

# Commercial Real Estate

Second Edition

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# Kosovo

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## Leasing

### Practical points

#### *Securing the premises*

Lease contracts are governed by the provisions of Law no. 04-L-077 On Obligational Relationships (hereinafter “**Law on Obligations**”). Kosovo legislation does not provide specific regulation for the leasing of commercial property.

It is possible to secure the premises in advance of them being constructed or in advance of an existing Lessee vacating on the basis of the lease agreement or pre-let agreement. The applicable law does not require that the rights deriving from a lease should be registered. However, in practice it is possible to also register the lease agreement with the relevant real estate registration office. This can be done after the construction of the premises is completed and after the issuance of the occupancy permit (said certificate is issued when the: (i) requirements of the construction permit have been fulfilled; (ii) construction permit holder and/or contractor have removed and disposed of all construction waste from the construction site to a waste disposal site of adequate construction specifically designated for such purposes; and (iii) energy efficiency and saving measures have been duly implemented).

#### *Taxes and fees payable*

The lease agreement can be registered with the relevant Cadastral Office in the Municipality where the property is located. Pursuant to article 11 of Administrative Instruction no. 08/2014, “On Fees on Products for Registering the Immovable Property Rights from Municipal Cadastral Offices”, the right to use tenancy for a duration of three to ten years may be registered by paying the fee in amount of €50. The fee is €250 for registering the right to use tenancy for a duration from 10-25 years.

Pursuant to article 30 of Law no. 03/L-01, notarised deeds are mandatory with regard to the transfer or acquisition of ownership or other real rights over real estate. In this regard, the lease agreement should be signed before the notary. Notary fees are determined based on the value of the transaction pursuant to Administrative Instruction no. 02/2012 “On Provisional Notary Fees”. For contracts on lease, the value shall be determined according to a one-year period of the lease.

On the other hand, the taxes paid by Landlords consist of the tax on income from the rent amounting to 9% of the rent price. The Landlord is also obliged to pay the annual tax on immovable property. Such tax is calculated based on the surface of the property. The Lessee is not liable for paying any taxes on the rent.

### *Fitting-out works*

The Law on Obligations addresses this issue to the extent that the Lessee may use the premises as stipulated by the lease agreement or in line with the purpose of the premises.

In principle, the Lessee will receive the premises in a state suitable for the purpose of lease. Any additional works can be regulated in agreement with the Landlord by the lease agreement.

In this regard, according to the Law on Obligations, the Lessee shall be liable for damage incurred because the leased thing was used in breach of the contract or contrary to its purpose, irrespective of whether it was used by the lessee, a person working under the lessee's mandate, a sub-Lessee or any other person allowed to use the thing by the Lessee.

Further, the Landlord may unilaterally terminate the lease agreement when the Lessee – despite the warning by the Landlord – continues to use the property contrary to the purpose of the agreement, or if the Lessee neglects the maintenance of the property and there is a risk of considerable damage being incurred by the Landlord. In such a case the Landlord may terminate the contract without notice.

### *Codes of practice*

There are no such codes of practice or guidelines.

### Key commercial terms

#### *Rent*

Subject to the Law on Obligations, the Lessee shall be obliged to pay the rent by the deadlines stipulated by the contract or by law. In absence of the latter, by the deadlines customary in the place where the premises have been handed to the Lessee.

Unless agreed otherwise or customary otherwise in the place of delivery, rent shall be paid every six (6) months for the property leased for a duration of one or more years. If the premises are leased for a shorter period, the rent is paid after such period.

In practice, rent is usually paid periodically on a monthly basis.

Subject to the Law on Obligations, in case the Lessee fails to pay the lease price, and a term of fifteen (15) days from the request of the Landlord to do so has expired, the Landlord may unilaterally terminate the lease agreement.

#### *Rent adjustments*

The Law on Obligations does not contain specific provisions addressing this issue. However, pursuant to article 376 of the Law on Obligations, the contracting parties may agree that the amount of the debtor's monetary obligation be stipulated in respect of changes in the price of goods and services expressed by the retail price index determined by the authorised organisation (index-linking clause), in respect of fluctuation in a foreign exchange rate (foreign currency clause), or in respect of changes in other prices.

#### *Other occupational costs*

The costs for ordinary maintenance and expenses incurred for the use thereof shall be borne by the Lessee.

#### *Period of occupation*

The length of term for leases of business premises are not restricted by the applicable legislation and are a matter of mutual consent between the parties.

#### *Remaining in occupation*

The Law on Obligations provides that a lease contract concluded for a stipulated

period shall terminate at the end of the period for which it was concluded. In case the Lessee continues to use the leased premises beyond the agreed term without any objection from the Landlord, the agreement shall be considered as tacitly renewed for an unlimited term. The same terms and conditions as those indicated under the initial lease agreement shall apply.

However, in case the parties intend to renew the contract for another limited period, modalities for such renewal may be provided in the lease agreement or, in absence thereof, the parties may mutually agree in this respect before expiry of the initial lease agreement.

#### *Disposing of the premises*

Subject to the Law on Obligations, the lease agreement made for an unlimited term may be terminated at any time provided that prior written notice is duly served to the other party. If the parties have not provided any specific term of notice in the agreement, a term of eight days shall apply by rule of law.

Regarding lease agreements with limited duration, the Law on Obligations stipulates that it shall terminate upon expiry of the term.

The Law on Obligations does not address the issue of unilateral termination before the expiry of the term of the agreement with no reason.

The reasons for unilateral termination by the Lessee provided by the Law on Obligations are as follows:

- if necessary repairs to the leased property hinder its use to a considerable degree and for a lengthy period;
- if upon delivery the leased property has any defect that cannot be rectified, the Tenant may choose to withdraw from the contract or demand a reduction of the lease price;
- if the third person's right limits the Tenant's right, the Tenant may choose to withdraw from the contract or demand a reduction in the lease price; or
- for reasons related to the alienation of the leased property.

As regards the sublease, the Law on Obligations provides that if the Lessee subleases the leased property without the Landlord's consent when such consent is required by law or by the contract, the Landlord may unilaterally terminate the contract.

#### *Alterations*

The Law on Obligations is silent in this respect. It provides that the Lessee may use the premises as stipulated by the lease agreement or in line with the purpose of the premises. In this regard, it may be construed that the Lessee may make alterations in agreement with the Landlord.

#### *Repair of the premises*

Pursuant to article 602, the Tenant shall not be liable for normal wear and tear to the property owing to customary use, or for damage incurred due to end of its useful life.

If during the lease the Lessee makes any changes to the premises, the Lessee will be obliged to return it to the state it was in when received for leasing.

The Lessee may take any additions added to the premises if such can be separated without damaging them, however the Landlord may keep them by compensating the Lessee for their value upon return.

## Investment

### Practical points

#### *Exclusivity*

An investor may ensure ownership by registering the property with the Register of Immovable Property Rights.

The Law on the Establishment of the Immovable Property Rights Register (Law no. 2002/05 as amended) foresees that entries in the register of immovable property rights enjoy the presumption of accuracy, truthfulness and legality until and unless corrected through the procedures established by the law.

#### *Restrictions on disposing of property*

The Law Restricting/Prohibiting the Transfer of the Property Title to Foreigners expired on 31st December 1990.

The current legislation does not provide for such restriction; on the contrary it guarantees the fair and equal treatment of foreign investors and local investors without discrimination.

#### *Impacts on timing*

With regard to the acquisition of land in Kosovo, it should be noted that land in Kosovo is categorised as agricultural and construction land.

Pursuant to the Law on Agricultural Land (law no. 02/L-26), agricultural land is used only for agricultural production. Any change of use may be done only according to the law and with the decision of the municipal competent body, after having the consent of the relevant Ministry.

As regards the land lease, according to Law no. 03/L-040 “On Local Self Government”, the municipalities have the right to sell and lease immovable and movable property, with the exception of the sale of land which is regulated by a special law.

UNMIK Regulation no. 2003/13 “On the Transformation of the Right of use to Socially Owned Property” establishes the possibility of leasing land for commercial purposes for a term of 99 years. In addition, Law no. 02/L-26 “On Agricultural Land” stipulates that agricultural land may be leased to natural and legal persons, local or foreign, involved in agricultural activities and may not be subleased without consent of the owner, with exemption of cases of transfer of the right of use for 99 years.

Agricultural land may be leased in the form of: (i) long term lease (over three years); (ii) short term lease (up to three years); and (iii) grazing lease.

Investors can also get a leasehold for land from the Municipality under which jurisdiction over the said land is located for a term of 10 years with an extension opportunity up to 99 years.

Also, it is to be noted that sellers usually warrant the transfer of an ownership title from encumbrances, liens or burdens of any kind. Based on such warranties, the buyer may hold the seller liable, in case of misinterpretation of the latter. The warranties may be interpreted as a substitute for the buyer carrying out his own due diligence on the ownership title. However, while carrying out a real estate transaction the buyer is recommended to conduct due diligence over the ownership title.

#### *Key milestones in acquisition process*

The minimum formalities for the sale and purchase of real estate are as follows:

- Execution of a contract between the buyer and seller and its certification by the public notary in the Municipality where the real estate is situated.

- Payment of tax related to the transfer of the ownership title over the real estate.
- Registration of the executed sale purchase contract with the Municipal Cadastral Office for the area where the property is located.

#### *Requirement for transfer of monies*

The applicable legislation does not specifically address this issue and is usually regulated by the agreement between the parties.

#### *Execution procedure*

When transferring or acquiring ownership or other real rights on real estate, it is mandatory to certify the contract by a notary public in the Municipality where the real estate is situated in Kosovo.

#### *Other procedural requirements*

As previously mentioned, the sale contract should be executed before the notary public in the Municipality where the real estate is situated, and registered with the Municipal Cadastral Office for the area where the property is located upon payment of tax related to the transfer of the ownership title over the real estate.

#### *Taxes and fees payable*

Usually the buyer takes the obligation to pay all expenses when purchasing a property. Such expenses include standard notary fees that are determined pursuant to the value of the sale purchase transaction, municipal taxes on the real estate transaction and fees for the registration of the ownership of property. The notary fees are determined based on the value of the transaction. For example, €120 is paid for transactions having a value from €60,001 to €100,000, whilst for transactions exceeding the amount of €100,000.00, the fee will increase by €20 for every €20,000.00, but it cannot exceed the total fee amount of €1,000.

The fees for real estate transactions are determined by Municipal Regulations and may vary across municipalities. For the registration of ownership, fees are determined pursuant to Administrative Instruction no. 08/2014, 'On fees for services for registering the immovable property rights from Municipal Cadastral Offices', according to the value of transactions performed on immovable property. For example, for transactions from €50,000 to €100,000, the due amount is €50 and for transactions that exceed €100,000, for every €50,000 the amount of €30 is paid, but the overall amount of the fee cannot exceed the value of €300.

#### Key commercial terms

##### *Deposit*

There is no consolidated practice in this regard, and the payment of deposit can be regulated pursuant to the agreement between the parties.

##### *Timing*

The registration of immovable properties is regulated by Law no. 2002/05 'On the Establishment of an Immovable Property Rights Register' as amended and Administrative Instruction no. 2004/03 for the implementation of said law.

For an initial registration of an immovable property, a written application should be filed with the Municipal Cadastral Office under the jurisdiction of which the property subject to registration is located.

The Municipal Cadastral Office ('MCO') shall review the application for registration and submitted documentation. If the documents are complete (i.e. the fees have been paid and the application is accompanied by the required documents), the MCO is obliged to complete the registration right within 15 days after the receipt of the request.

This deadline does not apply in case the request is not complete and/or when the MCO is obliged to require additional clarifications from the competent authorities. In case the documentation submitted is not sufficient, the MCO notifies the applicant and sets a deadline of 30 days to submit the missing documents.

In case of claims where parties fail to agree on any solution, the competent court shall have jurisdiction to rule on the dispute. Upon the decision of the court the MCO shall proceed with the registration.

### *Employees*

There are no specific provisions regulating the status of employees following the acquisition of property.

However, the Labor Law (law no. 03/L-212) provides that in statutory changes of a company, the next employer shall take over all obligations and responsibilities of the employment relationship from the previous employer that are applicable on the day of the change of the employer, in compliance with the Collective Contract and employment contract. Also, the previous employer is obliged to inform, in writing, all employees of the transfer of obligations and responsibilities to the next employer. If the employee refuses the transfer of the employment contract or does not declare his acceptance within five days from the day the announcement of transfer of obligations was received, the previous employer may terminate the employment contract with the employee.

### *Warranties for construction of buildings*

Pursuant to the provisions of the Law on Obligations governing construction agreements, the contractor shall be liable for any defects in the execution of the building concerning its solidity if such defects show within ten years of the delivery and takeover of works. The contractor shall also be liable for any deficiencies in the land on which the building is built that show within ten years of the delivery and takeover of works, unless an expert confirms that the land was suitable for construction during construction. The contractor shall be liable to the party who ordered the works, as well as to any other acquirer of the building.

This liability also applies to the designer, if the defect in the structure originates from any defect in the plan.

This liability cannot be excluded by contract.

### *Transfer of other tax or financial benefits*

The investor needs to consider same taxes and fees as mentioned above for acquiring the property.

## **Development**

### Practical points

#### *Land ownership and assembly*

The Law on the Establishment of the Immovable Property Rights Register provides that entries in the register shall be made accessible to the general public. In practice, however, only the authorised persons (i.e. owner of the real estate or the person authorised by him) can obtain physical documents about the real estate.

The owners can be required to sell their land pursuant to the provisions of the Law on Expropriation of Immovable Property (law no. 03L-139 as amended), which gives the government of Kosovo and municipalities the right to expropriate property if it is necessary and appropriate for the achievement of a legitimate public purpose or the promotion of the



public interest. The law also specifies the expropriation procedures under which financial compensation is provided to owners, calculated on a market-value basis.

#### *Land transfer*

This issue is not specifically addressed by the current legislation and can be regulated by agreement between parties.

#### *Taxes and fees payable*

The applicable law does not provide special regulations regarding development land and the investor should consider the same taxes as those mentioned above.

#### Key commercial terms

##### *Price*

There are no regulations specifying the value of the development land. It is determined according to market conditions.

##### *Payment structure*

This issue is not addressed by law.

The investor may pay the full value of the land at the point when this is transferred or at a later date, depending on the agreement.

##### *Deal structures*

Forward-funding and forward purchase structures are not common in Kosovo.

Pre-let contracts have been more frequently concluded lately given that there is a lack of commercial property buildings.

##### *Taxes and fees payable*

The same taxes stipulated above, on the acquisition of land in general, are payable.

## **Financing**

#### Practical points

##### *Level of loan*

There are no published reports in this regard.

##### *Security*

The most common protection sought by lenders in order to secure the credit obligation of the borrower is by the creation of a security interest over the property.

Kosovo law permits the creation of security interests over almost all assets and rights held by companies, including mortgages over real property, pledges over movables or rights (i.e. any movable property with monetary value and any right which can be transferred legally such as movable property, receivables, cash flows, shares or quotas, bank accounts, contractual rights, concessions, and licences). Mortgages can be established over immovable property, including land, building and fixtures.

The security agreement when using immovable property as collateral differs from the security agreements having movable property or rights as collateral. The security agreement should provide a clear description of the collateral.

Upon execution by the parties, pledge agreements over movable property or rights are registered through online application with the Pledge Registry Sector at the Kosovo Business Registration Agency, whereas mortgage agreements are filed with the Cadastral Agency of the area where the property is located.

### *Lender due diligence*

The minimum formalities required for real estate lending are the following:

- evaluation of the financial conditions;
- evaluation of the credit history of the investor obtained by the Credit Registry within the Central Bank of Kosovo;
- evaluation of the property to be created as security for the loan repayment;
- execution of the loan agreement between the lender and the borrower;
- execution of the pledge agreement and registration with the Pledge Registry Sector; and
- execution of the mortgage contract at the public notary's office and registration of such contract with the relevant Cadastral Office.

### *Enforcement*

The lenders can initiate enforcement action after the failure to make due payments. In this case, the lender has to respect the internal debt collection mechanisms if such procedures are in place.

The institution of private bailiff is the competent authority for the implementation of enforcement cases. The lender files an enforcement proposal regarding which the private bailiff renders an enforcement order.

The enforcement proposal can be submitted based on enforcement documents (i.e. judicial decision, notary's document or other document qualified by the law as an enforcement document) or based on authentic documents (i.e. invoices, documents with the significance of public documents, etc.).

### Key commercial terms

#### *Length of loan*

There are no published reports in this regard.

#### *Interest rate and payment dates*

The lender applies the interest rate as a fixed or variable percentage to the amount of approved loan on an annual basis. Pursuant to article 5 of the Regulation of the Central Bank of Kosovo dated 29.11.2012 "On effective interest rate", loan agreements, in addition to other requirements, should provide for the interest rate and type of interest (i.e. whether fixed or fluctuating), indicative index if a fluctuating interest rate will apply (i.e. Euribor, Libor, etc.), effective interest rate, periodicity of effective interest rate changes and/or of its composing features, etc.

#### *Repayment*

The fact that the debtor has failed to make due payments entitles the lender to demand repayment.

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He is an authorised trademark attorney and has expertise in trademark filing strategy and trademark prosecution, including IP and litigation issues.

Sokol graduated in Law at Tirana University, Albania (1996). He is fluent in English and Italian and is admitted to practise law in Albania and Kosovo.

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