



Leases

Polish law distinguishes two distinct forms of lease. A ‘lease agreement’ (*umowa najmu*) and a ‘tenancy agreement’ (*umowa dzierżawa*). The former may relate to any type of property, but is mainly used for commercial and residential property. The latter is used more for agricultural land and some industrial property. A ‘lease agreement’ grants the right to use the land that is the subject of the agreement; whereas a tenancy agreement gives right to collect benefits from the land, such as crops, minerals, etc. Either form of leasehold is not a real right (right *in rem*) and cannot be mortgaged as such.

Generally there are no restrictions on any individual or legal entity entering into a lease.

Typical commercial lease terms and conditions:

Term	<p>A lease agreement may be entered into for any period of time, which may be fixed or indefinite.</p> <p>Typically granted for a term of between three and seven years, with 5 years the most common (a tenant occupying a significant part of a building or one with a high financial standing may be granted a longer term).</p> <p>Leases are generally limited to ten years, although leases between business entities (<i>dzierżawa</i>) may be granted for a fixed term of up to 30 years (tenancy agreements may be for up to 30 years even though the parties are not business entities).</p> <p>A lease for 10 years may provide for a further term when the existing term expires (although this may not be enforceable until the new lease comes into effect). If there is no renewal of the lease at the end of the 10 or 30 years, if the tenant remains in occupation it is deemed to be a lease for an indefinite period which may then be terminated at any time.</p>
Termination	<p>A lease may be terminated by agreement of the parties, although a lease for a definite period of time may not be terminated until the end of that period (break clauses are rare).</p> <p>A lease granted for an indefinite period may be terminated at any time, subject to any agreement to the contrary.</p> <p>There is statutory protection for the tenant at end of lease term for commercial property (unlike residential premises). However, any physical eviction generally requires a court order.</p> <p>If there is no agreed notice period, a minimum of three months notice is required.</p> <p>Lease not for a defined term (with a ‘certified date’ (<i>data pewna</i>)) may be terminated by a purchaser of landlord’s interest.</p>
Rent	<p>Payable in advance in the local currency (Zloty), although many leases involving foreign companies are denominated in Euros (or in some cases US\$).</p> <p>There are no rent controls for commercial leases.</p> <p>VAT is payable on rent and service charges and payable by landlord and normally recharged to the tenant.</p>

Measuring basis	gross internal area (GIA)*
Rent revision	Annual indexation increases are normal, based on the index agreed by parties. Usually the Polish CPI, but the <i>Eurostat</i> or US CPI may also used. (Under the Civil Code, for a lease that is not granted for a fixed term the rent can be increased at any time, subject to one months notice; unless there is an agreement to the contrary.)
Security deposit	Typically, 3–6 months of rent and service charges, in cash or bank guarantee.
Service Charges/ Operating Expenses	For commercial premises most building expenses are recharged to the tenant, including charges for the common parts and management costs. Although, as in most civil law countries, structural repairs are the responsibility of the landlord (except in the case of a ‘tenancy agreement’ where the tenant is responsible for the complete maintenance of the building through out the term). An advanced service charge is normally payable and this is commonly calculated at a rate per sq. m. At the end of the financial year reconciliation is made between the advanced charge paid and the actual expenses. In some cases, a fixed rate per square metre is charged and the landlord pays all expenses, except for utilities supplied directly to the tenant.
Insurance	Landlord is normally responsible for standard building insurance (although the landlord has no statutory obligation to insure) and the premium is recharged to the tenant. Normally the insurance covers the reinstatement cost and public liability insurance . The cost of rent-loss insurance may also be recharged to the tenant. Tenant may also carry insurance for his own risks of occupation (fire, theft personal property, injury to third parties on the premises). For a ‘tenancy agreement’ all insurance is normally the responsibility of the tenant.
Assignment/ subletting	Tenant’s assignment or subletting normally requires L’s written consent. L is usually free to assign his interest. A new landlord may terminate a lease that is not for a fixed term, unless there is a notarised agreement to the contrary.
Right to renew	As agreed on grant of lease. No statutory right of renewal.
Repair	Landlord is responsible for all repairs to the building and common parts. The tenant is generally responsible for the minor repairs and maintenance. Costs paid by the landlord are generally recharged directly to the tenant or may be added as part of the service charge.

Improvements Unless there is an agreement to the contrary, as a general rule, any item permanently fixed to land becomes a part thereof and may be retained by landlord. The landlord is required to pay compensation for the any increase in the value of the land due to improvements. Alternatively, the landlord may require reinstatement. (This rule does not apply to a perpetual usufruct.)

Formalities A lease for more than one year should be in writing; otherwise it is assumed to be for an indefinite term and, as a rule, may be terminated by either party at any time.

The lease need not, but may be registered in the Land and Mortgage Registry (*Księgi Wieczyste*).

*Exact method of measurement vary from country to country (the most common methods are: The Royal Institution of Chartered Surveyors, *Code of Measuring Practice: A Guide for Property Professionals* (6th ed. London: 2007) and the Building Owners and Managers Association International (BOMA), *Standard Method for Measuring Floor Area in Office Buildings* (Washington, DC: 1996)

The above are intended only as a guide to common lease terms. Professional advice should be obtained in any particular case.

Offices

The prime office locations in Warsaw are in the City Centre (around Marszałkowska/Aleje Jerozolimskie/ul. Bielańska/ul. Przyokopowa) and the Financial Centre in Mokotów New City.

Retail

The prime retail locations in Warsaw are Nowy Świat and Chmielna. In addition, there are a number of major new malls such as the Złote Tarasy near the main train station.

Leases are typically for five to ten years. Anchor tenants are generally granted terms of 10 years, with an option to renew for a further 10 years. In a major shopping centre, a base rent (which may be indexed), plus a turnover/percentage rents is common.

Costs of promotion and marketing are usually included in the service charge. Tenant associations are not common, although are likely to be encouraged by international developers and retailers.

Leasing

As in many other Continental European countries, in Poland building owners may enter into 'leasing' agreements. This is an arrangement that is a form of conditional sale by which the 'lessee' enjoys the same rights to use the property as with a regular lease, but pays an agreed sum by instalments and usually a lump sum at the end of the agreed term (this is similar to a 'hire purchase' agreement as found in English law). The total amount payable is sufficient to amortise the capital cost and pay interest on the outstanding balance. Such an agreement may be a **finance lease**, which provides the lessee with a right to purchase the property at the end of the term, or an **operating lease**, which provides no right to purchase the property. Such an arrangement is used for most forms of commercial property, especially those where that the lessee is the sole occupier.

Terms in **bold** are defined and explained in the Encyclopedia of Real Estate Terms (Third Edition hardcopy and ONLINE) <<http://realestatedefined.com>>

This information is intended as an introductory guide and is intended to point out issues that may be of interest to a foreign investor. It does not constitute legal advice and should not be relied on as such. Professional advice is recommended on any issue referred to herein.

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