certain exemptions (for instance, for intra-group transfers, usually provided that the lease is transferred back to the original tenant if the group relationship ceases to exist).

If the lease is transferred (definitely or temporarily) along with the tenant's business as a going concern (i.e. in the context of a sale or lease of business), the prior consent of the landlord would not be required. In that case, however, the landlord must be notified in writing, by registered letter, of the sale or lease of business and may oppose the transfer, within 30 days, for "serious reasons" (typically based on financial conditions or the financial standing of the new tenant).

### Luxembourg

Current legislation

The tenant is entitled to sublease or transfer the lease unless otherwise provided in the lease agreement.

Any clause prohibiting the sublease or the transfer of a lease is null and void if the sublease or the transfer is made with the transfer of the business as a going concern ("*fonds de commerce*") and provided that an identical business is indeed established in the leased premises.

Nonetheless, such clause is valid if the landlord kept part of the building to live there or to have his family live there.

Any sublease or transfer of the lease should be notified to the landlord who may refuse the transfer project within thirty (30) days for legitimate reasons. The tenant may take legal proceedings within eight (8) days of the landlord's refusal.

Bill of Law

The same is provided by the Bill of Law. It only specifies that the rent paid by the sub-tenant to the tenant should not be higher than the rent paid by the tenant to the landlord.

### Monaco

The tenant has the right to sublease the premises, in whole or in part. If the landlord does not agree with subleasing, the lease agreement must specify this prohibition.

The lease agreement can be transferred to a new tenant without the landlord's consent.

### The Netherlands

Subleasing does not require the landlord's consent, unless the tenant should expect that the landlord will have reasonable objections to a specific sublease. The transfer of the lease requires the landlord's consent or authorisation by the Court.

Neither provision is semi-mandatory. The standard ROZ model stipulates that the landlord's approval is required for both the sublease and a transfer of the lease.

### Peru

Sublease

The written authorization of the landlord is required to sublease all or part of the rental property

Assignment

The landlord is required to give his or her agreement before, at the time or after the assignment agreement. If the landlord has previously agreed, the assignment contract shall take effect once the landlord has been notified in writing of a definite date of the assignment.

### Poland

The tenant requires the landlord's consent to sublease or to transfer the lease.

### Portugal

In retail lease agreements, the parties may freely agree the possibility of subleasing or assigning the lease. Any sublease requires the landlord's written consent. However, a sublease established without the landlord's prior consent may be ratified if the landlord recognises the sub-lessee as such.



In relation to the assignment, the transfer of the tenant's contractual position requires permission from the landlord, except in the following situations:

- (i) Transfer of the commercial business ("trespasse"), in which case the landlord has a pre-emption right on such a transfer;
- (ii) If the new tenant continues to conduct the same profession on the property as the tenant assigning its contractual position.

Nevertheless, the tenant shall notify the landlord of the assignment.

### Romania

By law, the tenant does not need the landlord's consent to sublease or to transfer the lease, unless otherwise provided in the lease.

However, market practice usually indicates that the tenant must obtain the landlord's prior written consent for the sublease and/or the transfer of the lease. Usually, however, such a sublease/transfer can operate without consent, provided that the subtenant/transferee is part of the tenant's group of companies. In that case, the tenant must only notify the landlord about the sublease /transfer. The subtenant usually remains jointly liable with the tenant for complying with its contractual undertakings.

### Russia

The tenant is entitled to sublease the premises or transfer the lease only with the landlord's consent. However, the Civil Code does not contain specific requirements regarding the form of such consent. To avoid any doubt, it is advisable to obtain the landlord's prior written consent to the particular sublease or assignment agreement.

In practice, a lease agreement may provide that the landlord's consent is not required for the sublease of the premises or for the transfer of the lease by the tenant, or a particular lease agreement may lay down only the tenant's obligation to notify the landlord about the sublease or the transfer of the lease.

### Serbia

Under the Law on Contracts and Torts, subleasing does not require the landlord's consent, unless the lease agreement in question specifically prohibits subleasing. However, in cases where the landlord is the public authority, sublease is not allowed under the law.

The Law on Contracts and Torts does not regulate the issue of transfer of the lease by the tenant. However, in practice, landlords prohibit such transfers.

### Slovakia

Unless otherwise agreed, subleasing and transferring the lease require the consent of the landlord. However, the Civil Code or the Lease of Business Premises Act does not require specific details as to the form of such consent. To avoid any doubt, obtaining the landlord's consent in written form is recommended with regard to a sublease or an assignment agreement. It is also advisable to obtain such consent in advance, i.e. before the tenant enters into the sublease agreement or the agreement to assign rights and obligations under the lease agreement.







### Slovenia

According to the ZPSPP, the tenant does not have the right to sublease the premises without the landlord's consent, unless otherwise agreed in the lease agreement.

Given that the transfer of the lease is considered to be assignment of the lease agreement, the consent of the landlord is also required in such cases.

### Spain

Unless otherwise agreed, the tenant may assign the lease without the landlord's prior consent but this entitles the landlord to increase the rent by 20%. In addition and unless otherwise agreed, the tenant can sublease without the landlord's prior consent, the landlord being entitled to increase the rent by 10% if the sublease is just of part of the premises and by 20% if the sublease is of the whole premises.

Nevertheless, in both an assignment and a sublease, the tenant must notify the landlord within one month from the time when the assignment or the sublease has been entered into.

In practice, the parties exclude the above principles and agree that any assignment, sublease or any corporate operation (mergers, acquisitions, etc., which for this purpose are considered as an assignment) requires the prior written consent of the landlord.

### Switzerland

Subleasing and transferring the lease require the landlord's consent.

The landlord may, however, only refuse consent to a sublease if (i) the tenant refuses to inform the landlord of the terms of the sublease, (ii) the terms and conditions of the sublease are unfair compared to those of the principal lease or (iii) the subleasing gives rise to major disadvantages for the landlord.

The landlord's consent for the transfer of the lease must be in writing and may only be withheld for good cause.

### Turkey

The tenant shall not sublease or transfer the lease to another third party without obtaining the consent of the landlord. However, the tenant may lease some part of the property provided that this does not require any alterations that would cause damage to the landlord.

### Ukraine

The tenant may sublease or transfer the lease agreement with the landlord's consent. Consent for subleasing may already be provided in the lease agreement.

### United Kingdom

Subleasing and transferring the lease require the landlord's consent. The lease agreement usually provides certain conditions that the landlord can impose if it is acting reasonably. Consent cannot be unreasonably withheld, by law, in England and Wales, where it is also normal practice for the landlord to require (at least if it is reasonable and often in any event) that the tenant guarantees the assignee.

As a starting point, the landlord cannot withhold consent to an assignment but landlords are allowed to impose certain conditions on assignment which do not need to be reasonable but which would need to be agreed between the parties at drafting.



# Acquisition of the premises

## Albania

The lease agreement is not binding on the new owner of the premises. The new owner may terminate even a fixed term lease in accordance with the statutory notice periods unless otherwise agreed.

## Austria

MRG (full and partial application)

Except for sublease agreements, the lease is binding on the acquirer in the case that the premises are sold. However, provisions of side agreements with unusual content are only binding provided the acquirer knew or should have known about such agreements.

ABGB (and subleases even under MRG)

The lease agreement is transferred to the acquirer. However, the acquirer may terminate the lease agreement if the lease agreement is not registered in the land register. Lease agreements may only be registered in the land register if they are concluded for a definite period.

## Belgium

If the landlord sells the premises, the new owner may terminate the lease, subject to a one-year notice period, within three months after the purchase of the premises, but only if the lease agreement expressly entitles the new owner to do so.

The new owner may only terminate the lease agreement on one of the legal grounds provided in the Law (own use, use of the premises for a non-retail activity, rebuild or material breach).

As the case may be, an eviction indemnity will be due and payable by the new owner pursuant to termination on these grounds.

## Bosnia and Herzegovina

If the landlord sells the premises, all rights and obligations to the tenant are automatically transferred to the new owner. However, if a forced sale of the premises is initiated in order to settle with one or more creditors, the lease will not be transferred to the new owner, unless the lease agreement is registered with the land registry which protects the tenant against eviction by the new owner.



### Bulgaria

The lease agreement is binding on the new owner for the full term of the lease, provided that the lease agreement has been concluded and registered with the Bulgarian real estate registry prior to the sale of the premises.

Lease agreements that predate the sale of the premises and the date of which can be verified (i.e. based on the notary public's certification of the lease agreement) are binding on the new owner for the remaining duration of the lease but in any event for no longer than one year.

In any other cases – and only if the tenant is in actual possession of the premises – the lease is binding on the new owner as a lease agreement for an indefinite term would be, i.e. it may be terminated by giving one month's prior notice.

If the tenant is evicted as a result of the sale of the premises, the tenant is entitled to an indemnity (incurred losses and lost profits) from the landlord.

### China

Any change in the ownership of the leased property during the period of the lease shall have no effect on the validity of the lease agreement.

### Colombia

The lease will remain binding to the acquirer in the case of a sale of the premises. In the Urban Housing Lease, the sale of the premises is considered a just cause to end the lease agreement if the tenant is duly notified three months before the termination date.

### Croatia

If the premises are sold, all rights and obligations towards the tenant are automatically transferred to the new owner.

If an enforcement procedure is initiated to sell the property in order to pay off one or more creditors, the lease will not be binding on the new owner, unless it has been registered with the Land Registry. The tenant can register the lease agreement with the Land Registry if such a provision is included in the lease agreement.

### Czech Republic

The lease is binding on the new owner of the premises. However, if the new owner was not aware of the contractual provisions of the lease exceeding the statutory provisions, the new owner is bound only by the statutory provisions.

### Dubai, United Arab Emirates

The Law specifically provides that transfer of ownership of the property does not affect the tenant's right to occupy the premises, provided that the lease agreement has a fixed term.

### France

Pursuant to Article 1743 of the French Civil Code, the lease is binding on the new owner provided that the lease has been executed as a notarial deed or has a certain date.

### Germany

If the landlord sells the premises, the new owner will automatically take its place in the lease agreement by operation of law.

### Hungary

Upon the sale of the premises, the new owner may not terminate a lease agreement for a definite period and will automatically become the landlord under the lease agreement by operation of law.

### Italy

The lease is binding on the new owner provided that the lease was entered into before the sale and the date of its execution was certified by a notary or through registration at the tax office.

If the lease was granted for a term exceeding nine years and was not recorded at the Land Registry, it would only be binding on the new owner for a period of nine years as from its initial date.

Any clause of the lease agreement providing for its termination in the event of the sale of the premises is null and void.

### Luxembourg

Current legislation

In the case of a sale of the premises, the lease is only binding on the acquirer if made in authentic form or with a defined date.

Bill of Law

The last version of the Bill of Law provides that the lease is binding on the acquirer in case of sale of the premises.

### Monaco

The new owner is subject to all rights and obligations provided for in the lease agreement considering it is automatically transferred.





### The Netherlands

If the landlord sells the premises, the lease agreement is binding on the new owner of the premises. This is a mandatory provision.

### Peru

- If the lease is registered in the real estate registry, the acquirer must abide by the contract, being substituted and bound from the moment of its acquisition to all rights and obligations of the landlord.
- If the lease is not registered, the acquirer may terminate it.

When the lease is terminated due to the transfer of the property, the landlord is obliged to pay damages to the tenant.

### Poland

The lease is binding on the new owner in the case of the sale or any other transfer of the premises. The new owner may terminate even a fixed term lease in accordance with the statutory notice periods unless the premises have been already delivered to the tenant and the existence of the lease before the transfer has been certified by a notary.

### Portugal

The landlord may freely sell the premises to a third party (after giving the tenant the possibility to exercise its pre-emption right, if applicable). The third party must be informed of the existence of a lease agreement.

The landlord undertakes not to make any changes in the lease agreement, since the position of landlord is totally assumed by the new owner and the lease agreement is not affected by such a transfer.

### Romania

The lease agreement is binding on the new owner provided that the lease is registered in the Land Book of the area where the premises are located or if the new owner is informed about the existence of the lease.

### Russia

The acquisition of the premises by a new owner does not interrupt the lease agreement. In that case, the new owner will enjoy the rights and bear the obligations of the landlord under the lease agreement.

However, the parties may agree in the lease agreement that a transfer of the ownership title will be a ground for an early termination of the lease.

### Serbia

The lease is binding on the acquirer, but the tenant is allowed to terminate the lease agreement in the case of the sale of the premises.

### Slovakia

If a change in the ownership of the leased building occurs, the acquirer assumes the legal position of the landlord and the tenant is entitled to relieve himself of his obligations towards the former owner as soon as the change is notified to him or proven by the acquirer.

However, the parties may agree in the lease agreement that a transfer of the ownership title will be a ground for early termination of the lease.

### Slovenia

The lease agreement is binding on the new owner of the premises.



### Spain

The lease agreement is binding on the new owner provided that the requirements established in Article 34 of the Spanish Mortgage Act are met.

This article provides that the third party acquiring – in good faith and for pecuniary interest – any right of a person who appears with powers to transmit in the Property Registry will be maintained in this acquisition once it has registered its rights in the Property Registry.

### Switzerland

In the case of a change of ownership of the premises, the lease is automatically transferred to the new owner. The new owner may terminate the lease as of the next legally permissible termination date if he claims an urgent need of such premises for himself, close relatives or in-laws. The parties to the lease agreement may, however, agree to have the lease entered in the land register under priority notice. If such an entry has been obtained, the new owner may not terminate the lease.

### Turkey

If the landlord sells the premises, the person who acquires the leased property may terminate the lease agreement via a lawsuit filed within six months following the acquisition of the property; only if, however, such property is needed by the new owner, her/his spouse, close relatives or any other legal dependents for housing or workplace purposes. Provided that the above mentioned requirements are met, the tenant shall be notified thereof within a month from the date of acquisition.

### Ukraine

The lease agreement is binding on the new owner. However, the parties may provide in the lease agreement that if the premises are sold the lease will be terminated.

### United Kingdom

In the case of the landlord selling its interest, any new owner will be bound by the terms of the lease. The outgoing owner may continue to have ongoing liability for breach of the covenants in certain circumstances.

In Scotland, for leases of more than 20 years to bind new owners, they must be registered with the Land Register of Scotland.



# Pre-emption right for the tenant

## Albania

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

## Austria

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

## Belgium

The tenant has no pre-emption right in the case of the sale of the premises, unless otherwise agreed in the lease agreement.

## Bosnia and Herzegovina

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

## Bulgaria

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

## China

If the landlord intends to sell the leased premises, the landlord shall notify the tenant within a reasonable time limit prior to the sale and the tenant shall have the pre-emption right under the same conditions. It is common to exclude such pre-emption rights in the lease agreement.

If the landlord sells the leased property without notifying the tenant within a reasonable period or in other circumstances that infringe upon the pre-emptive right of the tenant, where the tenant requests the invalidation of the sales contract of such property concluded by the landlord and the third-party buyer, the people's court shall not uphold such request (unless there is any other reason to invalidate the contract, such as malicious conspiracy between the landlord and the buyer damaging the interests of the tenant).



### Colombia

The tenant has no pre-emption right in the event of the sale of the premises unless otherwise agreed in the lease agreement.

### Croatia

The tenant has no pre-emption right in the event of the sale of the premises unless otherwise agreed in the lease agreement.

### Czech Republic

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

### Dubai, United Arab Emirates

The tenant has no right of pre-emption unless specifically agreed in the lease agreement.

### France

The lease agreement can provide a pre-emption right for the tenant.

In addition, the Pinel Act introduced as of 18 December 2014, a pre-emption right for the tenant in case of sale of the premises. However, this preferential right will not be enforceable in several situations and notably: in the event (i) of a sale of a commercial complex, (ii) of a single sale of various commercial premises, (iii) of a sale of commercial premises to the co-owner of a commercial complex, or (iv) in case of sale to the spouse, ascendant or descendant of the landlord.

### Germany

The tenant has no pre-emption right if the premises are sold unless otherwise agreed in the lease agreement.

The parties may agree upon a pre-emption right, which has to be agreed by notarial deed, otherwise the pre-emption right is invalid.

### Hungary

According to the applicable law, retail tenants have no pre-emption right in the case of the sale of the premises (except for premises owned by the municipality or the State).

### Italy

The tenant of retail premises has a pre-emption right in the case of the sale of the premises. In that case, the landlord (i) must notify the tenant, by serving a written

notice through a court bailiff ("*ufficiale giudiziario*"), of its intention to sell and must disclose the terms of the sale (including the price) and (ii) must invite the tenant to exercise its pre-emption right within a period of sixty days.

The above right does not apply in a number of cases, including following the transfer of the property to the landlord's spouse or immediate family members, the transfers for which a prevailing statutory pre-emption right applies (co-heirs), if the activity carried out by the tenant at the premises is of a temporary nature or if the premises are located in certain non-eligible areas (e.g. train stations, airports, hotels, etc.). According to Italian Courts, the pre-emption right would also not operate in case of transfer of the leased premises along with others, as a single transaction (e.g. sale of entire building comprising several units let to various tenants).

### Luxembourg

Current legislation

There is no provision in Luxembourg law regarding pre-emption rights for the tenant.

Bill of Law

The last version of the Bill of Law provides a pre-emption right for tenants who have been renting the premises for at least eighteen (18) years in case of the sale of the premises.

However, this preferential right will not be enforceable in several situations and notably: in the event of (i) a sale by public auction, (ii) sale to the spouse, parents or descendants of the landlord or (iii) a free assignment.

### Monaco

The tenant has a pre-emption right in the case of the sale of the premises.

However, the tenant loses this pre-emption right in the following four cases:

- Auction sale
- Sale to close relatives
- Transfer of joint property rights
- Sale of several premises in the same building.

### The Netherlands

The tenant has no statutory pre-emption right in the case of the sale of the premises, but the parties are free to contractually agree upon such a right.



### Peru

The tenant has no right of first refusal unless it is stipulated in the lease.

### Poland

A tenant in a shopping centre has no statutory preemption right in the case of the sale of the premises.

### Portugal

A tenant of more than three years' standing has a pre-emption right in respect of the sale of the building. The pre-emption right is mandatory and may not be eliminated by the parties or waived in advance by the tenant.

### Romania

The tenant has a pre-emption right in the case of the sale of the premises. However, according to market practice, the draft lease agreements proposed by landlords usually provide for the waiving of such a pre-emption right.

### Russia

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

### Serbia

Neither the Law on Contracts and Torts nor the Law on Conveyance of Real Estate (Official Gazette of the Republic of Serbia, no. 93/2014) envisage such a pre-emption right for the tenant.

### Slovakia

The tenant has no pre-emption right in the case of the sale of the premises, unless otherwise agreed in the lease agreement.

### Slovenia

The tenant has no pre-emption right in the case of the sale of the premises, unless otherwise agreed in the lease agreement.

### Spain

The tenant has a pre-emption right in the case of the sale of the premises, unless otherwise agreed. In practice, the tenant waives this right in the lease agreement.

### Switzerland

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

### Turkey

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease agreement.

### Ukraine

The tenant has a pre-emption right, on condition that the tenant duly performs its obligations under the lease.

### United Kingdom

The tenant has no pre-emption right in the case of the sale of the premises unless otherwise agreed in the lease.





# Rental guarantee

## Albania

There are no mandatory rules regarding the form and / or duration of a rental guarantee.

## Austria

There are no mandatory provisions regarding the form and/or duration of a rental guarantee. Usually, guarantees are submitted in written form and remain in force until two to four weeks after termination of the lease agreement.

If MRG is fully or partially applicable, any deposit paid in cash is to be transferred to a savings book by the landlord.

## Belgium

There are no mandatory rules regarding the form and/or duration of a rental guarantee. Usually, the rental guarantee varies between three and six months of rent and the landlord may require a first-demand bank guarantee, a standard bank guarantee or a blocked fund.

## Bosnia and Herzegovina

There are no mandatory provisions regarding the form and/or duration of a rental guarantee. Usually, the landlord requires security for the payment of rent and the amount varies between three and six months' rent.

## Bulgaria

There are no mandatory rules regarding the form and/or duration of a rental guarantee (commonly dubbed as "cash deposits"). However, the procedural rules introduce requirements of relevance to prove claims/enforce rental guarantees. In particular, if the rental guarantee's value exceeds BGN 5000 (approximately EUR 2,500), the guarantee must be agreed upon in writing and written confirmation of its payment (e.g. a receipt or an invoice) must be issued in order to successfully prove the existence /payment of the guarantee in the event of court disputes.



### Croatia

There are no mandatory rules regarding the form and/or duration of a rental guarantee. Usually, the landlord requires a security for the payment of rent in the form of a security deposit or a bank guarantee equivalent to three to six months' rent.

### China

There are no mandatory provisions regarding the form and/or duration of a rental guarantee. In practice, the tenant usually provides a deposit to the landlord in the amount of 2 or 3 monthly rentals which shall be returned upon the expiration of the lease term deducting reasonable payables to the landlord.

### Colombia

In the Urban Housing Lease, the landlord is forbidden to demand security deposits in cash or any other kind of warranty to guarantee the fulfilment of the tenant's obligations under the contract.

However, in the Urban Housing Lease, the landlord may request a deposit from the tenant in order to pay the public utilities of the premises in case the tenant breaches his obligation to pay them. The amount of such deposit cannot exceed the average amount charged by the municipality for public utilities for two periods in the premises.

### Czech Republic

There are no mandatory rules regarding the form and/or duration of a rental guarantee. It is standard practice that a cash deposit or a bank guarantee is required by the landlord in the amount of three months' rent and service charges, which must be valid for the whole lease term plus three months after the lease term and which must cover all the tenant's obligations under the lease agreement.

### Dubai, United Arab Emirates

There are no mandatory rules regarding the form and/or duration of a rental guarantee. Usually the landlord requires a security amount in lieu of maintenance obligations at the expiry of the lease agreement. The amount of the security deposit can vary from one month's rent to three month's rent.

### France

Article L. 145-40 of the French Commercial Code provides that in the event that the sum of the security deposit exceeds the total of two terms of rent, the amount by which said sum exceeds two terms of rent shall accrue interest for the account of the tenant.

Usually, the rental guarantee varies between 3 and 6 months of rent and the landlord may require a first demand bank guarantee.

### Germany

There are no mandatory rules regarding the form and/or duration of a rental guarantee. However, rental securities limited in duration are not common on the market.

### Hungary

There are no mandatory rules regarding the form and/or duration of a rental guarantee.

However, if it is agreed that the tenant will give a rental guarantee in the form of a bank guarantee, a suretyship or a parent company guarantee, the form and content of these securities are regulated by the Hungarian Civil Code. The landlord usually requires that the guarantee be subject to Hungarian law.

### Italy

The Lease Law imposes a mandatory limit on security deposits in cash, the amount of which cannot exceed three months' rent. The Italian courts have stated that this limit is not applicable to other types of securities, such as a bank guarantee, which is usually requested in addition to security deposits.

### Luxembourg

Current legislation

The rental guarantee is freely determined by the parties.

Bill of Law

The latest version of the Bill of Law provides that the rental guarantee shall not exceed six (6) months of rent. The landlord would be forced to accept any form of guarantee which ensures the due payment when required.



## Monaco

There are no mandatory provisions regarding the form and/or duration of a rental guarantee.

This matter is subject to the provisions of the agreement between the landlord and the tenant.

## The Netherlands

There are no mandatory rules regarding the form and/or duration of a rental guarantee.

The standard ROZ model stipulates that the tenant must either furnish a bank guarantee or pay a deposit. The landlord is able to make a claim against the bank guarantee or deposit until six (6) months after the lease agreement ends and the premises are vacated.

## Peru

There is no law requiring the payment of a security deposit, but it is standard practice for the landlord to request the equivalent of two rents as a security deposit for the lease.

## Poland

There are no mandatory provisions regarding the form and/or duration of a rental guarantee.

## Portugal

It is common the tenant give the landlord a deposit in the amount corresponding to the value of one or two months' rent in order to ensure that the premises are in good condition at the end of the agreement; this deposit shall be returned by the landlord in the end of the lease agreement if all the tenant's obligations under the contract are fulfilled.

An additional security apart from the one described above may be agreed between the parties (such as a bank guarantee or a comfort letter) and its execution is freely agreed between the parties. This additional guarantee is more common for larger shops/higher rents.

It's also possible to anticipate the payment of rent up to three months at the date in which the lease agreement is signed to safeguard any delay on the monthly rent payment; at the end of the lease if the tenant has fulfilled the obligation to pay all monthly rents, he don't have to pay rent on the last three months (the payment of those rents is already covered by the anticipated payment).

## Romania

There are no mandatory rules regarding the form and/or duration of a rental guarantee.

Market practice is that the guarantee is a cash deposit, a bank guarantee letter or promissory notes issued by a bank and accepted by the landlord. The average amount of the guarantee is three months' rent, service charges and other administrative costs where applicable (e.g. marketing costs).

## Russia

There are no mandatory rules regarding the form and/or duration of a rental guarantee.

In practice, the tenant usually provides a security deposit. In the event of any breaches by the tenant of the lease agreement, the landlord is entitled to deduct the relevant amounts charged to the tenant from the security deposit. The tenant is obliged to maintain the agreed amount of the security deposit during the whole lease term. After the termination of the lease agreement, the security deposit is to be transferred back to the tenant, or it may be offset as the rental payment for the last period of the lease term by mutual agreement.

The practice of using security deposits is very common in retail leases in Russia. However, the tenant's obligations under the lease agreement may be secured by other means, including a penalty, a mortgage, bank guarantee, retention, etc.

## Serbia

There are no mandatory rules regarding the form and/or duration of a rental guarantee.

## Slovakia

There are no mandatory legal provisions regarding the form or duration of a rental guarantee.

The practice of using security deposits is very common in retail leases. The amount of the security deposit is usually three times the rent plus service charges. The Civil Code provides that in order to secure the payment of rent, the landlord of business premises shall have a lien on the movables that are located in the business premises and that belong to the tenant, except for such movables that may not be the subject of an execution order.

## Slovenia

There are no mandatory rules regarding the form and/or duration of a rental guarantee.

## Spain

In accordance with the Spanish Urban Lease Act, the tenant must deliver a two-month security to the landlord at the time of signing of the lease agreement in order to ensure the leased property is in good condition at the end of the lease agreement. The security must be in cash. The security must be in force during the whole term of the lease agreement.

The security can also be subject to adjustments. Unless otherwise agreed, the security may be adjusted in the same way and form as has been agreed for the rent. In practice, additional securities can be agreed between the parties (such as bank guarantees) and the parties are free to regulate these additional securities as they see fit.



### Switzerland

In the context of retail leases, it is common for the payment of the rent to be secured by a bank guarantee. Alternatively, the landlord may require the tenant to furnish an advance cash security to be deposited with a bank.

The amount deposited usually consists of six to twelve months' rent. Where the tenant furnishes security in the form of cash or negotiable securities, the landlord must deposit an amount in a bank savings or deposit account in the tenant's name.

### Turkey

There are no mandatory rules regarding the form and/or duration of a rental guarantee. Usually, the landlord requires a security for the payment of rent fee in the form of a security deposit or a bank guarantee. In practice, a security deposit equivalent to two or three months is required by the landlord; however, it depends on the duration of the lease agreement.

### Ukraine

There are no mandatory rules regarding the form and/or duration of a rental guarantee. However, in practice, the landlord may request a parental and/or bank guarantee and a three-month prepayment to the landlord's account.

### United Kingdom

There are no mandatory rules regarding the form and/or duration of a rental guarantee.

Parent Company guarantees are common, followed by security deposits of between 3 and 12 months rent and service charge, plus value added tax. Bank guarantees are used only occasionally.



# Maintenance and repair

## Albania

The landlord is obliged to ensure that the premises are maintained in a condition suitable for the purpose for which they were leased. Also, the landlord would be responsible for all necessary maintenance and repairs to the premises (extraordinary expenses), whilst the tenant would be responsible for small, day-to-day repair and maintenance work (ordinary expenses).

## Austria

The landlord is obliged to do everything required to keep the lease object in a usable condition. However, this severe obligation is usually waived in the lease agreement and shifted to the tenant (as far as possible in accordance with *bonos mores*).

If the MRG is fully applicable, there is a system of maintenance and repair duties for both parties which may not be altered to the disadvantage of the tenant. In any case, the landlord has to repair severe defects to the building and to maintain the common areas of the premises.

## Belgium

There are no mandatory rules for maintenance and repair obligations. This matter is therefore subject to negotiations between the parties. The landlord may require the application of Article 1724 of the Belgian Civil Code (only minor repairs will be paid for by the tenant) or the application of Articles 605 and 606 of the Belgian Civil Code (the costs of major repairs are borne by the tenant).

In practice, the landlord requires the application of Articles 605 and 606 of the Belgian Civil Code more and more frequently.



### Bosnia and Herzegovina

The landlord is responsible for major repairs and maintenance of the common areas and the structure of the building (such as the heating systems).

The tenant is responsible for all operating costs, minor repairs and maintenance of the interiors of the premises linked to the use of the premises.

### Bulgaria

The tenant is responsible for (i) small-scale repairs of damage that results from normal use of the premises and (ii) damage intentionally or negligently caused by the tenant, its employees and subtenants.

More generally, the tenant is obliged to use the premises in good faith and with due care (which includes informing the landlord about any damage or encroachment on the premises).

The landlord is responsible for all other repairs. If the landlord fails to complete these repairs, the tenant may (i) require that the repairs be carried out, (ii) require that the rent be commensurately reduced, (iii) complete the repairs instead of the landlord and offset the costs against the rent, (iv) rescind the lease agreement (v) request an indemnity for the landlord's failure to complete the repairs if this failure is the landlord's fault (and not due to force majeure).

### China

The landlord shall be obliged to maintain and repair the leased property (other than the fit-out done by the tenant) except as otherwise agreed by the parties. Where the landlord fails to perform the obligations of maintenance and repair of the leased property, the tenant may conduct the maintenance and repair, and the expenses thereof shall be borne by the landlord. Where the maintenance and repair affects the use of the leased property by the tenant, the rent shall be reduced or the lease term shall be extended correspondingly.

### Colombia

The tenant is required to make ordinary repairs related to the use of the premises and is bound to repair any damaged caused by him. Those ordinary repairs include: broken glass, damaged walls or bricks, damaged doors, windows, locks, etc.

In addition, the landowner does not have to compensate the tenant for useful improvements. Therefore, the tenant may dismantle these improvements from the premises upon vacating it, as long as the premises are not damaged by the removal. Moreover, the tenant has the right to obtain compensation for any essential improvements made by him on the premises, as long as the following conditions are met: the improvements were not needed as a consequence of his negligence, and the tenant gave notice to the landlord in due time of the improvements required.

### Croatia

The tenant is obliged to bear the costs of normal maintenance such as cleaning, painting of walls, small installation repairs and the like, unless otherwise agreed.

The tenant cannot be held liable for deterioration of the state of business premises, devices and equipment resulting from their regular use.

The tenant is obliged to settle the cost of repairing damage to the premises that was caused by it or by other persons using the premises.

The tenant has the right to perform works that would change the construction, arrangement, surface, purpose or outer appearance of the premises only upon the express written consent of the landlord.

The landlord is obliged to maintain the premises in such a condition that the tenant can perform the activities stipulated in the lease agreement. The landlord is also obliged to make any repairs necessary to that end. When a need for such repairs arises, the tenant must immediately notify the landlord in writing, otherwise it could be liable for possible damage. The costs of major repairs (structure, heating systems and the like) are also, in principle, borne by the landlord.

### Czech Republic

The tenant has to carry out normal maintenance and minor repairs inside the premises and the landlord is responsible for all other maintenance and repair obligations.

In practice, however, the tenant is usually required to carry out all maintenance works and repairs inside the premises and the landlord is obliged to carry out only maintenance and repairs of the structural elements of the building.



### Dubai, United Arab Emirates

Unless otherwise agreed in the lease agreement, the Landlord is responsible for repair and maintenance of the premises and for repairing any defect or damage that may affect the tenant's intended use of the premises.

### France

The allocation of maintenance and repair obligations has been recently regulated by Decree n° 2014-1317 which was promulgated on 5 November 2014.

In lease agreements entered into or renewed as of 5 November 2014, the tenant cannot be charged for:

- major repairs (as set forth in Article 606 of the Civil Code) and the fees relating to those repairs, if applicable;
- wear and tear repairs and compliance works ("*travaux de mise en conformité*") when such works and repairs consist in major repairs as defined above. With respect to other maintenance and repair works, the parties may determine freely their respective obligations.

### Germany

Usually, the costs of maintenance and repair works are charged to the tenant within the limits of the terms and conditions (AGB). The landlord has to bear the cost of maintenance and repair of the building structure (so-called "roof and façade") as well as renewal of technical installations.

The landlord may transfer the following duties to the tenant:

- repair and maintenance of common areas and common installations up to 10% of yearly net rent (invalid without cap);
- repair and maintenance and decorative repairs inside the lease object.

### Hungary

The landlord is responsible for central and structural maintenance together with maintenance of the common parts (including cleaning). The landlord is also responsible for maintenance of the central equipment (heating and cooling system, water, etc.).

The tenant is responsible for the internal maintenance of the premises (including the maintenance of the fitting-out works and equipment installed by the tenant and the cleaning of the premises).

### Italy

According to the Civil Code, the landlord is obliged to ensure that the premises are maintained in a condition suitable for the purpose for which they were leased.

Moreover, the landlord would be responsible for all necessary maintenance and repairs to the premises, whilst the tenant would be responsible for small, day-to-day repair and maintenance work.

In practice, the maintenance and repair obligations are regulated in the lease agreement. The landlord will be typically responsible for any structural works and extraordinary maintenance and repairs whilst the tenant will be responsible for ordinary maintenance and repairs.

### Luxembourg

The landlord is responsible for:

- major repairs (as set forth in Article 606 of the Civil Code) and the fees relating to those repairs, if applicable;
- wear and tear repairs and compliance works ("*travaux de mise en conformité*") when such works and repairs consist in major repairs as defined above.

With respect to other maintenance and repair works, the parties may determine freely their respective obligations. Usually, the tenant is responsible for maintenance and repair works.

### Monaco

There are no mandatory rules for maintenance and repair obligations.

This matter is therefore subject to the agreement between the landlord and the tenant and Civil Code provisions.

### The Netherlands

The landlord is obliged to take care of maintenance of the premises. Furthermore, the landlord is obliged to repair defects at the request of the tenant, unless it is impossible to do so, the costs of repair are unreasonable given the circumstances, the defects involve 'minor repairs' or the defects were caused by the tenant.

The tenant is obliged to execute 'minor repairs', i.e. repairs that can be executed by the average handy tenant and do not result in costs that are too high and/or require specialist knowledge, unless the damage is a result of a breach of the landlord's obligation to repair defects.

Neither stipulation is semi-mandatory. The standard ROZ model stipulates the same, with the exception that the tenant is responsible for the maintenance and repair of changes and additions that it made to the premises.

## Poland

Minor repairs connected with normal use of the premises are performed by the tenant. Those minor repairs include especially minor floor, door and window repairs, painting of walls, floors and the inner side of entrance doors, as well as minor repairs to installations and technical equipment ensuring lighting, heating, and water supply and discharge.

In practice, the landlord usually recharges the costs for major, structural repairs to the tenants via a service charge.

The landlord is not obliged to restore the premises in the case of their destruction as a result of circumstances for which the landlord is not responsible. In practice, retail leases exclude this obligation and the landlord is subject to a reinstatement obligation.

## Peru

### Refurbishments

The landlord is obliged during the lease to keep the property in good condition for the purpose of the lease and to make all necessary repairs. The tenant is obliged to notify the landlord immediately of any repairs to be carried out, or bear responsibility for the resulting damages. In the case of urgent repairs, the tenant must have them carried out immediately, with the right to reimbursement, provided that the landlord is notified at the time of the repair. Upkeep and maintenance expenses: these are the responsibility of the tenant.

### Deterioration

The tenant is responsible for loss or deterioration of the property that occurs during the lease.

As a general rule, retail leases are required to take out insurance to cover any deterioration or repair to be carried out on the leased property.

## Portugal

In retail lease agreements, the parties are free to agree whatever they deem appropriate in relation to the maintenance and repair of the premises. Generally, the tenant may conduct ordinary works and modify the content of the premises and the landlord carries out the extraordinary works (such as the structure or the façade).

Usually, the maintenance and repair works are carried out by the landlord, except those works resulting from damages caused by the tenant due to its negligence. Likewise, the tenant must bear any maintenance works that may not be reasonably delayed until the conclusion of the lease and also may conduct at its own expense any minor repairs that are needed to the premises due to normal activity in the building.

If nothing is set out in the lease agreement, the landlord is responsible for the maintenance and repair of the premises.

## Romania

The landlord is obliged by law to perform the structural and most important repairs to the leased premises and all repairs related to common areas.

The tenant must perform the repairs to the leased premises that become necessary due to the day-to-day use of the premises. If the landlord does not fulfil its repair obligations, the tenant is entitled to perform the structural repairs that would impact the leased premises in lieu of the landlord and to charge the landlord the costs and interest incurred.

## Russia

The parties may agree specific provisions concerning their obligations to maintain and repair the premises. If no specific provisions are agreed, the Civil Code will apply.

According to Article 616 of the Civil Code, maintenance and minor repairs to the premises are performed by the tenant.

On the other hand, major repairs to the premises are performed by the landlord. The landlord must carry out major repairs to the premises at its own expense and within the periods specified in the lease agreement (or within reasonable periods). In the event that the landlord fails to perform major repairs, the tenant has three options:

- to itself perform the major repairs provided for by the lease agreement or urgently required, and claim compensation for the relevant expenses from the landlord;
- to claim a proportionate decrease in the rent;
- to claim early termination of the lease agreement and compensation for losses.

## Serbia

Based on the Law on Contracts and Torts, the landlord is obliged to maintain the premises in proper condition and to perform necessary repairs. The Landlord is also obliged to compensate the tenant for costs incurred for repairs that it was the landlord's duty to make.

However, the costs of smaller repairs caused by regular use of the premises, and the costs of the use itself, are borne by the tenant.

## Slovakia

The Leasing of Business Premises Act imposes general obligations on the landlord. The landlord is obliged to hand over the premises to the tenant in a condition fit for the agreed use or, if the manner of use was not agreed, in a condition fit for normal use. The landlord is obliged to maintain the premises in such a condition at its own expense.



The scope of repairs to be made by the landlord or the tenant is usually agreed between the parties.

The tenant is obliged to notify the landlord without undue delay of the need to make repairs, which are to be made by the landlord. If the tenant breaches this obligation, it is liable for any damage caused and is not entitled to the claims it would otherwise have from the impossibility or reduced possibility to use the property caused by the property defects that were not notified to the landlord in a timely manner.

If the tenant incurs expenses from repair of the property that is the responsibility of the landlord, it is entitled to the reimbursement of such expenses if the repairs were made with the landlord's consent, or if the landlord failed to secure the repairs without undue delay despite having been notified of the need for the repairs.

Otherwise, the tenant may only demand that which the landlord gained in enrichment. The tenant is obliged to ensure that the property is not damaged. It is only obliged to arrange insurance of the property if the agreement so stipulates.

### Slovenia

The landlord must hand over the premises to the tenant in such a condition that they can be used for the purpose specified by the agreement and maintained in such a state.

Furthermore, the landlord must carry out all necessary tasks to provide the fulfilment of the agreement's intent.

According to the ZPSPP, the tenant is obliged to repair the damage to the premises or on the premises that it has caused.

### Spain

The parties are free to agree whatever they deem convenient. The usual clauses in this regard include that the tenant may repair the ordinary work and the content of the premises and the landlord must be responsible for the work on the structure, façade and general facilities of the premises. The most usual discussion on this matter is which of the parties will execute the works necessary to adapt the premises to new legal regulations that are introduced from time to time. Unless otherwise agreed, Article 21 of the Spanish Urban Lease Act will apply. This article provides that maintenance and repair works must be performed by the landlord, except those works resulting from damage caused by the tenant due to its negligence or caused by its workforce. In addition, the tenant must perform any maintenance work that cannot be reasonably delayed until the conclusion of the lease, even though the work disturbs the tenant or the tenant is deprived of a part of the premises due to the execution of the work. If the work lasts for more than twenty days, the tenant has the right to a proportionate deduction of the rent in respect to the surface area of the premises of which the tenant has been deprived due to the execution of the work. Finally, Article 21 provides that the tenant must carry out minor repairs to the premises arising out of its normal activity at its own expense.

### Switzerland

The landlord has an obligation to maintain the premises in a suitable condition and to procure necessary repairs on the outside and inside. Failure to execute necessary repairs entitles the tenant to rental reductions and/or damages.

The tenant must remedy defects that can be dealt with by minor cleaning or repairs as part of regular maintenance and, depending on local custom, must do so at its own expense. The amount up to which a repair is considered to be "minor" is usually agreed upon in lease agreements.





On learning of defects that it is not obliged to remedy, the tenant must inform the landlord. Please note that the parties usually explicitly define the scope of each party's maintenance and repair obligations, often in the form of an annexed interface paper.

#### Turkey

The landlord is obliged to do everything required to keep the leased property in a usable condition and must bear the responsibility of resolving any defects or preventing damages.

#### Ukraine

The law distinguishes between two types of repairs which may be performed with respect to the premises, namely:

- operational repairs, which usually include works necessary for systematic and timely support of the premises' operational quality and to prevent early deterioration of the premises; and
- major repairs, which usually include works to replace, renew and modernise the premises (including equipment) due to the extent of physical wear-and-tear and destruction, improve operational characteristics, etc. Major repairs usually require the premises to stop operating.

The parties are allowed to determine in the lease who will be obliged to perform operational and major repairs with respect to the premises. If the lease is silent regarding allocation of duties for repairs, then the tenant is responsible for the operational repairs and the landlord is obliged to perform major repairs to the premises.

Normally, the premises are managed by the landlord or a specialist company appointed for the purpose and the tenant has to pay a charge for services (such as cleaning

and security), on a monthly or quarterly basis, in an amount calculated pro rata to the area occupied by the premises. The service charges may be included as part of the rent payable or invoiced separately.

Any additional services to be provided by the landlord must be specified in the lease agreement. The tenant generally pays all electricity and telephone bills directly to the provider (if the tenant has direct agreements with the providers) or reimburses the landlord the relevant amounts (if the tenant has no direct agreements with the providers). Market practice shows that the tenant will also generally pay all other utility bills.

#### United Kingdom

There are no mandatory rules for maintenance and repair obligations. This matter is therefore subject to negotiations between the parties. In Scotland, in the absence of contractual agreement, there are basic common law rules which would apply.

However, if the premises are in a multi-let shopping centre, for example, it is likely that the landlord will repair the structure and the tenant will repair the internal areas. The tenant will pay for the repair of the structure via a service charge. If the unit is a stand-alone unit, then it is likely that the tenant will be responsible for repairing the whole unit directly. The parties may decide to agree, for older buildings in particular, a cap on the service charge.



# VAT

## Albania

There is no VAT applicable on rent.

The rent is subject to 15% withholding tax.

## Austria

The landlord may under certain circumstances decide whether to charge VAT or not. If he does (as is usually the case), rent and service charges are subject to 20% VAT. The tenant as an entrepreneur is entitled to claim input tax.

## Belgium

There is no VAT applicable on rent, except for a storage lease with less than 10% of the premises used as office space. However, in a shopping centre, there is a split between the rent, which is not subject to VAT, and the service charges, which are subject to VAT.

## Bosnia and Herzegovina

The rent is subject to 17% VAT only if the landlord is registered as a person subject to VAT. VAT taxpayers are determined by the value of their total turnover when the value is higher than BAM 50 000 in the previous year. In all other cases, when the lessor is a person who is not subject to VAT, the income generated from the lease is subject to personal income tax.

In addition income generated through lease might be subject to corporate and personal income tax and property taxes depending on location of the real estate.

Service charges are subject to VAT under the same conditions. Service charges are not included in the rent unless the parties explicitly agree accordingly.

## Bulgaria

Rent and service charges are subject to 20% VAT.

## China

Generally, lease of immovable properties (e.g. real estate) is subject to VAT at 11% in China. However, as China is in the process of VAT reform, there are many special rules, including simplified VAT calculation method, preferred tax rate, etc., for lease of immovable properties. For example, for lease of real estate acquired via direct purchase, donation, shareholder investment, etc. before 1 May 2016, a simplified VAT method at the rate of 5% can be selected. For real estate acquired via direct purchase, donation, shareholder investment, etc. after 1 May 2016, however, the general VAT method at the rate of 11% shall be adopted.

## Colombia

As a general rule, rent and services charges are subject to 19% VAT. However, the urban housing lease, the financial lease (so called "leasing") and the lease for cultural and artistic purposes are exempt from VAT.

## Croatia

The rent is subject to 25% VAT only if the landlord is registered as VAT taxpayer. The registration in the VAT system is obligatory if the value of total annual taxable supplies of goods and services provided by the entrepreneur exceed HRK 230,000 (as of 1 January 2018, the subject threshold will amount to HRK 300,000). Service charges are subject to VAT under the same conditions. Service charges are not included in the rent unless the parties explicitly agree accordingly.

## Czech Republic

Rent and service charges are subject to 21% VAT provided that the tenant is a registered VAT payer.

## Dubai, United Arab Emirates

VAT has not been implemented yet in the UAE. It is intended to come into force on 1 January 2018 and rental payments under lease agreements will be caught under the ambit of the proposed legislation. It is thought that tenants will likely be able to recover amounts of VAT provided certain criteria are met, including having a valid VAT invoice from the landlord.

## France

Usually, rent and service charges are subject to 20% VAT (the landlord usually elects for VAT).

## Germany

Rent and service charges are basically subject to 19% VAT.

## Hungary

By general rule of law, rent is exempt from VAT unless the landlord opted to apply it. Almost all retail landlords opt for VAT in an amount of 27%, in respect of their leasing business.

## Italy

The rent would be subject to 22% VAT, provided that the following conditions are satisfied: (i) the premises are an "instrumental property" ("immobile strumentale"), (ii) the landlord is a VAT-registered entity /person acting in the course of business and (iii) the landlord expressly exercises the option to apply VAT to the rent. If VAT applies, registration tax at 1% would also be charged annually on the value of the rent. If the conditions for application of VAT are not satisfied, VAT shall not apply and registration tax would be charged at 2% rate.

Services charges are generally treated as services and as such, if the landlord is a VAT-registered entity or person, would be subject to VAT according to ordinary rules.

## Luxembourg

The retail lease agreement may be subject to VAT provided that the tenant and the landlord are both subject to VAT.

Usually, rent and service charges are subject to 17% VAT.

## Monaco

Rent and service charges are subject to 20% VAT.

## The Netherlands

Rent and service charges are not subject to VAT, but in practice, parties opt for rent subject to 21% VAT.

## Peru

Contracts between legal entities: the VAT is applied to the value of the transaction (monthly compensation), with the obligation occurring at the time the payment receipt is issued or remuneration is received. Payment receipt is deemed to have been issued when: (i) it has been issued; (ii) the service is terminated; (iii) remuneration is received; or, (iv) the deadlines for payments indicated in the contract are met, whichever comes first.

The user to whom the VAT is transferred may use it as a tax credit provided that: (i) the expense for said service is deductible for income tax purposes; and (ii) it has been used for operations taxed with VAT.



Contracts between a person (landlord) and a legal person (tenant): In principle, in the case of natural persons who do not carry out business activities, no VAT is generated unless it qualifies as customary.

### Poland

The rent and service charges are generally subject to 23% VAT.

### Portugal

In general terms, an urban building lease, when the premises are open space, is exempt from VAT. However, landlords may apply, subject to certain requirements, and may waive such an exemption and charge VAT.

If the premises are leased with equipment and furniture, VAT is usually charged, since such agreements are considered to be services agreements and, therefore, subject to VAT.

The current VAT rate is 23%.

### Romania

The rent is subject to 20% VAT provided that the landlord is a registered VAT-paying company.

The charges are not subject to VAT, provided that the landlord is not a registered VAT-paying company or an individual person.

### Russia

Rent and service charges are subject to 18% VAT. If a foreign legal entity transfers premises located in the Russian Federation into a lease, it is obliged to calculate and pay VAT itself if it is registered with the Russian tax authorities. If the landlord is not registered with the Russian tax authorities, the VAT must be calculated and paid by a tax agent (in this case, usually the tenant of the premises).

The landlord may be released from any obligation to pay VAT if the tenant is a foreign individual or legal entity accredited in the Russian Federation.

### Serbia

Both rent and service charges are subject to 20% VAT. Under the Serbian foreign exchange regulations, rent can be paid in euros, while service charges can be fixed in euros but they have to be paid in Serbian dinars.

### Slovakia

Rent and service charges are subject to 20% VAT.

### Slovenia

As a general rule, the rent is VAT exempt, unless the parties have opted to charge VAT.

In order to opt for VAT, both parties have to be registered for VAT purposes, the tenant must be entitled to full VAT deduction and the Tax Authority has to be notified about applying VAT (by the end of the month following the conclusion of the lease agreement).

In practice, most of the landlords and tenants opt for taxation with VAT. The VAT rate in that case is 22%. If service and utility charges are charged separately from the rent, they are taxed with VAT, provided that the supplier is registered for VAT.

If the service and utility charges are included into the rent, the VAT treatment of such charges follows the VAT treatment of the rent (primarily VAT exempt, but there is option for taxation with VAT).

### Spain

The rent and service charges are subject to 21% VAT.

### Switzerland

The rent and service charges are not subject to VAT. The landlord may opt to charge the applicable VAT rate (currently 8%) if the premises are not solely used for private purposes.

### Turkey

As long as the landlord is a legal entity, 18% VAT shall be applicable.

### United Kingdom

There is no VAT on rent and service charges provided that the landlord has not elected to waive its exemption for VAT purposes. This will depend on the identity of the premises.

VAT at a current rate of 20% will usually be chargeable on rent and service charges if the landlord has waived its exemption for VAT.

### Ukraine

The rent and service charges are subject to 20% VAT, on condition that the landlord/service provider is registered as a VAT payer.





# Other provisions

## Albania

There are no other important legal provisions or practices.

## Austria

There are no other important legal provisions or practices.

## Belgium

There are no other important legal provisions or practices.

## Bosnia and Herzegovina

- The premises must be handed over to the tenant in good condition. Usually, the handover is documented by minutes signed by both parties.
- The landlord has to maintain the premises in a condition suitable for the agreed use during the whole lease term, and to make all necessary repairs at its own expense. The landlord is liable for defects limiting the suitability of the premises for its agreed or ordinary use.
- The landlord is responsible for any potential right of a third party that would prevent or limit the use of the premises.

## Bulgaria

It is standard practice that agreements providing for the payment of specific sums, such as rent, are concluded in writing and that the parties' signatures are certified by a notary public. This approach allows for an expedited enforcement of the payment obligation, without going through a fully fledged lawsuit during which the tenant may challenge the landlord's claims.

## China

In China, the parties to the lease shall go through tenancy registration formalities with the competent real estate authorities. The registration is not a condition precedent for the validity of the lease contract. However, registered lease contracts prevail over non registered ones. In some regions local legislators have issued local regulations on lease agreements. Thus, when concluding lease contracts, the parties should always check whether there are specific local regulations.

## Colombia

There are no other important legal provisions or practices.



## Croatia

There are no other important legal provisions or practices.

## Czech Republic

The Civil Code is effective as from 1 January 2014. However, it does apply to lease agreements concluded before that date. The most important changes introduced by the Civil Code are (i) the extension of the reasons for termination, (ii) the possibility to terminate the lease in the case of material change to the circumstances under which the lease was concluded, and (iii) the non-application of the contractual provisions of the lease to a new owner of the premises who was not aware of such provisions at the time of transfer of the lease.

## Dubai, United Arab Emirates

Termination of a lease by the landlord at expiry of the lease is subject to very strict criteria, namely not less than 12 months' notice is given via notary public and one of the following reasons is stated in the termination notice: (i) the landlord wishes the premises for its own use (in which case the landlord is prohibited from leasing the premises for a period of 2 years following the tenant vacating), (ii) the landlord wishes to sell the premises, (iii) the landlord wishes to demolish the premises, or (iv) the landlord wishes to carry out major maintenance/refurbishment which is necessary and which necessity is backed up by a report from the relevant authorities.

## France

### Renewed rent

As previously mentioned, the applicable law grants the tenant the right to renew the lease. The renewal rent is capped for retail premises: the rate of variation between the initial rent and the renewal rent cannot exceed the variation in the applicable index. This cap does not apply where the leased premises are designed for a specific use ("*locaux monovalents*") or where the lease is granted for office use only.

In addition, the rent is uncapped and assessed at the current rental value of the premises in the following situations:

- where there has been a significant change in the commercial nature of the area, the features of the premises or the respective obligations of the parties under the lease;
- where the lease is entered into for a period of more than nine years;
- where the lease has continued for more than 12 years due to tacit continuation.

Furthermore, the uncapped rent of a renewed lease may not be subject to an annual increase of more than 10% of the rent paid in the previous year.

Finally, the parties may provide in the lease that the renewal rent shall correspond to the rental value of the premises and that the above-mentioned cap is not applicable.

### Service charges and taxes

Decree n° 2014-1317 as promulgated on 5 November 2014 provides a list of the service charges and taxes that cannot be charged to the tenant.

This list includes:

- taxes, including the Territorial Economic Contribution (CET), where the landlord is personally liable for payment, but these taxes may be transferred to the tenant: property tax and taxes added to property tax such as taxes relating to the use of the premises or to the building or to a service which benefits the tenant directly or indirectly;
- management fees;
- service charges, taxes and costs of works relating to vacant premises or attributable to other tenants.

## Germany

All essential agreements in the lease must comply with the statutory requirement for the written form: all agreements have to be made in writing in a formal amendment contract attached to the lease agreement. Failing this, the lease would be deemed to have an unlimited term and could be terminated by either party with statutory notice, even if it had a longer definite term.

## Hungary

### Statutory right of pledge

The landlord has a statutory right of pledge (based on the Hungarian Civil Code) on the valuables located within the tenant's premises to secure claims for rent and other costs.

### Declaration of vacation

Upon the signing of the lease agreement, landlords often require tenants to sign a declaration of vacation in the form of a public notarial document. This document is directly enforceable in the case of termination of the lease by the landlord, and on the basis of such a document the tenant may be easily evicted from the premises.

## Italy

### Publicity requirements

If the initial term of the lease exceeds nine years, notarisation would be required to record the lease at the Land Registry.

Registration for tax purposes

Leases must also be registered at the tax office ("Agenzia delle Entrate"). Failure to register a lease would result in the lease being null and void.

### Luxembourg

Postponement

According to Luxembourg law the tenant whose lease terminates may request two delays of six months each to leave the premises. These requests should be filed two (2) months before the end of the lease.

The Bill of Law provides the implementation of a postponement period of up to nine (9) months for tenants in the case of an eviction decision if:

- all the rents and charges have been paid on the date of the application;
- the applicant is the real operator of the business; and
- the only purpose is for the operator to arrange the relocation of his commercial activities.

### Monaco

Renting premises to any type of company, (where they can elect their legal domicile) without applying the provisions of law n° 490 is possible under law n° 1.433 of 18 November 2016, subject to specific conditions among which:

- solely intellectual work and administrative services will be exercised in the premises;
- clients can be received, subject to no stock being stored and commercial activity held;
- the lease duration must be a minimum of five years;
- each party may oppose the automatic renewal for the same duration, with a prior notice of six months;
- the tenant may terminate the lease at any time after the first year of occupation, with a prior notice of six months.

### The Netherlands

There are no other important legal provisions or practices.

### Peru

There are no other important legal provisions or practices.

### Poland

The landlord has the statutory right of pledge over the tenant's movables kept in the premises as security against the tenant's obligations. This statutory right is usually excluded in retail leases.

### Portugal

Normally, when the lease agreement is entered into, an inventory of the property is drawn up with the aim of ensuring that, on termination of the lease, the tenant leaves the premises in a state similar to that existing when the tenant took possession of the premises.

Another important clause is the one regarding the costs and expenses arising out of or in connection with the lease agreement: it is advisable to clearly specify which costs are going to be assumed by the tenant and which by the landlord.

Finally, for tax purposes, lease agreements must be registered at the tax authority.

### Romania

Preference right for the re-leasing of the premises:

The tenant benefits from the right to re-lease the premises, upon termination of the initial lease, on equal financial terms to those for a third party. However, this is not a mandatory provision and landlord-oriented draft lease agreements usually exclude such a right.

Termination of the lease cannot apply due to insolvency: In various countries' legislative systems, it is largely accepted that if one of the parties becomes insolvent, the other party is entitled to terminate the lease agreement. However, under Romanian insolvency law, this is not a valid ground for termination of the lease by either landlord or tenant.

### Russia

According to existing commercial practice, the following legal structure is quite standard and is usually applied: preliminary lease agreement, short-term lease agreement and long-term lease agreement.

Preliminary lease agreement

If a building, premises or any other property is under construction and a potential tenant wishes to "mark out" the building / premises and "fix" the amount of rent, the potential tenant enters into a preliminary lease agreement with the prospective owner to regulate their future relationship. The object of the preliminary lease agreement is to oblige the parties to enter into the short-term and long-term lease agreements by the agreed date.

Historically, the concept of a preliminary lease agreement became popular on the market since the parties to it were unable to enter into a lease agreement prior to registration of the ownership title to the building / premises by the landlord. The courts considered a building not registered with the Unified State Register of Real Estate (the "State Register") as something that did not legally exist. Due to recent developments in Russian law, leasing future property is now deemed valid. Therefore, these days the parties are free to forego execution of a preliminary lease agreement and may enter into a principal lease agreement with respect to a future object. However, due to the relatively recent nature of this development, the practice of using preliminary lease agreements can still be encountered on the market.

### Short-term lease

A short-term lease is a lease agreement executed for a period of less than one year and is not subject to registration with the State Register. In order for the tenant to legally occupy the building whilst the longterm lease is being registered, a short-term lease is usually entered into between the parties. Both agreements should be simultaneously executed.

### Long-term lease

A long-term lease is a lease agreement which lasts for at least one year and is only valid upon registration with the State Register. During the registration procedure, a registration authority will examine the validity of the long-term lease. The material conditions of any lease should, therefore, be clearly determined, including the subject matter of the long-term lease (i.e. building, premises or structure) and the amount of rent or the rent calculation method.

A prerequisite of concluding the long-term lease agreement is the registration of the lease agreement in the State Register by the Federal Service of State Registration, Cadastre and Cartography. For the purposes of state registration, a registration fee must be paid as a fixed amount defined by the Tax Code. In practice, such a fee is usually shared equally between the landlord and the tenant.

### Serbia

There are no other important legal provisions or practices.

### Slovakia

#### Exclusivity

This kind of provision is considered sensitive because the antimonopoly office may consider it anti-competitive.

#### Change of ownership structure

Sometimes lease agreements may include provisions about limitations on the tenant following a change in the tenant's ownership structure or other corporate changes, or the agreement may state that these kinds of corporate changes are subject to the consent of the landlord. These kinds of provisions (rights of the landlord) are ineligible.

#### Calculation of the premises

It is important to be careful when calculating the area of the premises, especially in relation to calculating the common areas, for which a proportion of the service charge shall be paid. Various different calculation methods could be used, some of which may be disadvantageous to tenants.

### Slovenia

There are no other important legal provisions or practices.

### Spain

At the time of the signing of the lease agreement, an inventory of the premises is drawn up with the aim of ensuring that, on termination of the lease, the tenant leaves the premises in a state similar to that existing when taking possession of the property.

Another important clause is the one regarding the costs and expenses arising out of or in connection with the lease agreement: there must be a clear specification of which costs are going to be assumed by the tenant and which by the landlord (ordinary and extraordinary costs, taxes, services, etc.).

### Switzerland

There are no other important legal provisions or practices.

### Turkey

Although not mandatory, it is standard practice that agreements are concluded in writing.

Certain articles under the TCO will be implemented in 2020. One of the significant amendments will be that after 2020, annual revision of the rent shall not exceed the producer price index (ÜFE). Such provision is already applicable for house rents.

### Ukraine

Unilateral termination of the lease is prohibited. Therefore the tenant may not terminate the lease by giving notice to the landlord (even if such a right is provided under the lease), because such notice will not be sufficient by law to terminate the lease properly.

The lease can only be terminated upon execution of the relevant transfer and an acceptance act to prove proper delivery of the premises from the tenant to the landlord. Furthermore, in order to avoid any disputes regarding lease termination, the parties should also execute a relevant amendment to the lease confirming its proper termination and the absence of any complaints.

There is an extensive list of essential conditions to which the parties should agree in the lease; otherwise the lease may be challenged as allegedly invalid.

### United Kingdom

As indicated above, the matter of retail lease agreements largely depends on the arrangements agreed between the parties. Other main clauses are as follows:

- Service charge: the tenant must pay towards common parts, etc;
- Forfeiture: the landlord can take the lease back if the tenant does not comply with its obligations or becomes insolvent;



- Insurance: either the landlord or the tenant will have to insure the premises depending on the specific circumstances and identity of the premises. The tenant will reimburse the landlord if it is the landlord who insures. The landlord will be obliged to reinstate if there is damage or destruction by an insured risk if the landlord insures. It is also becoming more common to document the position should damage by an uninsured risk arise. If the lease is silent then the tenant bears the risk but generally it is more common these days to see provisions which place the risk back with the landlord who can choose either to reinstate (at its own cost) or terminate.
- Environmental provisions. These are becoming more common, to apportion risk and liability.

# CMS Contacts

## Albania

CMS Tirana

**Mirko Daidone**

T +355 4 430 2123

E mirko.daidone@cms-aacs.com

## Austria

CMS Vienna

**Nikolaus Weselik**

T +43 1 40443 2250

E nikolaus.weselik@cms-rrh.com

**Johannes Hysek**

T +43 1 40443 3250

E johannes.hysek@cms-rrh.com

## Belgium

CMS Brussels

**Bruno Duquesne**

T +32 2 74369 40

E bruno.duquesne@cms-db.com

**Pierre-Axel Chabot**

T +32 47 730 8345

E pierreaxel.chabot@cms-db.com

## Bosnia and Herzegovina

CMS Sarajevo

**Nedžida Salihović-Whalen**

T +387 33 94 4600

E nedzida.salihovic-whalen@cms-rrh.com

## Bulgaria

CMS Sofia

**Darina Baltadjieva**

T +359 2 447 1350

E darina.baltadjieva@cms-rrh.com

**Jenia Dimitrova**

T +359 2 92199 10

E jenia.dimitrova@cms-cmno.com

## China

CMS Shanghai

**Ulrike Glueck**

T +86 21 6289 6363

E ulrike.glueck@cmslegal.cn

CMS Beijing

**Nick Beckett**

T +86 10 8527 0287

E nick.beckett@cms-cmno.com

## Colombia

CMS Bogotá & CMS Medellín

**Juan Camilo Rodríguez**

T +57 1 321 8910

E juan.rodriguez@cms-racla.com

**Clara María Uribe**

T +57 4 604 0433

E clara.uribe@cms-racla.com

## Croatia

CMS Zagreb

**Gregor Famira**

T +385 1 4825 600

E gregor.famira@cms-rrh.com

**Ana-Marija Skoko**

T +385 1 4825 600

E ana-marija.skoko@bmslegal.hr

## Czech Republic

CMS Prague

**Lukáš Hejduk**

T +420 2 96798 892

E lukas.hejduk@cms-cmno.com

## France

CMS Paris

**Aline Divo**

T +33 1 4738 5695

E aline.divo@cms-fl.com

**Pierre Popesco**

T +33 1 4738 5771

E pierre.popesco@cms-fl.com

**Jean-Luc Tixier**

T +33 1 4738 5648

E jean-luc.tixier@cms-fl.com

**Philippe Riglet**

T +33 1 4738 4042

E philippe.riglet@cms-fl.com

## Germany

CMS Cologne

**Isabel Schreyger**

T +49 221 7716 132

E isabel.schreyger@cms-hs.com

CMS Berlin

**Dr. Andreas Otto**

T +49 30 20360 1506

E andreas.otto@cms-hs.com

## Hungary

CMS Budapest

**Gábor Czike**

T +36 1 48348 19

E gabor.czike@cms-cmno.com

**József Várady**

T +36 1 48348 40

E jozsef.varady@cms-cmno.com

## Italy

CMS Rome

**Marco Casasole**

T +39 06 4781 51

E marco.casasole@cms-aacs.com

CMS Milan

**Dietmar Zischg**

T +39 02 89283 800

E dietmar.zischg@cms-aacs.com

## Luxembourg

CMS Luxembourg

**Julien Leclère**

T +352 26 2753 28

E julien.leclere@cms-dblux.com

**Vivian Walry**

T +352 26 2753 21

E vivian.walry@cms-dblux.com

## Monaco

CMS Monaco

**Sophie Marquet**

T +377 97 98 42 24

E sophie.marquet@cms-pcm.com

## The Netherlands

CMS Amsterdam

**Arnout Scholten**

T +31 20 3016 472

E arnout.scholten@cms-dsb.com

**Hein van der Meer**

T +31 30 3016 227

E hein.vandermeer@cms-dsb.com

### Peru

CMS Lima

#### **Carolina Gajate**

T +51 1 513 9430

E carolina.gajate@cms-grau.com

#### **José Panduro**

T +51 1 513 9430

E jose.panduro@cms-grau.com

### Poland

CMS Warsaw

#### **Wojciech Koczara**

T +48 22 520 8320

E wojciech.koczara@cms-cmno.com

#### **Lidia Dziurzyńska-Leipert**

T +48 22 520 5659

E lidia.dziurzynska-leipert@cms-cmno.com

#### **Anna Brzoza-Ostrowska**

T +48 22 520 5598

E anna.brzoza-ostrowska@cms-cmno.com

### Portugal

CMS Lisbon

#### **Luis Abreu Coutinho**

T +351 21 09581 00

E luis.coutinho@cms-rpa.com

#### **Salvador Pires Marques**

T +351 21 09581 00

E salvador.marques@cms-rpa.com

#### **Cristina Gouveia de Carvalho**

T +351 21 09581 00

E cristina.carvalho@cms-rpa.com

### Romania

CMS Bucharest

#### **Roxana Fratila**

T +40 21 4073 839

E roxana.fratila@cms-cmno.com

#### **Alexandru Dumitrescu**

T +40 21 4073 953

E alexandru.dumitrescu@cms-cmno.com

### Russia

CMS Moscow

#### **Jean-Francois Marquaire**

T +7 495 786 4000

E jf.marquaire@cmslegal.ru

#### **Artashes Oganov**

T +7 495 786 4086

E artashes.oganov@cmslegal.ru

### Serbia

CMS Belgrade

#### **Marija Marošćan**

T +381 11 3208 900

E marija.marosan@cms-rrh.com

### Slovakia

#### **Michal Hutan**

T +420 296 798 746

E michal.hutan@cms-cmno.com

#### **Peter Šimo**

T +43 1 40443 2150

E peter.simo@cms-rrh.com

### Slovenia

CMS Ljubljana

#### **Gregor Famira**

T +385 1 4825 600

E gregor.famira@cms-rrh.com

### Spain

CMS Madrid

#### **Álvaro Otero**

T +34 91 4520 013

E alvaro.otero@cms-asl.com

#### **Javier Torre de Silva**

T +34 91 4519 321

E javier.torredesilva@cms-asl.com

### Switzerland

CMS Zurich

#### **Stefan Gerster**

T +41 44 285 11 11

E stefan.gerster@cms-vep.com

#### **Sibylle Schnyder**

T +41 44 285 11 11

E sibylle.schnyder@cms-vep.com

### Turkey

CMS Istanbul

#### **Döne Yalçın**

T +90 212 24349 28

E doene.yalcin@ybb-av.com

#### **Alican Babalioğlu**

T +90 212 24349 28

E alican.babalioğlu@ybb-av.com

### Ukraine

CMS Kyiv

#### **Natalia Kushniruk**

T +380 44 391 7724

E natalia.kushniruk@cms-cmno.com

#### **Anna Pogrebna**

T +380 44 500 1718

E anna.pogrebna@cms-rrh.com

### United Arab Emirates

CMS Dubai

#### **Geoff Smith**

T +971 4 374 2819

E geoff.smith@cms-cmno.com

#### **John O'Connor**

T +971 4 374 2806

E john.oconnor@cms-cmno.com

### United Kingdom

CMS London

#### **Pranai Karia**

T +44 20 7367 2742

E pranai.karia@cms-cmno.com

#### **Alistair Kennedy**

T +44 20 7367 3993

E alistair.kennedy@cms-cmno.com



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