

Legal Flash

“New provisions on commercial leases”

February 2014

Greek law **4242/2014** (the “**Law**”) named “*Single Carrier for Extroversion and other provisions*” was published on February 28th, 2014, on the Greek Government Gazette (Government Gazette Bulletin A' 50/28-02-2014).

Article 13 of the Law introduces specific and important provisions regarding the up-to-date status of commercial leases in Greece.

New Leases

According to paragraph 1 of article 13 of the Law, commercial leases falling within the scope of Presidential Decree 34/1995, which are concluded after February 28th, 2014, shall have a minimum term of three (3) years, even if they were concluded for a shorter, or indefinite, period.

Such new leases may be (amicably) terminated, at any time, by virtue of a newer agreement signed between the landlord and the lessee, evidenced by means a document bearing a certain date.

According to the Law, the (unilateral) termination (by either the landlord or the lessee) of a new commercial lease shall be made in writing, whilst it becomes legally binding within three (3) months after its service to the other party. It should be stressed however that the new Law does not specify whether the aforesaid right for unilaterally terminating a commercial lease is afforded to the parties also during the legal minimum three-year term of a new commercial lease.

It should be pointed out that the provisions of Greek Presidential Decree 34/1995 concerning: **(a)** the minimum term of commercial leases (article 5), **(b)** the termination (by the landlord) for own-using the leased premises (articles 16-18 and 20-22), **(c)** the termination (by the landlord) for reconstructing the leased premises (articles 23-26 and 27 par. 2), **(d)** the effect, formalities, as well as the issues relating to the compensation payable by the landlord, as a result of terminating the lease for own-using or reconstructing the premises (articles 28-36), **(e)** the termination (by the landlord) for personally occupying the premises (articles 37-39), **(f)** the termination due to the bankruptcy of the lessee (article 40), **(g)** the termination by the lessee (article 43), and **(h)** issues relating to the right of the landlord to post signs on the leased property, as well as the prescription period for certain claims (articles 46 and 47), are not applicable to commercial leases that are concluded after February 28th, 2014.

To-be-noted that all matters pertaining to commercial leases, which are concluded after February 28th, 2014 and are not explicitly regulated by the new Law, may be freely negotiated and agreed between the parties at the conclusion of the commercial lease, subject however to the provisions of the Greek Civil Code, as well as the provisions of Presidential Decree 34/1995, still remaining in force (after the enactment of the Law).

Existing Leases

It should be clarified that the provisions of the new Law do not affect the twelve-year, or the potential longer contractually agreed term of a commercial lease that has been concluded, extended or renewed (either implicitly or explicitly) before the enactment of the new Law (i.e. before February 28th, 2014), also including leases whose their twelve-year duration has on the one hand expired, but on the other hand there are less than nine (9) months that have lapsed since such (twelve-year) expiry.

In regards to already concluded commercial leases, changes have also been introduced with respect to the right of the landlord to terminate the (commercial) lease for own-using or reconstructing of the premises. Kindly note that the termination for own-using the property is no longer possible, unless eighteen (18) (or in specific cases of nine (9) months) have passed since the commencement of the lease, whereas the time limits for the landlord to terminate the lease for reconstructing the property may differ, in accordance with the overall (contractually) agreed term of the lease.

We should emphasize the fact that the provisions (articles 60 and 61) of Presidential Decree 34/1995, regarding the obligation of the landlord to restore the intangible commercial value of the leased property, due to the completion of twelve (12) years, are abolished both vis-à-vis existing commercial leases, as well as towards new leases concluded after February 28th, 2014.

From the above it is indicated that even upon the expiry of the twelve-year term of an already concluded commercial lease, it appears that there is no obligation for the landlord to compensate the lessee for the intangible commercial value of the leased premises, whilst, transitionally and in order to avoid any potential surprise of the commercial market, it is anticipated that in the event of termination by the landlord – until 31.08.2014 – of a commercial lease that is due to expire until 31.08.2014, by reason of reaching its twelve-year term (as per article 5 of Presidential Decree 34/1995), or a lease whose twelve-year term has ended, but there are still more than nine (9) months remaining – on 31.08.2014 – following such (twelve-year) expiry, the

landlord would have to pay to the lessee a compensation equal to six (6) monthly rents.

The changes in practice

From the provisions of the new Law it seems that greater freedom and discretion is subsequently afforded to the contracting parties, in order to freely negotiate and agree on different (contractual) lease terms, always in line with their business and operational needs, although such term may never be less than the minimum three (3) year term contemplated under the Law.

Furthermore, the new Law appears to differentiate between the right of the parties (either the landlord or the lessee) to unilaterally terminate a (new) commercial lease, from their respective obligation to pay any kind of compensation/penalty.

Finally, we note that the non application – only with regard to new commercial leases – of the provisions of Greek Presidential Decree 34/1995, pertaining, *inter alia*, to the right of the landlord to terminate the lease for own-using/occupying, or reconstructing the leased premises, as well as the obligation (of the landlord) to restore the intangible commercial value of the property, appear to provide substantial contractual freedom to the parties of a (new) commercial lease, who are now entitled to freely negotiate the terms of a commercial lease, subject however to the provisions of the Greek Civil Code, as well as the provisions of Presidential Decree 34/1995 that still remain in force.

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This information is intended only as a general update for interested persons and should not be used as a basis for decision making.

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