

## Key Features of Commercial Leases in the Czech Republic

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**Further information**

If you would like further information on any aspect of the key features of commercial leases in the Czech Republic, as well as on other Czech real estate issues, please contact:

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This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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# Key features of commercial leases in the Czech Republic

## INTRODUCTION

This note sets out the major issues concerning the statutory regulations of a lease agreement (*nájemní smlouva*) in the Czech Republic with respect to a commercial lease.

The provisions of Czech law relating to lease agreements do not use the term "commercial lease" as such. Generally, the term "commercial lease" would be used to qualify a lease agreement concluded between entrepreneurs. Under the Czech Commercial Code, an entrepreneur is a person or entity who carries out economic or professional activities on their own behalf in order to make a profit.

As regards commercial leases, Czech law recognises two different regimes of regulation depending on whether the subject of the lease is (i) non-residential premises (typically a commercial unit in a shopping centre) or (ii) an entire real estate property (e.g. a building or land) or set of properties.

In this note, we do not refer to leases of residential premises, which are regulated under a different regime as such leases do not generally fall within the category of commercial leases.

The applicable legal regulations only establish the general framework of a lease. Consequently, the parties are entitled to freely shape their rights and obligations under a lease agreement.

## LEASE OF NON-RESIDENTIAL PREMISES

### ESSENTIALS AND REQUIRED FORM

Lease agreements relating to non-residential premises are governed by the Act No. 116/1990 Coll., on the lease and sub-lease of non-residential premises. The lease agreement must be executed in writing and must include the following: the subject and purpose of the lease, the amount or method of determination of the rent and other payments to be paid by the tenant for services provided in connection with the lease, the term of the lease if it is not concluded for an indefinite period, and information on the subject of business to be carried out in the premises.

A lease contract is void from the very beginning if it is not in the required form (i.e. in writing) or omits any of the essentials.

Under current Czech case law, a lease agreement relating to non-residential premises may only be executed if an occupancy permit had been granted by the relevant building authority with respect to such premises. Therefore, if the premises are to be fitted out, it is a common practice to conclude an agreement on future lease agreement beforehand, under which the parties undertake to execute the

lease after the relevant use permit has been obtained in respect of the premises.

### DURATION OF THE LEASE

A lease agreement may be concluded for a definite or indefinite period. Generally, the term of the lease is determined by the parties and their interests, the type of leased premises and the agreed purpose. In relationships between entrepreneurs, lease agreements are usually concluded for a definite period.

Leases concluded for a very long definite term (e.g. for a period of 100 years, which exceeds a human lifespan) are considered by case law as leases concluded for an indefinite term.

The parties are free to extend the lease term by mutual agreement.

If the tenant continues to use the leased premises after the lease terminates (either by the lapse of the term or earlier termination) and the landlord fails to file an action in court within thirty days after the end of the lease term requiring the tenant to vacate the premises, the lease shall be extended for a period of one year (if the lease term was shorter than one year, then the lease is extended for a period corresponding to the original term).

### RENT

Parties to a lease are entitled to freely establish the amount and denomination of the rent according to their specific needs. It is very common for the rent of a commercial lease to be expressed in EUR or as the CZK equivalent of a EUR amount.

It is quite usual for the parties to agree on the rent being increased in line with inflation. There are no statutory provisions concerning such an increase, and the parties are free to agree on any inflation index. The parties usually adjust the index to the currency in which the rent was established, for example, if the rent is expressed in EUR, the most commonly chosen index would be the Monetary Union Index of Consumer Prices (MUICP). If the rent is expressed in CZK, the usual index would be the consumer price index published by the Czech Statistical Office (CSU).

### SUBLETTING

A tenant of non-residential premises cannot sublease the premises or any part thereof without the consent of the landlord. This statutory provision can be excluded by agreement of the parties to the lease agreement, i.e. the tenant and the landlord may agree that the tenant is entitled to sublease the premises to a third party.

The sublease agreement must be concluded in writing for a definite period of time. The term of the sublease can never be longer than the term of the lease.

#### **TERMINATION**

A lease agreement concluded for a definite term expires after the lapse of the agreed period. The lease agreement can always be terminated, regardless of whether it was concluded for a definite or indefinite period, by mutual agreement of the parties.

A lease agreement concluded for an indefinite time can be terminated without stating any grounds by a notice of termination, unless agreed otherwise by the parties.

A lease agreement concluded for a definite term can only be terminated by the parties on the specific grounds detailed in the agreement or in the applicable regulations.

The notice period is three months and starts to run on the first day of the month following the month in which the notice of termination was served upon a party. However, the parties may agree on an alternative notice period.

#### **SECURITY**

The statutory provisions do not regulate any obligations for securing the payment of rent, but cash deposits and bank or corporate guarantees are widely used in practice.

If the tenant is in delay with rent payments, the landlord has the statutory right of pledge over the movable items that the tenant brought into the leased premises. The landlord's statutory right of pledge expires when the items encumbered by the pledge have been removed from the leased premises, unless listed by a bailiff. The landlord may oppose the removal of an item encumbered by the pledge and may keep it at its own risk if the rent in arrears has not been paid or secured, but the landlord must request such retained items to be listed by a bailiff within eight days after the retention or release them to the tenant.

#### **TRANSFER OF THE SUBJECT OF LEASE**

If the ownership right to the leased premises or the building in which the premises are situated is sold during the period of the lease, the acquirer will replace the transferor in the lease relationship. Unless agreed otherwise, neither party may terminate the lease based on this ground.

### **LEASE OF ENTIRE PROPERTY**

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#### **ESSENTIALS AND REQUIRED FORM**

The lease of an entire property (even a building that contains non-residential premises only) is governed by the Czech Civil Code.

The lease may be executed in any form, unless otherwise requested by a party. The lease must specify the subject of lease and should specify the rent; otherwise the tenant will pay the rent usually paid for a similar subject of lease at the moment of lease execution.

#### **SUBLETTING**

The tenant is entitled to sublet the subject of lease, unless agreed otherwise by the parties. The sublease agreement may be executed in any form, unless a party requires a written form. The term of the sublease shall terminate by the termination date of the lease at the latest.

#### **TERMINATION**

The same rules apply as for the lease of non-residential premises provided, however, that specific grounds for termination of the lease concluded for a definite period of time shall not apply.

#### **TRANSFER OF THE SUBJECT OF LEASE**

If the ownership right to the subject of lease is transferred during the period of the lease, the acquirer will replace the transferor in the lease relationship. The tenant is then entitled to terminate the lease while observing the statutory time limits for the termination notice.

#### **DURATION, RENT AND SECURITY**

The same rules apply as for the lease of non-residential premises.

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