

New leasing framework in Bahrain

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Bahrain Law No. 27 of 2014 'Issuing the Property Lease Law' (the "Property Lease Law") was published on 7 August 2014 and came into force on 7 February 2015 (the "Effective Date").

The Property Lease Law introduces a new legislative framework for real property leases in the Kingdom of Bahrain and repeals the following laws, which previously applied to real property leases:

- Lease Act issued under Declaration No. 29 of 1363 A.H. on 9 July 1944
- Lease Act issued under Declaration No. 43 of 1365 A. H. on 25 August 1946 and its amendments
- Defining Commercial Stores Rent in Manama of 1955 issued under Declaration No. 42 of 1374 A.H.
- Decree-law No. 9 of 1970 with respect of modifying some lease rules and amendments
- Decree-law No. 8 of 1984 with respect of setting property rent before January 1970.

Application

The Property Lease Law applies to real estate premises that are intended for residential, industrial, commercial, professional and craftsmanship purposes. However, the Property Lease Law does not apply to:

- fixed and non-fixed industrial lands and construction subject to Decree-law No. 28 of 1999 with respect to industrial zones establishment and organisation
- agricultural lands
- lands leased for hotels and tourist purposes
- furnished flats leased for periods not exceeding one month
- residential units occupied for work conditions
- lands leased under musataha agreements for development.

The Property Lease Law applies to both new leases and leases that were in existence on the Effective Date.

Lease formalities and registration

All leases subject to the Property Lease Law must be in writing and must specify the lease period and the rent payable by the lessee. If a lease does not specify the lease period, the lease will be valid for the period specified in the lease for payment of rent. Further, if the rent is not specified, the rent will be determined on commencement of the lease by taking into account the condition, size and purpose of the leased premises, and the prevailing rent in the area in which the leased premises are situated.

The Property Lease Agreement Registration Office will be established by the Ministry of Justice in cooperation with the Ministry of Municipality for the registration of leases that are subject to the Property Lease Law. All new leases and their amendments must be registered with the Property Lease Agreement Registration Office within one month from the date of issue. Leases that existed when the Property Lease Law came into force must be issued in writing and registered within six months from the Effective Date.

The registration procedures and fees for registration will be issued by the Minister of Justice, subject to the fees being not less than 1 Dinar and not more than 5 Dinars for residential properties and not less than 5 Dinars and not more than 10 Dinars for other properties.

It is the lessor's responsibility to register its lease and to pay the registration fees. However, if the lessor refuses to pay the fees, the lessee may register the lease and deduct the registration fees from the rent.

Rent, security deposit and rent increases

A lessor of residential premises can receive a maximum of 3 months' rent paid by cash in advance. For other types of premises, the parties can agree on a different amount. The maximum security deposit that a lessor can require from a lessee is 1 month's rent.

The lessee must pay the rent to the lessor within a maximum period of one week from the due date stated in the lease. If a lease does not specify the due dates for payment of rent, the rent will be due at the beginning of each month.

A lessor may not increase the rent under a lease until two years from the lease commencement date or the previous rent increase (whichever is earlier). The rent increase is capped at 5% for residential properties and 7% for commercial, industrial, professional, craftsmanship or other properties. Additionally, the rent can only be increased a maximum of 5 times throughout the lease term, unless the parties agree otherwise in writing. If the lessor wishes to increase the rent, it must give the lessee written notice at least 3 months before expiry of the second year.

These restrictions also apply when existing leases are renewed or re-entered after the expiry of 3 years from the Effective Date.

Leased premises condition, maintenance and alterations

The lessor is required to deliver the leased premises to the lessee in a condition suitable for the lessee's intended purpose as agreed by the parties.

The lessor is obliged to perform urgent, necessary maintenance works that are required for keeping the leased premises in a safe condition and useable for the intended purpose. The lessee is obliged to maintain the leased premises through normal due care and to perform minor maintenance that is required for the lessee to use the leased premises for its intended purpose.

The lessee must not make any changes to the leased premises without obtaining the lessor's written consent unless the changes will not be detrimental to the lessor. Upon vacating the leased premises, the lessee must return the premises to the lessor in the same condition as they were in when the lease commenced except for any improvements made by the lessee, which must remain in the premises unless the parties agree otherwise.

Expiry and renewal

All leases will expire at the end of their term. If a lessee continues to use its leased premises after expiry of the lease with no objection from the lessor, the lease will be deemed to be extended for a similar period to the expired lease and on the same terms and conditions. However, the lessee's continued occupation of the leased premises will not be deemed an extension of the lease after it receives a notice of eviction from the lessor.

If the lessee intends to leave the premises on expiry of the lease, it must give the lessor written notice of its intention at least 3 months before the lease expires.

Similarly, if a lessee wishes to renew its lease, it must give the lessor written notice at least 3 months before the lease expires. The lessee is entitled to renew for a period up to 3 years for residential premises and 7 years for commercial, industrial, professional, craftsmanship or other premises.

The Property Lease Law also provides that leases that are subject to the provisions of Decree-law No. 9 of 1970 will expire after 3 years from the Effective Date.

Eviction of lessees

For leases signed after the Effective Date, a lessor cannot require a lessee to vacate leased premises until after a period of 3 years from the date of handover for residential premises and 7 years for commercial, industrial, professional, craftsmanship or other premises. However, the parties are entitled to agree in writing to a different period.

This restriction on evicting a lessee does not apply where:

- the lessee has not paid the rent on the due date specified in the lease or by a decision of the Lease Disputes Committee for 2 consecutive months
- the lessee has sub-leased or allowed a third party to use all or part of the leased premises without obtaining the lessor's consent
- the lessee or sub-lessee has allowed the number of people occupying the leased premises to exceed the normal limit
- the lessee has used or allowed the leased premises to be used in a way that violates the lease conditions, the intended purpose or public order and morals, or is detrimental to the financial interests of the lessor
- the condition of the property endangers the lives of residents, or a final demolition order has been issued by the relevant municipality
- at least 25 years has passed since the property was constructed, or the area in which the property is located was re-classified, and the lessor wishes to demolish and rebuild the property (which must occur within 1 year from the date of eviction)
- the lessor or its immediate relatives wish to occupy the leased premises for residency, subject to obtaining the lessee's written agreement and provided that the lessor gives the lessee at least 6 months' written notice prior to eviction and the lessor or its immediate relatives occupy the leased premises for at least 1 year
- the lessor wishes to live in the leased premises in circumstances where the lessor has not been living in the area where the leased premises are located or has been living out of Bahrain and owns no other property. In this case, the lessor can only evict the lessee if this intention was stated in the lease
- the lessee used or allowed the leased premises to be used for a purpose other than the intended purpose or made changes to the leased premises that have endangered its safety
- the lessee has abandoned the leased premises for at least 1 year.

In these situations, a lessor can request the lessee to vacate the leased premises. However, if the circumstances under items 6, 7 or 8 above apply, the lessee may be entitled to a grace period of not more than 3 months for residential premises or 6 months for other premises.

Sub-leasing and assignment

A lessee may not transfer or sub-lease all or part of its leased premises without obtaining the written consent of the lessor. Further, a transfer or sub-lease to a third party is only effective against third parties after it has been registered.

If the lessor transfers ownership of the leased premises to a new owner, the new owner must give the lessee written notice of the ownership transfer within 30 days from the date of registration of the

transfer. The new owner is bound by any leases existing at the date of transfer.

Lease Disputes Committee

The Property Lease Law provides for a Lease Disputes Committee, which is affiliated to the Ministry of Justice, to be established to settle:

- lawsuits and disputes arising from leases under the Property Lease Law
- lawsuits and disputes stipulated in clauses 6 and 7 in Article 8, as well as Article 8 (repeated) of the Code of Civil and Commercial Procedure
- preventative decisions with respect to the above lawsuits and disputes.

However, the Committee will not hear disputes arising from leases that are not registered with the Property Lease Agreement Registration office.

A party to a dispute can appeal a decision of the Committee to the High Civil Court within 15 days from the date of judgement. The High Civil Court's decision in relation to the matter will be final.

The Courts will continue to hear and determine cases relating to lease disputes that were filed with the Courts before the Property Lease Law came into effect.

Conclusion

The new legislative regime for real property leases in Bahrain introduces a number of new requirements that lessors and lessees need to comply with, including the requirement to register their leases. The new law should put an end to the conflicts between the previous laws and the Civil Code, and the resulting disputes between lessees and lessors. The new rules in relation to lease renewals will also be a welcome relief to lessors.

While the Property Lease Law prescribes a number of lease conditions, the law also allows some flexibility by giving the parties the option to agree in their leases to provisions contrary to some of the prescribed conditions, which will be particularly beneficial in a commercial context. Parties contemplating entering into new leases or reviewing their existing leases should obtain legal advice on the application of the Property Lease Law.