

Overview of the Leasing Process – Brazil

Regulated by federal law nº 8,245/1991 (“Tenancy Law”). No regulatory agency.

- In Brazil, one of the main objectives of location control is to protect franchisor if franchisor must sublease to obtain prime locations.
- The Brazilian Tenancy Law stipulates that the rent charged to the subtenant cannot be higher than the rent paid by the tenant to the landlord.
- Subleasing is normally practiced by well-established franchise chains and involves certain prime locations.
- For small franchise chains – the majority of cases – , the lease agreement is directly executed by the franchisee, without any kind of liability whatsoever to the franchisor.
- It is not common nor feasible to execute a Conditional Lease Agreement involving the landlord in Brazil. However, it is common to include certain provisions in the lease agreement.
- The franchisor right to acquire the premises must be addressed into the lease agreement and the right to acquire business is commonly provided for in franchise agreements.
- For mall locations, the lease term is usually 5 years and for outside malls, the lease term is usually 3 years, as the payment of key monies are forbidden and to avoid the right for lease renewal.
- Commercial Leases may be renewed when: (a) the agreement is made in writing and specifies a fixed term; (b) the term is for at least 5 years of uninterrupted periods; and (c) the tenant has been operating the same business for at least 3 years.
- The Tenancy Law provides that during the fixed term of a lease agreement, the landlord cannot recover the property, unless (i) the tenant agrees to return it and to terminate the agreement; and (ii) the tenant does not comply with its/his /hers obligations.
- An indeterminate term agreement allows the landlord to recover the property with 30 days prior notice, without the need to justify such demand.
- The Tenancy Law expressly forbids the landlord to accelerate monthly rent, stipulating civil and criminal consequences.

- During the fixed term of a lease agreement, the tenant may return the property by paying the stipulated penalty, which will be proportional to the lease term elapsed.
- The Tenancy Law provides for the right of first refusal of the tenant in the event of the sale of the property he/she/it has leased from the landlord.
- Certain situations are not subject to the tenant's right of first refusal, as listed in article 32 of the Tenancy Law.
- Franchisors may exercise certain controls over franchisees' premises without the landlord agreeing to the controls in its lease with the tenant.
- The foreign franchisor will need to incorporate a company in Brazil to own and directly conduct a local business.
- Except for certain standard provisions, in Brazil it is almost impossible to negotiate and insert provisions in lease agreements to be executed with malls. For street franchise locations, such provisions are negotiable.
- The franchisor's rights under a lease takes place in a local court, as the Code of Civil Procedures provides that a Brazilian Court have jurisdiction when, among others, the lawsuit deals with a real state located in Brazil. ("lex locci").
- Based upon case law, the tenant does not need landlord's authorization if the tenant wishes to sell its goodwill (including the related business) to a third party.
- Landlords do not request franchisors to guaranty leases of their franchisees.
- Commercial lease terms are usually consistent with the term of franchise agreements used by franchisors.
- The Brazilian law and jurisdiction applies for all real state located in Brazil.
- Landlords are solely amenable to accept provisions to be inserted into the lease agreement when they will effectively result in an economic advantage to the landlord and if they will not result in the assumption of new obligations to the landlord.