

Linklaters



A pan-European guide to leasing trends

2023

# Purpose of this guide

In the challenging macro-economic environment, the leasing market is evolving. This Guide summarises the key trends across ten European jurisdictions – Belgium, England and Wales, France, Germany, Italy, Luxembourg, Poland, Portugal, Spain and Sweden – and asks whether, in each jurisdiction, the traditional institutional lease remains the norm. If you require further information or advice on the lease regimes in any of these jurisdictions, then please do get in touch with your usual Linklaters contact or any of Linklaters' experts listed in this Guide.



# Belgium



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# Belgium

What does the traditional institutional lease look like?

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In Belgium a lease on “institutionally” acceptable terms will, in general, be entered into at a market rent for a term of nine years (although public entities tend to take leases for longer terms, generally around 18 years), with the tenant being responsible for the maintenance and non-structural repair costs and bearing taxes, service charges and insurance costs related to the building. The rent is generally subject to review based on indexation (although it is not uncommon for landlords to negotiate for upward review only, even though the enforceability of this under Belgian law is subject to debate).

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

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With the rise of the ESG agenda over the last few years, green provisions are seen more and more in the Belgian market (although they are still not commonplace). Green lease provisions (which are typically only seen in leases of non-residential properties) often impose obligations on the landlord and/or tenant to manage and reduce a property’s environmental impact through improvements.

The pandemic led to tenants demanding more flexibility in their lease terms. Examples of this include: (i) flexibility over the size of the premises (i.e. the possibility to increase or decrease the size of the premises depending on the tenant’s requirements from time to time); (ii) requests for more flexible term lengths with more frequent break options; and (iii) pandemic clauses which offer concessions in the event of forced closure – these clauses continue to be commonplace, even now, in the post-pandemic environment.

In addition to demanding more flexibility, tenants have become more attentive to their lease terms and are now less inclined to accept “triple A” leases – one example of this is the fact that the newly reformed Belgian Civil Code is being used more and more by tenants as a reference point for the scope of their liabilities, in particular for defining their maintenance and repair obligations. Traditionally, landlords and tenants tended to derogate from the common lease regime under the (Old) Civil Code by agreeing in the lease that the landlord’s maintenance and repair obligations would be limited to structural repairs to the roof, foundations and walls, while the tenant would bear responsibility for all other repair and maintenance of the premises. However, the current trend is for tenants to refer to the “*usufruct regime*” under the new Civil Code, which provides that the landlord should have broader repair and maintenance responsibility (including, for example, for technical installations such as HVAC) albeit with a potential contribution from the tenant up to a certain threshold.

Finally, tenant incentives such as rent-free periods and financial contributions from landlords have become increasingly common (for example, in office leases we often see financial contributions for fit-out works to be carried out by tenants).

Is this having an impact on the investment market?

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The pandemic had a particularly significant impact on the office leasing market. It remains to be seen how this will evolve in the coming years (as we are gradually experiencing a trend of employees moving back to the office). It is expected that there will be a continued need for flexibility in lease terms for the benefit of tenants.

# Belgium

## Are there any long-term changes on the horizon?

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Belgian law has been subject to significant changes in recent years. Of particular relevance for leases is: (i) the reform of the Belgian Civil Code (i.e. the introduction of Books 3 (“Goods”) and 5 (“Obligations”); and (ii) the Belgian “B2B” protection regime needs to be taken into account by professional contract parties which prohibits (amongst other things) unfair contractual terms and market practices in B2B commercial relations.

The impact of these legislative changes on market practice when it comes to the negotiation and drafting of leases has been significant and we expect this to evolve in the years to come.

Over the past few years legislative powers in terms of residential and retail leases have been transferred from the Federal level to the Regions; following which, the Regions have introduced certain changes, including the short term retail (“pop-up”) lease regimes and the reform of the legislative residential lease framework. On a Federal level, VAT leases have been introduced (which means it is now possible for landlords to charge VAT on the rent payable) – this is significant because, as a rule, leases are exempted from VAT under Belgian law.

Finally, we have recently seen the arrival of new leasing models in multi-tenant office buildings whereby the landlord typically offers more services in the form of amenities (which are typically funded through the service charges paid by tenants).

# England and Wales



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# England and Wales

What does the traditional institutional lease look like?

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Traditionally, institutional investors in England and Wales would expect to see occupational leases drawn on “institutionally” acceptable terms – crucially, this would include a term of between 10-25 years at a market rent (although commercial lease terms have been decreasing so that the UK average is now just under three years), with the tenant bearing responsibility for repairing the premises and contributing towards the insurance costs of the building. Another key feature of the institutional lease is the upwards only rent review.

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

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Many tenants are now demanding more “tenant-friendly” terms centred around flexibility and affordability – the general consensus from tenants is that lease terms need to better reflect the needs of businesses in an age where trade is less focused around bricks and mortar premises and omnichannel operations are the norm.

Tenants are seeking shorter lease terms with built in flexibility including tenant break rights and “rightsizing” options enabling tenants to expand or contract their space as their premises needs evolve. In the retail space, there continues to be demand for rents to be based on turnover so that the liability attached to the lease depends largely on the income from the tenant’s operations from the premises.

Many landlords are now offering “plug and play” space as an alternative to the traditional “Category A” (which includes only basic finishes) and “urban campuses” are becoming increasingly common as business occupiers re-evaluate what their offices must look and feel like. ESG is becoming more important than ever.

Is this having an impact on the investment market?

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Landlords are increasingly willing to work with tenants to find new approaches which work for both sides. Some landlords, for example, have acknowledged that a “one size fits all” approach to leasing no longer works, and we are seeing new models come to the market which reflect the varying needs of tenants.

As we continue to witness a shift away from the “traditional” institutional lease, it will be interesting to see if and how investment and valuation models will respond.

Are there any long-term changes on the horizon?

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We are in the midst of a structural shift in commercial leasing in England and Wales and it will be important to keep a watchful eye on developments over the next year. Examples of where changes might be on the horizon include:

- > the Commercial Rent (Prohibition of Upward-Only Reviews) Bill has been brought before Parliament which, as the name suggests, seeks to prohibit upwards only rent reviews from all new commercial leases and also seeks to retrospectively invalidate any such existing clauses – the Bill remains in the early stages in Parliament; and
- > a review has been announced by the Law Commission on the security of tenure provisions in the Landlord and Tenant Act 1954 (which are considered by many to be outdated and in need of modernisation to better reflect current practice). The Law Commission is aiming to publish a consultation paper by early 2024.

# France



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# France

What does the traditional institutional lease look like?

Institutional investors in France would traditionally expect leases to be drawn up on “institutionally” favourable terms and governed (as far as possible) by the well-known French commercial lease regime (which is, in most cases, mandatory). This regime provides for:

- > a term length of at least nine years with tenants having break options exercisable every three years (unless such break options are expressly waived by the tenant (with a waiver only being permissible in certain circumstances – for example, where the premises are used exclusively as offices or for warehouse use)); and
- > security of tenure for tenants.

Tenants are generally required to bear the costs of all repairs, insurance costs, service charges and taxes save for costs to be mandatorily borne by landlords by law (for example, costs relating to structural works).

Rents are generally set at market value and indexed annually (upwards and downwards) based on the applicable index (such as the Commercial Rent Index (ILC) for retail premises or Tertiary Activities Index (ILAT) for office premises). Retail leases for premises in shopping centres typically contain a turnover rent.

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

In France, pursuant to the French Civil Code, the “hardship concept” applicable to all contracts allows parties to renegotiate their contract terms and conditions during the term of the contract in the event of an external or unpredictable event rendering the performance of the contract excessively onerous for one of the parties. In the context of commercial real estate, it is common to see leases including an express waiver of this “hardship concept”. This is a clear signal that landlords and tenants are requiring more certainty going forward.

Tenant incentives are now granted very regularly – rent-free periods are common, as are financial contributions from landlords towards tenants’ works (the amount of which usually depends on the length of the term of the lease, with greater amounts offered where the tenant waives its right to terminate).

Environmental provisions are now always included in commercial leases. Indeed, even when the type of premises or the leased surface area does not trigger mandatory environmental provisions, parties are anticipating new environmental regulations by including provisions with a view to reducing energy consumption.

Is this having an impact on the investment market?

With its new “bioclimatic” local urban development, Paris is aiming to be a “greener” city that continues to welcome new residents by encouraging the conversion of offices into housing.

Therefore, the supply of offices in Paris (which is already very limited) will become even scarcer (due to the drive for more housing), which we expect will lead to an increase in rental values for the Paris office market.

Are there any long-term changes on the horizon?

Environment and ESG-related topics more broadly are becoming central to negotiations. Indeed, regulations relating to energy performance are affecting the letting of “tertiary buildings” (being buildings related to the services sector) as well as residential buildings.

With respect to tertiary buildings, article L.174-1 of the French Construction and Housing Code obliges landlords and tenants to implement, within tertiary buildings and tertiary parts of “mixed-use building complexes” (where tertiary sector activities are undertaken on a floor area of at least 1,000 sqm), measures that aim to reduce the final energy consumption of the building(s) by 40% in 2030, 50% in 2040 and 60% in 2050.

For these targets to be met, the French government has set up a dedicated platform (named “OPERAT”) so that landlords and/or tenants of relevant buildings must report on data/information regarding the energy consumption of a given building to assess progress towards reaching these targets annually. As a result, leases should now include provisions relating to these reporting obligations.

# Germany



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# Germany

What does the traditional institutional lease look like?

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Traditionally, institutional investors in Germany would expect to see leases with a lease term of 10 years (although lease terms have been decreasing over the last few years; a base term of five years is not that unusual anymore).

In many cases extension options in favour of a tenant are also included in commercial leases.

Rents are generally set at market value at the outset and are usually subject to index-based rent adjustments (upwards and downwards). Market reviews during the term of the lease are not common. For retail premises turnover related rent components are also common.

Tenants are typically required to carry out maintenance and repair works including cosmetic repairs within the leased premises. However, works and/or costs in relation to the roof and structure (“*Dach*” und “*Fach*”) of the premises can, generally, not be shifted to a tenant and must, therefore, be carried out/ borne by the landlord.

Under German law, ancillary sums such as service charges are required to be borne by the landlord where they are not explicitly allocated to the tenant in the lease. In practice, such costs are regularly allocated to the tenant to a great extent. This can be done by listing them in the lease or by reference to the operational cost ordinance (“*Betriebskostenverordnung*”) which is a statutory list of ancillary costs that are typically (and can legally be) allocated to a tenant, or by a combination of both.

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

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We are seeing a shift from traditional terms to more flexible lease terms with shorter base lease terms, extension options which can only be exercised by the tenant and break rights in favour of the tenant.

In general, tenants are more self-confident and are asking for more incentives such as landlord contributions (known in Germany as build out subsidies) and rent-free periods. On the other hand, we are seeing many tenants that are expressly asking for ESG-related provisions and are open to spending money in this regard for including, for example, further consumption measuring systems or electronic charging stations.

Is this having an impact on the investment market?

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The German real estate market is currently in a phase where investors prefer to optimise their existing portfolios (by, for example, investing in ESG) over investing in new properties – high interest rates, inflation and increased construction costs have all contributed to this. Market participants expect lower interest rates and lower construction costs from 2025 onwards, which is expected to boost transactions. However, we do not have the impression that landlords are having a significantly harder time letting out quality space (not least because, as fewer new projects are being realised, less new space is available); this applies particularly to logistics and residential real estate as well as data centres.

At the same time, it seems that the self-confidence gained by tenants motivates them to raise issues with the landlord and to challenge certain provisions in particular in relation to ancillary costs. It is, therefore, becoming increasingly important to clearly set out the rules and to observe all legal requirements in respect of commercial leases so that tenants have no reason to challenge the drafting.

In addition, ESG-related regulations are having an increasing impact on the investment market due to public subsidies and political ambitions to fundamentally improve the energy efficiency of buildings. At the turn of the new year, a fully modernised Building Energy Act (*Gebäudeenergiegesetz*) will come into force, obliging landlords, among other things, to install climate-friendly models when installing new heating systems.

# Germany

Are there any long-term changes on the horizon?

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ESG linked provisions are gaining greater attention in the rental market, especially against the background of the fully modernised Building Energy Act. Certain ESG-related modernisations, in particular in relation to improving the energy footprint of a building, allow for rent increases beyond the otherwise permitted maximum.

The residential market – which is currently one of the most important investment asset classes in Germany – remains exciting. Rising construction costs (also fuelled by the new Building Energy Act), are limiting residential construction and have put a dampener on political ambitions to build 400,000 housing units per year. This is leading to a tense situation and increasing rents in metropolitan areas.

Political discussions about boosting the construction of new homes on the one hand and regulating the residential market on the other hand are ongoing. The most recent prominent cases of controversy involved the Berlin “rent cap” experiment. This sought to introduce a cap on rents, but was ultimately rejected due to legislative reasons as well as the call for expropriation of large housing companies in Berlin by political activists, which too has been rejected by the senate of the city of Berlin for the time being.

# Italy



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# Italy

## What does the traditional institutional lease look like?

The majority of the provisions applicable to property lease agreements in Italy are included in dedicated laws, namely law no. 431 of 9 December 1998, as from time to time amended applicable to residential lease agreements and law no. 392 of 27 July 1978, as from time to time amended (the “**Commercial Tenancy Law**”) for commercial lease agreements. Only a few property lease agreements (such as parking spaces and basements not appurtenant to residential or commercial leases) are governed solely by the Civil Code but they are far less important in the market.

The Commercial Tenancy Law sets out certain mandatory provisions that the landlord must comply with and any departure therefrom, if and when challenged by the tenant, would be declared null and void and automatically replaced by the mandatory provision of the same law. Over the years these restrictions have directly determined the contents of commercial lease agreements in Italy.

The main mandatory provisions of the Commercial Tenancy Law are as follows:

- > **Term:** not less than six years (increased up to nine years for hotels and similar facilities), renewed for further six-year periods (or nine-year periods for hotels) unless terminated;
- > **Renewal:** upon expiration of the first six-year (or nine-year) period, and subsequently upon expiration of each following six-year (or nine-year) period, the lease is automatically renewed for an additional period of at least six (or nine) years, unless either party serves the other, by way of a 12-month (or 18-month in case of hotels) prior notice, a notice stating the intention not to renew the contract. At the expiration of the first six-year (or nine-year) period, the landlord is entitled to terminate the lease only in limited cases (for example, for its own use);
- > **Withdrawal:** the landlord is never entitled to withdraw from the lease early, while the tenant may withdraw both under an express withdrawal clause agreed in the contract or upon the occurrence of the so called “serious reasons” (“*gravi motivi*”) which applies regardless of its specific insertion in the lease;

> **Rent indexation:** in commercial lease agreements having an initial term not longer than the minimum required by the law (i.e. six years or nine years, as the case may be), indexation may not exceed the annual limit of 75% of the variation of the index of prices of goods for the white-collar and blue-collar families, as ascertained by the Italian entity for statistics (ISTAT);

> **Sublease/assignment:** the tenant is entitled to sublet the unit or to assign the lease agreement – without the landlord’s consent – in the event the sublease or assignment takes place in the context of a sale or lease of the going concern of the tenant which the property lease agreement is a part of. The landlord, however, may challenge such sublease/assignment for material reasons;

> **Registration tax:** the registration tax (1% of the yearly rent in commercial leases) relating to the lease has to be paid by the parties as to 50% each.

Should the activity of the tenant involve dealings with the general public (such as in the case of retail units), the following additional mandatory protections apply:

> **Goodwill indemnity:** in the event of termination of the commercial lease agreement by the landlord (in absence of a tenant’s breach), the tenant is entitled to a goodwill indemnity corresponding to 18 (or 21) times the amount of the stabilized monthly rent. The amount of the goodwill indemnity is doubled in the event the real estate unit is leased to another tenant operating the same activity of the previous one;

> **Pre-emption rights in favour of the tenant:** should the landlord decide to sell the leased premises during the term of the lease or to re-let it at the expiration of the property lease agreement, the tenant is entitled, as the case may be, to a pre-emption right to purchase the premises or to lease it on the same terms and conditions.

# Italy

Are you seeing a shift away from these traditional terms?  
What are the current leasing trends?

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A partial departure from the highly regulated law regime was introduced in November 2014. According to the new paragraph 3 of section 79 of the Commercial Tenancy Law, parties to commercial property lease agreements entered into after 12 November 2014 (insofar as the annual rent is greater than € 250,000) can depart from any provision (including those of a mandatory nature) of the Commercial Tenancy Law. This liberalisation of commercial leases in 2014 – albeit partial and limited to larger contracts – constituted an acknowledgment, by the Italian legislator, that the rationale that had inspired the Commercial Tenancy Law has long since become completely outdated. In fact, when the Commercial Tenancy Law was enacted – in 1978, when the internet was still in its infancy and both production (craft and industrial) and commerce could only be based on bricks and mortar premises – the physical location of a commercial or industrial activity was considered (quite reasonably) essential for the success of the activity itself.

It was also taken for granted that the tenant was the “weaker party” in the contractual relationship, in the context of the Italian economic structure at that point in time, which was made up of large property owners and many small commercial activities. These two assumptions are now largely irrelevant in light of the revolution triggered by the internet era. The current trend, therefore, at least in the area of institutional investments and leases with rents above the legal threshold, is an alignment with the more advanced European leasing models. In particular, today in Italy it is possible to create property lease agreements almost entirely in line with the concept of the “triple net lease” (NNN), i.e. the model in which the lease, on the landlord’s side, becomes a pure income flow.

Is this having an impact  
on the investment market?

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The possibility of agreeing with the tenant, in advance, a waiver of its right to withdraw early from the lease at any time in the presence of so-called “serious reasons” (which, before 2014, undermined the stability of any non-residential rental relationships) and, therefore, the possibility for landlords to obtain in advance a guaranteed duration of the lease, has allowed a new phase of great success for real estate development transactions, particularly in the logistics sector.

# Italy

## Are there any long-term changes on the horizon?

As mentioned, the Commercial Tenancy Law contains a number of limitations for the landlord/safeguards for the tenant which international investors always considered too restrictive and out of line with international business practice. With respect to this general consideration, the 2014 reform has undoubtedly had a positive impact on the market and helped to mitigate the criticisms of international investors. Our impression, therefore, is that a further easing of restrictions for other types of lease agreements could further increase the attractiveness of the Italian market for investments in real estate. It will be particularly important to consider the possibility of liberalising, at least partially, the residential lease market, so as to stimulate “build-to-rent” residential transactions, which are still too small a segment of the Italian market.

In recent years, following the introduction of European regulation and the policies adopted by foreign investors, almost all “institutional” landlords have implemented green clauses in non-residential leases. Conversely, these clauses in residential leases are still uncommon. Generally speaking, green clauses in leases cover sustainability of the premises including: (i) maintenance of environmental ratings; (ii) information sharing clauses (to enable landlords to carry out sustainability analysis); and (iii) use of green electricity.

In addition to the above, it is worth noting an intense discussion concerning the possible regulation of the market for short-term rentals for tourism purposes. To date, in Italy, residential leases for tourism purposes constitute one of the few almost totally liberalised segments of the residential market

and, in view of Italy’s natural vocation for tourism, they have had great success as alternative accommodation to hotels, also under the impetus of online portals (such as Airbnb and the like). The spread of these alternative accommodation models has led, on the one hand, to a further decrease in the housing supply for residents in the historic centres of major cities and, on the other, to a large area of tax evasion. For this reason, the government is considering the introduction of administrative control measures on housing used for short-term rental for tourism purposes.

# Luxembourg



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# Luxembourg

What does the traditional institutional lease look like?

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Luxembourg has always been a landlord-friendly market. This may be explained by the attractiveness of the economy, the scarcity of prime office buildings, as well as the freedom that is given to parties when negotiating a lease agreement. This has resulted in lease agreements containing terms and conditions that are very favorable to landlords, notably as regards duration, compliance with laws and regulations, maintenance and repair and reinstatement clauses.

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

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We are seeing an important shift in the behaviour of landlords in the market, as well as in tenant expectations for retail and office space. ESG considerations are on the up and tenants are asking for more sustainable real estate. Businesses claim that this will lead to an increase in value and improve their corporate image and branding. We are seeing landlords announcing a significant number of new prime and ESG-focused office developments due to come to the market in the forthcoming months and years.

Insofar as unlet or out-of-date buildings are concerned, landlords are motivated to convert them into hotels and sought-after luxury apartments for wealthy or high earning individuals.

In a world which seeks to reduce costs and expenses, affordability remains a paramount issue. However, in a flourishing economy which attracts more than 9,000 new working professionals every year, affordability is not always guaranteed as prices remain high.

Is this having an impact on the investment market?

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The general slowdown of the economy as well as the current “cost-of-money” – which has hampered the investment market – have not helped mitigate office and retail leasing businesses. The impact of the pandemic is still having an adverse effect on the real estate market as a whole, and we are experiencing deep changes in the way we envisage working. This year, again, office vacancy rates in Luxembourg remained at an historical high.

Are there any long-term changes on the horizon?

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Whilst office rentals are on track for a mild recession this year, perhaps surprisingly, the real estate retail market remained stable during the third quarter of 2023 with solid growth.

Overall, it is widely anticipated that leasing businesses should start to recover from 2024 onwards. Landlords should remain wary of tenants’ environmental preoccupations and continue carrying out climate-friendly practices as well implementing “tenant-friendly” terms around flexibility and affordability.

There are no recent or forthcoming legislative changes related to Luxembourg commercial property market.

# Poland



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# Poland

What does the traditional institutional lease look like?

Generally, institutional investors in Poland would expect leases to have a fixed term of between at least five (e.g. for office or warehouse premises) to 15 years (e.g. build-to-suit **"BTS"** warehouse premises designed and constructed for a specific tenant), usually with a tenant's renewal option for a further lease term. Break options are currently rarely seen.

Tenants would typically bear responsibility for repairing the premises and contribute towards the building's operating costs (including the insurance costs). The rent amount is directly stipulated in the lease and is usually payable on a monthly basis. Upwards only rent review on an indexation basis is market standard. Leases typically stipulate against subletting with narrow exceptions, including to companies from the same capital group.

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

ESG has significantly influenced the real estate market in Poland. The implementation of smart and green components is a significant part of contemporary leases. In practice, the most common "green leases" clauses used in Poland relate to: (i) the reduction of utility consumption; (ii) the use of environmentally friendly alternatives available in the building; (iii) optimising the use of building management systems according to the intensity of the building's use; (iv) establishing planned or acceptable levels of utility consumption or emissions; (v) managing waste; and (vi) introducing appropriate provisions in service contracts to enable the implementation of such "green" clauses.

ESG-focused developers or property managers often offer charging stations for electric cars and bicycle spaces next to the office building (and locker rooms/showers) which encourages landlords to promote "greener" habits amongst their occupiers, such as arriving at work by bicycle, scooter or promoting the trend of carpooling.

Tenants are increasingly willing to introduce "green" clauses and comply with the principles of sustainable development in the building, even where there are express consequences in the lease for failure to comply.

Is this having an impact on the investment market?

There are currently no plans to amend the terms of the Polish Civil Code, which governs the provisions of Polish leases.

In 2022, the Polish government introduced the National Urban Policy 2030 ("NUP 2030"). This new policy emphasises that the key element of conducting urban policy is to face development challenges and to strengthen the capacity of cities and their functional areas for sustainable development, as well as building resilience to climate change and improving the quality of life for inhabitants of Polish cities. The NUP 2030 focuses on national measures which correspond with the current challenges faced by cities and functional urban areas. The policies implemented by institutions, especially governmental, should allow the best use of the potential and competitive advantage of Polish cities in order to assure sustainable spatial and socio-economic development.

There are also various strategies, plans and policies underway aiming to implement ESG measures in Poland, for example: (i) the Polish Energy Policy 2040 (which focuses on energy security and renewables); and (ii) the roadmap for the development of sustainable finance (which aims to help develop sustainable financial products and services).

Aside from the ESG trend, in general, landlords are having to be more flexible. The financing of developments is more expensive than ever, but at the same time, tenants are becoming much more aware and demanding.

Are there any long-term changes on the horizon?

Currently, landlords operating in the office and retail leasing market are more willing to work with tenants to find solutions that are acceptable for both sides (in particular in the ESG sector). There is still demand for warehouse premises, however tenants are more challenging, as they require a more customised approach to suite their bespoke requirements.

Currently, there are no specific regulations on the enforcement of "green lease" provisions in the Polish real estate market. Nevertheless, despite the lack of national regulations, more and more tenants are choosing to cooperate with landlords to implement common pro-environmental policies.

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# Portugal

What does the traditional institutional lease look like?

Institutional investors looking to lease office space should expect to be offered a lease with a medium to long initial term, usually between five and ten years (which is often a mandatory term) and an automatic renewal provision for successive renewal periods of five years. Tenant break rights are expected whereas landlord break rights are not. The tenant would be obliged to carry out and bear the costs of all repair and maintenance works to the let premises and the rent structure would typically consist of a fixed rent amount and a service charge amount, with annual upwards only rent reviews based on CPI and annual service charge reviews (excluding wear and tear). All commercial tenants have a legal pre-emption right applicable in the event the landlord proposes to dispose of its interest in the premises to a third party, but it is common practice for the parties to waive this right contractually.

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

The most obvious shifts away from traditional lease terms relate to a growing demand from commercial tenants to include:

- > green lease provisions, dealing with things like maintaining energy efficiency ratings, using materials made from sustainable sources in any fitting out, sharing data in respect of energy usage, agreeing resource and waste reduction targets, and compromising the landlord on capex aimed at improving the energy performance of the building; and
- > lease provisions awarding tenants greater flexibility in the management of their leases. These include additional or more flexible break clauses and provisions allowing tenants to increase or decrease their let area, for example through provisions allowing for the partial termination of the lease and/or awarding a pre-emption right or a right of first offer in relation to vacant premises in the relevant building.

Is this having an impact on the investment market?

Real estate investors have become increasingly aware of the ESG traits of the buildings they intend to invest in, and developers have been responding to that demand.

As the ESG trend continues to gain traction, tenants (particularly those occupying office premises) are often keen to improve their ESG credentials and may seek to negotiate mutually acceptable “green” provisions. In these cases, “green” clauses are a means to ensure that landlords and tenants work together to achieve their own ESG objectives.

With that said, “green” provisions are not always welcomed by certain tenants, particularly where they are likely to impose additional cost and/or administrative burdens for occupiers. In these circumstances, it is not unusual for “green” clauses to become heavily negotiated.

It should also be noted that recent case law from the Supreme Court of Justice has taken a restrictive view in relation to mandatory lease terms for tenants – in other words, a lease which does not include a tenant break clause (or includes a tenant break clause subject to payment of a break penalty whereby the break is only valid if the rents are paid up to the end of the lease term) will be deemed null and void. Landlords should, therefore, seek different paths and alternative clauses to counterbalance this restriction and assure legal certainty to long-term leases.

# Portugal

## Are there any long-term changes on the horizon?

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The legal regime applicable to commercial leases has historically been characterised as allowing the parties to freely agree the provisions applicable to their lease, with almost no limitations. This is distinct from the regime applicable to residential leases which contains a greater number of mandatory provisions which tend to award greater protection to the tenant. In recent years however, we have witnessed a slight departure from that trait, particularly in respect to the addition of elements intended to extend the effective duration of leases. Both landlords and tenants should keep a close eye on developments in case law decided by the Supreme Court of Justice in matters related to the urban lease regime, as recent decisions have affirmed the existence of limitations to the terms and conditions that parties may agree under commercial lease agreements, which the market had not previously considered.

In terms of the wider market more generally, the Portuguese Government has recently acknowledged that Portugal is going through a housing crisis, which has been intensified by the boom in real estate prices and by the significant increase in the inflow of tourists and expats looking for accommodation when either visiting or settling in the country. These and other factors combined have led to a housing shortage, particularly felt in the metropolitan areas of both Lisbon and Porto. The Portuguese Parliament has approved legislation aimed at increasing the number of buildings available in the residential rental market, such as, among other measures, a mechanism by which the Government can forcibly lease out vacant premises against the owner's will. Despite the approval of this measure, its execution remains uncertain as, in practice, it heavily relies on the co-operation of the relevant municipalities; officials of the most densely populated municipalities have, in the past, publicly criticised this solution.

# Spain



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# Spain

## What does the traditional institutional lease look like?

Traditionally, institutional investors in Spain would expect to see a lease term of three to five years, although where the premises is large the term is usually five years with an option to renew for a similar period. Some (but not all) leases contain renewal rights. Rent is usually payable monthly in advance subject to an annual review based on the Spanish Consumer Price Index ("*Índice de Precios al Consumo*"). It is common for a tenant's break option to be included in long leases. Spanish law requires tenants to provide the landlord with a cash deposit equivalent to two months' rent as security for its obligations under the lease, which must be lodged with the relevant public authorities. In addition, landlords may require a bank guarantee of 6-12 months or cash deposit or personal guarantee from the tenant's parent company.

The landlord is typically responsible for structural works and the tenant is responsible for maintenance and repair of the premises (excluding wear and tear). All commercial tenants have a legal pre-emption right applicable in the event the landlord proposes to dispose of its interest in the premises to a third party, but it is common practice for the parties to waive this right contractually.

## Are you seeing a shift away from these traditional terms? What are the current leasing trends?

Many tenants are now demanding more "tenant-friendly" terms centred around flexibility and affordability. Specifically, in the post-pandemic, high inflation environment, we are seeing tenants request the following:

> **Service charge reductions or caps:** tenants are, now more than ever, paying more attention to service charge expenditure, particularly given current levels of inflation. Tenants commonly try to negotiate caps or service charge reductions and are demanding more transparency; in this regard, it is common for the parties to include (for information purposes) the estimated amount of service charge expenditure for the current year;

> **Rent reduction/suspension/waiver:** where market rents have reduced, tenants are expecting their rents to be adjusted accordingly (both from the outset of a lease, and on any rent review); and

> **Turnover rent:** changing from a fixed principal rent to a turnover rent only for certain anchor tenants (this is affecting retail premises only). Traditionally, turnover rents have not been favoured by landlords in Spain, but due to recent changes in the market landlords are increasingly conceding on such requests and now accept turnover rents more frequently than they might have traditionally.

# Spain

Is this having an impact on the investment market?

In the current market, we anticipate tenants will continue to demand increasingly “tenant-friendly” terms including (i) a maximum (cap) ratio to the Spanish Consumer Price Index (*Índice de Precios al Consumo*); (ii) requests for more frequent break rights; (iii) reductions in the size of the demised premises; (iv) the ability for the tenant to assign the lease to group companies; (v) greater flexibility to carry out works; and/or (vi) more protection in relation to force majeure/pandemic clauses (due to the post-pandemic situation).

Landlords do, however, usually expect to receive something in return. For example, landlords might seek (i) that market rent reviews are replaced with annual indexation reviews in line with the increase in the Consumer Price Index (*Índice de Precios al Consumo*), with a minimum (floor) ratio (and without a maximum (cap) ratio) that guarantees the landlord the revaluation of the rent during the term of the lease, (ii) a waiver of any tenant break rights; (iii) an extension of the lease term; and/or (iv) force majeure clauses reverting back to the more standard, pre-pandemic form.

Landlords are also taking an increasing interest in the financial performance of their tenants and it is becoming common for landlords to request that the tenant provides financial information including accounts and capex invested/future investment forecasts. This is particularly relevant in turnover leases where the rent received by the landlord directly correlates with the tenant’s performance at the premises.

Although it is true that the leasing relationship between landlords and tenants is evolving and gaining some flexibility in certain aspects as indicated above, we have not identified any clear impact on the investment market in Spain linked to these trends.

On 24 May 2023, a new housing law was definitively approved. This legislation intends to grow Spain’s public housing stock, and makes changes to the residential rental regulations that affect all landlords, particularly large landlords (those owning (i) more than ten urban residential properties or (ii) more than 1,500 sqm in residential property floor area).

Are there any long-term changes on the horizon?

Apart from the new housing law, there have not been any legislative changes in connection with the above nor are there any planned soon.

The new law also limits residential rent increases. For large landlords, the rent increases for: (i) 2023 shall not exceed 2%; and (ii) 2024 cannot be increased by more than 3%. For 2025 and beyond, Spain’s national statistics office will, before 31 December 2024, prepare a new and specific benchmark index.

It should be noted that the new housing law has been challenged by several regional governments (which are responsible for implementing several key provisions of this piece of legislation) before the constitutional court.

# Sweden



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# Sweden

What does the traditional institutional lease look like?

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Traditionally institutional investors in Sweden would want to see occupational leases drawn on “institutionally” acceptable terms. These would normally include initial lease terms of three or five years for office premises and 10 to 20 years for industrial or logistics premises, typically with an option to renew for a period of three or five years (with a mutual break right on nine months’ notice).

For higher value leases, the tenant is normally responsible for maintenance, repairs, and in some cases future capital investments in the premises. All tenants are usually liable to contribute towards the insurance and property tax costs for the building.

The typical rent structure is a fixed rent which is subject to indexation in line with the consumer price index.

Are you seeing a shift away from these traditional terms? What are the current leasing trends?

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Even though the landscape for retail is changing with a greater focus on omnichannel sales and the office landscape is seeing a greater focus on working from home, there has been no significant shift away from these traditional lease terms in the CBD (Central Business District) area. However, more exposed, smaller retail tenants are being offered short-term rent reductions in exchange for term extensions or new leases being entered into.

There has also been an increase in interest around the environmental aspects of leases. Many of the leases now include a “green appendix” (“*Sw. Grön Bilaga*”) which describes the environmental aspects and obligations in the lease.

Is this having an impact on the investment market?

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We have not seen a shift away from traditional lease terms. The increased interest in the environmental footprint of leases has resulted in property owners becoming increasingly focused on obtaining a good environmental certification for their property. Obtaining these certifications can contribute to the long-term value of properties, as they can result in reduced operational costs, improved market reputation, and increased demand from environmentally conscious customers.

Are there any long-term changes on the horizon?

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There have been discussions in Sweden on adopting market-based rent for newly built housing, instead of a rent control system. However, the Swedish government was not successful in finding support for the suggested policy in parliament. There are no long-term changes currently on the horizon.

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