

Legal alert

October 2015

Commercial Property leasehold transactions outside England and Wales

Property law is clearly fundamentally different throughout the world. In this article Emily White explores some of the key issues for occupiers of space overseas. Emily has been involved in lease negotiations in over 20 European, Asian and Middle Eastern countries in the past 5 years.

Key differences in heads of terms

Rent payment frequency - most European and Asian countries require the tenant to pay monthly rather than quarterly.

Rent review – most European and Asian countries include annual increases (except in Israel where there are quarterly reviews) of the principal rent, generally by reference to the CPI (consumer prices index).

Rent per square metre – it is more common for European and Asian countries to express the rent as x per m² rather than an annual lump sum. Often, different parts of the leased space will have different rents per m².

Term / break options / renewal rights – some countries, such as Germany, have automatic renewals unless the tenant serves a notice well (as long as a year) in advance. Other countries, such as Scotland, have no rights to renew except by negotiation between the parties. Dutch leases can require the tenant to continue to occupy until the expiry of the term, even if the tenant has fitted out alternative premises to move to.

Alienation – each country seems to take their own approach to sub-letting or assigning leases.

Alterations / repair / reinstatement – your local lawyer can advise on the norm in the relevant country, although generally the reinstatement obligations are less onerous than for English / Welsh leases.

Service charge – often this is expressed as a separate sum per m², but is sometimes dealt with by a notional increase in the actual floor area. Your local lawyer can advise whether or not it is the norm in the relevant country for there to be annual reconciliations at the end of each year.

Differences in conveyancing practice

Language – many countries (including Eastern European or Asian countries) negotiate their leases in English. Others sometimes enter into leases in both English and the local language, but with a statement that the local language will prevail in the event of conflict.

Civil code – most Latin-based European countries manage to avoid much case law and instead codify important provisions. Often there is no need to incorporate detailed provisions to protect the tenant where there is damage or destruction because the Code allows the tenant to terminate the lease.

Notaries and board minutes – notaries are more important outside England and Wales. They are separate to the lawyers who will be negotiating the transactional documents. Lease agreements and other documents often need to be signed in a local notary's presence, for which a separate fee is due and identification required. Your local lawyer will advise on the mechanics, whether both parties need to attend in person and/or to sign each page and whether separate board minutes are required.

Binding the parties – often the lawyer is left out of the exchange / completion process. For German lease agreements, one party signs the hard copies first and then sends them direct to the other party, who should countersign within 28 days and then return one set to the first party. In contrast, Scottish parties do not even sign the lease – the lawyers do on their behalf. You will need to understand the process from the local lawyer. Be particularly aware in Dutch transactions as, in certain circumstances, parties can be bound before even signing. Property law is clearly fundamentally different throughout the world. In this article Emily White explores some of the key issues for occupiers of space overseas. Emily has been involved in lease negotiations in over 20 European, Asian and Middle Eastern countries in the past 5 years.

Differences in documentation

No separate lease – generally European and Asian commercial lease agreements have just one document to cover any landlord's / tenant's works, as well as the usual lease covenants. Instead of a certificate of practical completion to trigger completion of a lease (and the term and rent commencement date) this is generally done by way of a "handover protocol", which is a separate piece of paper confirming the date that the lease term will start, as well as the measurement and therefore actual rent.

Rent deposits / bank guarantees – rent deposits are often not ring-fenced in the way that English/ Welsh ones are so, depending on the identity of the landlord, tenants may prefer to provide a bank guarantee.

Extending the term / increasing the space – in contrast to English and Welsh leases, most other countries do not have problems with entering into simple deeds of variation to extend the term or increase the space.

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