



Commercial Real Estate

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Cyprus

George Vrikis
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Leasing

Practical points

(a) *Securing the premises*

A Lease Agreement falls within the ambit of the Cyprus Contracts Law, Cap. 149 and, as such, follows the general rules and principles of contracts. In this respect, it is worth noting that since the Cypriot legal system is based on the Anglo-Saxon common law principles, there are a number of similarities with a UK-jurisdiction Lease Agreement.

A matter worth noting is the requirement for a Lease and/or Rental Agreement to be signed by the parties in the presence of two (2) competent witnesses in order to be legally binding (if its term is of one (1) year and above – Section 77 of Cap. 149), as opposed to a Purchase Contract for Immovable Property, which does not require any witnesses.

If you are proposing to enter into a lease agreement prior to the property being vacated by existing tenants and/or prior to completion of construction of such property, the terms of the Lease Agreement should contain detailed terms for such occupation of the property by the new Tenant, so as to avoid an argument that this is merely an “agreement to agree” and not a full and legally binding Lease Agreement.

Lastly, if the term of the agreement exceeds fifteen (15) years, then such an agreement may be lodged with the pertinent Land Registry Department within three (3) months from execution and form an encumbrance on the property. It is important to note that this may only be effected if a relevant provision allowing for such registration is included in the Agreement; however, it is advisable that if you do not wish for such registration to occur, a specific provision is included in the Agreement to deny such a right from the Lessee.

If the term of the Lease Agreement exceeds thirty-three (33) years, and the Lessee is a non-EU citizen, an application must be made to the Council of Ministers so as to obtain a permit to proceed with such a lease.

(b) *Taxes and fees payable*

There are two main tax and fee items to take into consideration, as follows:

- (i) The Stamp Law provides for stamp duty on contracts on the basis of consideration at the following rates:
 - Less than €5,000 – nil.
 - In excess of €5,000 but not exceeding €170,000 – €1.50 for every €1,000 or part thereof.

- In excess of €170,000 – €2.00 for every €1,000 or part thereof, with an upper limit of €20,000.

Stamp duty must be paid within 30 days from the date of execution of the relevant documents or, if they are executed abroad, within 30 days after they are received in Cyprus. The absence of the revenue stamp does not render a contract void, but an unstamped contract cannot be used in court proceedings or for the lodging of the lease contract with the Land Registry Department (as per our comments above).

One may still pay the stamp duty at a later time, however a penalty of approximately 10% will be applied (for a delay of up to six (6) months) – after this period, the stamp duty to be paid is double the original amount payable.

- (ii) The owner of the property is subject to pay tax on the amount of the rent received. However, if the person renting the property is a legal entity (e.g. a Company or Partnership), then the legal entity is responsible for deducting the Defence Tax from the monthly rent and paying this amount directly to the Tax Authorities, and to provide the owner with evidence of such payment.

(c) *Fitting-out works*

With respect to premises which are already complete, the usual starting point is that no alterations, additions or modifications are allowed in the premises unless they are done with the written consent of the landlord. Furthermore, it is fairly typical that the Agreement will contain provisions to the effect that the tenant has to return the premises back to their original state on expiry of the tenancy term, at its own expense, unless the landlord otherwise agrees.

However, for premises which are still under construction, it is a matter of negotiation between the parties and it is also fairly common that the landlord will allow for relevant modifications and alterations to be made by the tenant (within the scope of the Building Permit available) – typically an Appendix will be included in the Agreement to indicate the understanding of the parties as to what such alterations and modifications shall entail.

(d) *Codes of practice*

Cyprus has not yet issued any specialised Codes of Practice with regard to Lease Agreements.

Key commercial terms

(a) *Rent*

Rent is payable under such terms as agreed between the parties (typically monthly or quarterly – but in certain cases for long-term commercial agreements, even annually in advance). The amount payable is, in the vast majority of situations, fixed under the contract, with specified intervals for pre-agreed increases in such amount or giving a maximum percentage increase by which the landlord may raise the rent.

As per our comment above, if the tenant is a legal entity (or a national or local government body) then they must deduct the Defence Tax on rent prior to such payment and effect payment of the tax directly to the tax authorities on behalf of the landlord.

Lastly, it should be noted that the Rent Control Law of 1983 (as amended), provides security of tenure and protection as to the amount by which the rent can be increased for what are known as “statutory tenants” of dwellings and shops in regulated areas built up to and including 31/12/1999. However, as at the time of writing, the maximum increase of rent allowed for such premises every two years was fixed at 0% by the Council of

Ministers, due to the prevailing economic conditions.

(b) *Rent adjustments*

The procedure for rent adjustments is set out in the terms of the lease and in most cases is either pre-agreed as to the amount, or a range for a percentage or maximum percentage is given. Unless the tenancy is within the scope of the Rent Control Law (as above), in which case rent increases could not exceed 14% every two years, it is entirely a matter for agreement between the parties. As noted above, at the time of writing, the maximum increase of rent allowed for such premises every two years was fixed at 0% by the Council of Ministers.

(c) *Other occupational costs*

It is typically the tenant's obligation to maintain the premises in good repair and working order, unless the damage is a result of natural wear and tear. Furthermore, if the premises are part of a communal building (e.g. an office in a block of offices), the tenant is responsible for payment of common expenses for the building, with such common expenses typically being calculated on the basis of the percentage area covered by the rented premises as against the whole building.

The tenant will also typically be responsible for insuring his own content, and undertaking any other insurance required in order to legally operate its business.

Tenants are almost always required under the provisions of the Agreement to pay other taxes, duties and fees which are related directly to the occupancy of the premises, such as refuse collection duties, sewerage fees, and other municipal rates which are not connected to ownership. Duties and taxes connected to ownership (such as immovable property tax) are paid by the landlord.

(d) *Period of occupation*

The term of the tenancy agreement is purely a matter of negotiation between the parties. However, if the premises and the tenancy agreement fall within the scope of the Rent Control Law (as above), certain protection is granted to the tenant from eviction from the premises, which is only allowed under strictly defined circumstances, which, theoretically, could mean that a tenant could stay in the same premises for the duration of his life.

(e) *Remaining in occupation*

As long as a tenant is covered by the terms of the lease agreement and fulfils all obligations towards the landlord, he is allowed to remain in peaceful occupation of the premises. It must be noted that, even in the event that a tenant is not fulfilling his obligations towards the landlord, the landlord cannot repossess occupancy of the premises (for example, change the locks to the property) unless a Court Order is first obtained ordering the eviction of the tenant and all due actions are thereafter taken for the eviction.

(f) *Disposing of the premises*

The terms of a typical lease agreement would provide that the tenant cannot dispose (i.e. assign, sublet or otherwise dispose of) the premises unless he has received the written approval of the landlord. However, this can be subject to negotiation between the parties; a typical example being a company renting out premises which will be used to house various of their employees which are on rotation, which can be agreed and form part of the agreement with the landlord.

It is worth noting here that, as discussed above, a lease exceeding 15 years may be registered with the Land Registry; the effect of such registration would be to allow

the tenant to trade the lease if he so desired, without the need for any consent from the landlord.

(g) *Alterations*

Please refer to 'Fitting-out works', above.

(h) *Repair of the premises*

Please refer to 'Other occupational costs', above.

Investment

Practical points

(a) *Exclusivity*

Under the Sale of Immovable Property (Specific Performance) Law No. 81(I) of 2011 (as amended), the buyer of immovable property, upon lodging the Purchase Contract with the relevant Land Registry Department (with Stamp Duty duly paid thereon), even if the Title Deeds to the said property have not been concurrently transferred under his name, may apply to the Court for specific performance of the Purchase Contract.

It should also be noted that the Land Registry Department, once the Purchase Contract is properly lodged, will recognise the purchaser as the beneficial owner of the said property and will require his/her consent in order to make a transfer of the property, e.g. by way of an assignment agreement.

It should be noted that the above protection is only applicable in terms of Purchase Contracts and not Lease Contracts, in which case the standard contractual remedies for breach of contract would be applicable.

(b) *Restrictions on disposing of property*

Generally, once a property is duly and legally purchased, and the Purchase Contract is filed with the relevant Land Registry Department, there are no restrictions applicable to how the owner chooses to dispose it. However, the following should be borne in mind:

- (i) If the person purchasing the property is a non-EU and non-Cypriot national, then he requires permission from the Council of Ministers in order to register the property under his name. It is noted that the 3rd country national may proceed with purchase and lodging the contract with the Land Registry Department, but the Title Deeds may only be issued under his name upon presenting the written authorisation by the Council of Ministers to the Land Registry and if his application is rejected, he should take such steps as to transfer the property to another person.
- (ii) The above is also true with regard to Lease Agreements which exceed a lease period of thirty-three (33) years, as well as the purchase of shares of Cypriot companies which are registered owners of immovable property in Cyprus.

It is worth noting that review of the application by the Council of Ministers typically takes three to six months. The above limitations are not applicable in any way as to EU Citizens and Cypriot nationals.

(c) *Impacts on timing*

The most important timing aspect as to purchase of immovable property is the six (6) months period after signing for lodging the Purchase Contract with the Land Registry Department, in order to secure your rights of ownership. Clients are always advised to effect such lodging as soon as possible after signing. Another timing issue would be the

payment of the Stamp Duty applicable – within 30 days from execution – in order to avoid any increased fees and penalties.

(d) *Key milestones in acquisition process*

Generally, the usual sequence of events would be as follows:

- (i) Locating suitable property – either by engaging a registered Real Estate Agent or by yourself.
- (ii) Undertake Due Diligence – it is highly advisable that you undertake a full background check on the proposed property (either by yourself, through the real estate agent or your lawyer). A search with the Land Registry Department should be undertaken to locate any mortgages, memos, liens or other encumbrances on the proposed property. In the event that the Final Certificate of Completion is not yet issued by the relevant municipal authorities, you should consider engaging an architect to check whether the property was built in accordance with the Building Permit issued.
- (iii) Negotiation – once satisfied with the Due Diligence, the negotiation of the key terms should be undertaken, e.g. price, time of delivery, etc. Usually such negotiations are held between estate agents and/or lawyers.
- (iv) Contract – The final contract, which will contain all terms and conditions, should be drafted, negotiated and agreed between the parties. It is strongly advisable that you seek legal assistance on this matter and do not rely on ready-made contracts.
- (v) Execution – Upon execution of the contract, care must be taken for payment of the Stamp Duty and filing with the Land Registry Department (if applicable) within the prerequisite time periods.
- (vi) Post-Completion – such matters might include alternations which have been agreed (in cases of Lease Agreements or Sale Contracts where the property is still under construction), issuance of separate title deeds and registration under the buyer's name, and so forth.

(e) *Requirement for transfer of monies*

Such matters entirely depend on the agreement between the parties. However, typically in a Lease Agreement, the owner shall require that the agreed deposit payment and at least the first month of rent is paid in advance. When it comes to Purchase Agreements, it is typical that all, or almost all, of the purchase price is paid in advance or concurrently with execution and/or lodging the Purchase Contract with the Land Registry. In cases of purchase of property, it is advisable that a small amount is left behind until issuance of the Title Deeds is effected in the name of the Buyer.

(f) *Execution procedure and procedural requirements*

It should be noted that although the official languages of the Republic of Cyprus are Greek and Turkish, the Land Registry Department generally accepts English documents and agreements as well, without a requirement to translate into Greek or Turkish. For all other languages, the documents and agreements would require translation.

Furthermore, if the buyer is a company, it will be requested to provide a full set of its corporate certificates, as well as passports of its directors and shareholders. Such documents, especially for non-Cypriot entities, should be legalised and Apostilled to ensure that the Land Registry accepts same.

If execution will be under a Power of Attorney granted, such Power of Attorney will require to be certified (either in Cyprus, or in an embassy or consulate of Cyprus abroad)

and be available in original for filing with the Land Registry Department.

As per above, execution of a Lease Agreement should be done in the presence of two competent witnesses and, although not required, the same is advisable for Purchase Agreements.

On the date of lodging the Purchase Contract with the Land Registry, a filing fee shall be payable; additionally, if a transfer of title deeds is to be effected, the transfer fee should firstly be paid at the Land Registry Department; it is noted that this is applicable for Assignment Agreements as well. The same holds true for all property-related taxes and duties, and capital gains taxes on behalf of the Seller.

(g) *Taxes and fees payable*

In order for the transfer of a property to be effected, as per the provisions of the Immovable Property (Transfer and Mortgage) Law of 1965 (as amended), a transfer fee is payable to the Land Registry Department which is typically paid by the purchaser. The calculation of this transfer fee is based on the purchase price of the Purchase Agreement, which the Land Registry reviews, however, to check that it represents the current market price (and reserves the right to charge the transfer fee on the basis of an increased market price).

As to the applicable fee, this is calculated on the basis of the first €85,000 charged at 3%; the next €85,000 charged at 5%; and any excess above €170,000 is charged at 8%. It must be noted, however, that currently the fees payable stand at only 50% of the above calculation, under a government incentive and legislation passed in 2015.

It should also be noted that if two buyers are indicated in the contract, purchasing for example the property in equal shares, then for the purposes of the above calculation, the purchase price will be divided between them and only then will the applicable percentages be calculated, resulting in decreased transfer fees.

VAT is charged on supplies of new buildings and the land on which they stand if the application for a building permit was submitted after 1 May 2004. The current rate is 19%, but may fall to 5% if the property purchased is to be used as the primary residence (this deduction is only allowed once per lifetime). Currently no VAT is charged on leasing or letting of immovable property.

Immovable property tax is payable each year by all owners of immovable property in Cyprus, assessed on the taxpayer's total holding of immovable property at the start of the year. For years up to and including 2016, the tax was based on 1980 values, but the government has recently concluded a revaluation of properties to current values with the intention of revising the immovable property tax system, re-basing it on current values (as at 2013) and adjusting the rates accordingly.

Capital Gains Tax is levied at the rate of 20% on gains realised from the disposal of immovable property in Cyprus, including gains from the disposal of shares in private companies which own such property, or companies in which the value of real estate directly or indirectly accounts for 50% or more of the value of the shares. It must be noted that some exemptions apply to this.

During ownership of immovable property (and/or possession if renting), certain other duties and levies are also applicable, such as refuse collection duty, maintenance of professional offices duties (if applicable), etc. and such amounts are generally different depending on the decision of each municipality.

Lastly, as to Defence Tax on rent, please refer to 'Leasing, Taxes and fees payable', above.

Key commercial terms

(a) *Deposit*

It is very common for a deposit to be paid on Lease Agreements to ensure compliance with the terms of the contract. It is also quite common for a deposit to be paid in cases of purchase of property which is still under construction, to cover initial building costs. The amounts and timing of the payments are negotiable between the parties and vary greatly depending on length of contract and value of the contract, as well as the negotiating power of each party.

(b) *Timing*

There is no generally fixed or approximate timeframe for negotiation and conclusion of a contract, with a key timing factor being any negative findings during the Due Diligence procedure and review, and how easily such matters may be addressed. Another key factor is the complexity of each transaction and size of the project, as a simple purchase contract of a small office will invariably require less negotiations and drafting than a building contract for a high-rise office building.

(c) *Employees*

Employee considerations will generally only come into play if, as part of the transaction, the buyer is purchasing shares in a company which already employs an individual. If this is the case, the provisions of the Safeguarding and Protection of Employees' Rights in the Event of the Transfer of Undertakings, Businesses or Parts Thereof Law, Law 104(I) of 2000 (which is based on relevant EU Regulation) should be adhered to, which, briefly, state that for the next twelve (12) months, employment of these individuals should be maintained under their current terms and conditions.

(d) *Warranties for construction of building*

This matter is strictly a subject of negotiation between parties. However, it is fairly standard in the building industry that a one (1) year warranty will be given by the Contractor to cover material defects and building defects for which the Contractor is responsible.

(e) *Transfer of other tax or financial benefits*

Where the transaction includes the purchase of an entity which is defined as a "going concern", if such an entity has reported losses during the previous years, these may be used by the Buyer to offset future profits of this entity (losses may be carried forward a maximum of five years). However, it is strongly recommended that before such a purchase, Financial Due Diligence is undertaken by tax and accounting specialists.

Development

Practical points

(a) *Land ownership and assembly*

The data maintained by the Land Registry Department is not public information and as such not readily accessible. A Real Estate Agent should be hired if a proposed purchaser wishes to enquire and find out the ownership of specific plots of land.

(b) *Land transfer*

It should be noted that, other than by way of a voluntary sale of immovable property, the only other way for a transfer to be effected is via the provisions of the Compulsory Acquisition of Property Law, No. 15 of 1962 (as amended), which provides that only

national or local government bodies may acquire property, in the public interest and by showing just cause, and only on payment of immediate compensation to the owner at the current market value. The owner has the right to apply to the Court to affix this value if not satisfied with the value proposed by the governmental bodies.

It should also be noted that property acquired by governmental bodies in this manner has to be used for the purpose defined when first compulsorily acquiring it (and solely for that limited and defined purpose). If not so used, it should be returned to the former owner and/or the former owner may apply to the Court for a Court Order to return the property back to him – at such time, the former owner will be required to return any funds received in compensation for the property's compulsory acquisition.

(c) *Taxes and fees payable*

Please refer to 'Investment, Taxes and fees payable', above.

Key commercial terms

(a) *Price*

The price is a direct result of the parties' negotiations; factors which should be borne in mind include checking as to any mortgages or other encumbrances on the property which might indicate pressure on the Seller to sell the property, as well as checking that all licences, building permits and lastly Title Deeds have been issued for the property in question, as such matters may potentially form a negotiation point – as well as taking these into account in terms of future costs and risks on the purchase.

(b) *Payment structure*

Yet again, such matters solely depend on negotiation by the parties; however, the nature of the property in question will also be a factor for consideration. By way of example, a straight-out purchase of a fully completed property, with Title Deeds, will usually entail the payment of a small initial deposit and then the balance payable on the date of the transfer of the property. In contrast, a property that is under development, will typically mean a payment schedule will be put in place, with a deposit payable on signing of the contract, and thereafter periodic payments as various phases of the construction are completed, as evidenced by a certificate from the overseeing architect or civil engineer.

(c) *Deal structures*

Deal structures vary considerably on the basis of the property in question; the most common deal structures are straight-out purchases, fixed-term leases with a right to renew, joint-venture agreements for development of a property, as well as development contracts with guaranteed income-generating rentals.

(d) *Taxes and fees payable*

At the point of agreement to enter into a transaction, the only tax payable is the stamp duty on the contract, described in 'Investment, Taxes and fees payable', above.

Financing

Practical points

(a) *Level of loan*

Banks in Cyprus are regulated and under the oversight of the Central Bank of Cyprus, which sets a maximum loan-to-value ratio for residential property lending, but currently does not do so for more complex commercial property transactions. However, following the economic crisis of 2013 in Cyprus, the banks are currently very hesitant to give out

loans for new purchases and/or new developments in property. By way of a reference, the starting position for giving a loan for a residential property to an individual is that the individual must have at least 30% of the value of the property in his own funds. As to commercial projects, it is strongly recommended that a business plan is made available to the bank to indicate that the project is based on sound financial predictions and shall be commercially viable for the duration of the loan.

(b) *Security*

The most typical security requested by banks is a mortgage over the proposed property to be purchased, although it is also fairly common that they will ask for a Guarantee to be given by one or two credit-worthy individuals as additional security to the mortgage. The mortgage shall give a bank priority as a secured creditor over other secured creditors which come after the bank in terms of time, and generally over all unsecured creditors.

Once the mortgage is granted and registered with the Land Registry Department (as per the provisions of the Immovable Property (Transfer and Mortgage) Law, No. 9 of 1965), the bank obtains a legal interest in the mortgaged property until full and final repayment of the loan or until otherwise agreed between the parties.

If the borrower is a company, the bank will most likely also require a floating charge over all the company's assets in addition to the mortgage. A floating charge is a security interest, generally over all of the company's assets, which "floats" until an event of default occurs or until the company goes into liquidation, at which time the floating charge crystallises and attaches to all the relevant assets. It gives the secured creditor two valuable remedies in the event of default:

- (i) Firstly, the creditor may crystallise the charge, and then liquidate any asset subject to the charge as if it was a fixed charge.
- (ii) Alternatively, if the floating charge encompasses substantially all of the assets and undertaking of the company, the charge holder may appoint a receiver to take control of the business with a view to discharging the debt out of income or selling off the entire business as a going concern.

Any charge created by a company must be registered with the Registrar of Companies within 21 days after creation of the charge under section 91 of the Companies Law and also be included in the company's Register of Charges. If a company acquires property subject to a charge, it must send the same particulars together with a certified copy of the charge within 21 days of acquiring the property. Failure to register a charge may invalidate the charge. It must be noted that the creditor can also register the charge with the Registrar of Companies so as to protect their interests.

(c) *Lender Due Diligence*

Due Diligence requirements vary in accordance to each lender's internal procedures, as well as the nature and value of the project in question. The fairly standard requirement is that the borrower will need to produce: evidence of sufficient income, or a business plan for the viability of the project; evidence as to the title deeds and/or ownership of the property; evidence of a search with the Land Registry as to any existing mortgages and encumbrances; and so forth.

(d) *Enforcement*

A mortgage or charge generally includes provisions allowing the holder to take possession of the charged property and realise it to discharge or reduce the secured debt, or to appoint a receiver to do this on its behalf.

Although the previous foreclosure process was very cumbersome and allowed many opportunities for the debtor to delay and obstruct the proceedings, with the result that foreclosures could take many years (typically 10 years or more) to complete, in 2014, a new law was passed to streamline the process and reduce the scope for delay. However, a number of amendments were made to the law with the stated intention of protecting so-called “primary residences” against foreclosure, and the new law is not fully effective.

For companies, if the charge is a floating charge, the procedure is the same.

Key commercial terms

(a) *Length of loan*

The length of the loan and the repayment dates vary enormously, according to the timing of the funds generated by the project being financed. By way of example, a bank will not lend out funds to an individual for a time period which is expected to go over his life expectancy, and will generally try to limit repayments until the individual reaches retirement age. However, if you are a company and discussing financing of a building project which will be generating income (e.g. an office building which will be rented out), longer timeframes can be discussed.

(b) *Interest rate and payment dates*

Interest rates are determined by market rates, and taking into account the risk factor from the proposed transaction; it is also fairly standard that interest is capitalised twice a year on commercial loans and property-related loans. Repayments are typically on a monthly or quarterly basis.

(c) *Repayment*

The terms of repayment are set out in the Loan Agreement and, other than the fixed repayment schedule, care must be taken when agreeing on any other rights of the lender to accelerate the loan and demand its earlier repayment. Typically, such acceleration rights will be given in the event of liquidation or insolvency of the borrower, consistent failure to pay on time, or other material adverse change in the circumstances of the borrower (although in some cases, a period of time may be given to the borrower to remedy the situation prior to acceleration).

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George graduated from the University of Leicester where he acquired an LL.B. with first class (Hons) in 2006 and is also the holder of an LL.M. in Corporate & Commercial Law with Distinction. Upon Completion of his Bar Vocational Course at BPP Law School in London, George was called to the Bar of England & Wales in 2007, being a member of the Honourable Society of Lincoln's Inn. He has been a practising advocate and member of the Cyprus Bar Association since 2007 and is the Managing Partner of G. Vrikis & Associates LLC.

George's main fields of expertise are corporate & commercial law, corporate & civil litigation, employment law, land law, estate planning, as well as administrative law. He has acted for and on behalf of multinational corporations for Due Diligence reports and acquisition of structures based in Cyprus; including drafting and reviewing from a Cyprus-law perspective the pertinent agreements and documentation and shareholders' agreements, as well as Joint-Venture Agreements, and working closely with global law firms.

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