



Overview of the Leasing Process – Portugal

1. **Lease term** _ any term by agreement of the parties. Where lease is silent on term the court will imply a certain term of not less than 10 years with the tenant not being able to terminate in the first year.
2. **Renewability** _ tenant may renew unless the landlord objects in writing by giving written notice within pre-determined notice periods depending upon the length of the lease. Where a lease expires without the landlord taking action to recover the premises within 1 year of this expiration, the lease is deemed renewed.
3. **Termination of a lease** _
 - a) With cause: by mutual consent; termination based on default; tenant may terminate where landlord has not undertaken necessary works making the property uninhabitable; the landlord may terminate where an unlawful assignment of the lease has occurred; systematic breaches of health & safety rules, principles of quiet enjoyment, etc; use of premises for unlawful or activities not consented to in the lease; late payment of rent for up to 3 months; opposition by the tenant to works ordered to be undertaken by a public entity for a period of at least 3 months.
 - b) Without cause: *tenant* must give at least one year's notice in writing if wishes to terminate. Failure to provide this notice makes the tenant liable to pay rent for the month's notice not provided although it does not invalidate the termination. *Landlord*: may terminate if intends to occupy premises or demolish / remodel or refurbish substantially the premises by giving 6 month's notice. Failing this, Landlord must give 5 years written notice.
4. **Expiration of a lease** _ at the end of a term certain or where the business contractually agreed to be undertaken at the premises terminates.
5. **Duty to mitigate damages/relet the premises** _ none unless lease expressly provides for this.



6. **Right to acquire or operate the tenant's business operated from the premises / what rights does a landlord have over the tenant's business if the tenant wishes to sell it to a third party** _*Trespasse*: Portuguese law concept which provides that where the tenant wishes to sell the business operated from the premises as a going concern, then this sale may include the leased premises, i.e. the lease will be transferred to the new owner of the business. The Landlord has a preferential right (unless excluded expressly in the lease) in these circumstances to acquire the business. Tenant is not required to seek consent to the sale, only notify landlord of it. In certain circumstances, tenant also has a right of preference to acquire building.
7. **Subleases** _ requires written consent of landlord;
8. **Right to assign lease** _ only if lease expressly permits this otherwise landlord may terminate;
9. **Rent increases:** must be phased over a 5 or 10 year period, depending upon specific circumstances;
10. **Disputes under a lease:** must be determined under Portuguese law and jurisdiction of local courts (*lex situs*)