

Foreign Companies Leasing Office Space in Switzerland

by [Yves de Coulon](#), [BianchiSchwald](#)

Practice notes | [Law stated as of 01-Jul-2023](#) | Switzerland

A Practice Note discussing the issues to consider when a foreign organisation leases office space in a multi-tenant building in Switzerland. This Note provides guidance for foreign counsel on the leasing process in Switzerland, including the workflow of the transaction, laws affecting the parties, and key documents, issues, and customs in leasing transactions.

A company that is considering opening an office in a foreign jurisdiction must be informed about the local laws and customs related to office leasing. This Note provides a high-level overview of the office space leasing process in Switzerland, including discussion of:

- The professionals that should be engaged when opening a foreign office.
- Common leasing structures.
- The principal stages in a typical leasing transaction (including physical and legal due diligence).
- Restrictions on a foreign entity leasing or occupying property in Switzerland.
- Key lease terms for tenants.
- Lease registration requirements (where necessary).
- Taxes applicable to leases of office space.

This Note is useful for counsel advising a foreign organisation in its home jurisdiction on the key legal and practical points to consider when leasing an office in Switzerland. This Note is not, however, intended to be a replacement for legal advice from a lawyer that is qualified in Swiss commercial property landlord and tenant law. For guidance targeted at those practising in Switzerland, see [Country Q&A, Commercial Real Estate in Switzerland: Overview](#) and [Country Q&A, Doing Business in Switzerland: Overview](#).

This Note assumes the tenant is leasing space in a completed multi-tenant office building. It does not address build-to-suit or single-tenant transactions. This Note also does not address the following topics, guidance for which can be found in the resources noted below, if applicable:

- Current market conditions for office leases.
- Construction law except as it relates to due diligence of the premises (see [Country Q&A, Construction and projects in Switzerland: overview](#)).
- Environmental law except as it relates to due diligence of the premises (see [Country Q&A, Environmental law and practice in Switzerland: overview](#)).

- Establishing a business presence (see Country Q&A, [Establishing a Business in Switzerland](#)).
- Corporate registration and filing requirements (see Country Q&A, [Doing Business in Switzerland: Overview: Question 8](#)).
- Financing a leasehold interest.
- Employment law (see Country Q&As, [Doing Business in Switzerland: Overview: Questions 10 to 15 and Employment and Employee Benefits in Switzerland: Overview](#)).
- Tax law (except as it relates to commercial leases) (see Country Q&A, [Doing Business in Switzerland: Overview: Questions 16 to 25](#)).

For an overview of commercial real estate in Switzerland, see [Country Q&A, Commercial Real Estate in Switzerland: Overview](#).

Workflow of a Leasing Transaction

In Switzerland, there are several steps involved in identifying appropriate office space and completing an office lease. These steps include the following, which can overlap depending on the particular transaction:

- Assemble the leasing team (see [The Leasing Team](#)).
- Define the lease and space criteria (see [Office Location Considerations](#)).
- If necessary, enter into an agreement on the negotiation process and/or the attribution of the lease premises, which can take the form of a letter of intent, a term sheet, or another preliminary agreement (see [Preliminary Agreements](#)).
- Conduct due diligence of the premises, the property, and the landlord (see [Due Diligence](#)).
- Negotiate the lease and other related agreements (see [Primary Documents and Box, Tenant Lease Negotiations](#)).
- Execute the lease and, if necessary, register the lease in the land register (see [Executing the Lease](#)).

The Leasing Team

The critical first step when deciding to open an office in a foreign jurisdiction is to identify the key internal and external advisors. These advisors provide valuable input when defining the criteria for the premises and the lease.

Internal Team

There are potentially many experts within the tenant's organisation who should be consulted when establishing premises criteria. The tenant should consider including internal representatives from departments such as:

- Human resources.
- Information technology (IT).
- Operations and security.

- Finance and accounting.
- Legal department.

The above-mentioned internal team must be also able to rely on local experts, who can provide it with the necessary information to make fully informed decisions and therefore best serve the interests of the company. These people are the subject of the next section (see [Key External Advisers](#)).

Key External Advisers

To gain an accurate perspective of the Swiss commercial real estate market, it can be useful for foreign companies to obtain proper advice from local advisers who have a good command of local specificities. In Switzerland, the process of identifying and leasing commercial premises usually involves:

- The prospective tenant looking for commercial space.
- The landlord of the premises offered for lease.
- The person who usually bridges the gap between the two, the commercial leasing broker.

However, landlords themselves are rarely directly involved in the leasing process of the commercial premises they own. Most landlords entrust the management of their buildings to professional property managers. As a result, the property manager is usually the landlord's representative in the negotiations and conclusion of a commercial lease for the landlord's building (or buildings). In addition, property managers are often also entrusted to directly market the commercial premises that are for rent within the buildings they have under management.

There are other professionals frequently involved in the process of leasing Swiss commercial premises, usually at the later stage of the lease negotiation. These mainly comprise the legal advisers and the construction professionals (in particular, architects, and all types of contractors).

The key external advisers will therefore usually be involved in the following sequence:

- First, the commercial leasing brokers and the property managers representing the landlords.
- Second, the lawyers, the architects and other professional planners, and the contractors.

Commercial Leasing Broker

If an organisation does not have detailed knowledge of the area in question, then it may be advisable and prudent to employ a commercial leasing broker. In doing so, foreign companies can avail themselves of rental business premises that are suitable to their actual needs without concern that the selected premises may not meet market standards, both in terms of rent and/or quality.

In Switzerland, commercial leasing brokers are professional property finders. Their main objective is to find the right premises for each type of business and tenant. For prospective foreign commercial tenants, there are several benefits to using these real estate professionals. They will allow the foreign commercial tenants to save both time and resources by obtaining reliable and quick information about the market, as well as locating the premises that are best tailored to their needs.

Commercial leasing brokers act as a bridge between the foreign company wishing to rent commercial premises and the landlords offering those commercial premises. Therefore, their primary role is to liaise and work with the relevant landlord's

representatives with the aim of to being able to offer prospective foreign commercial tenants the commercial spaces that best suit their requirements.

The primary (and sometimes only) role of a commercial leasing broker is to find adequate premises, and put prospective tenants in contact with the landlords or their representatives and no more. However, in many cases, commercial leasing brokers are also entrusted with the complete negotiation of the terms of the lease, until a full agreement between the parties is reached. When so instructed, they act as the representative of the prospective tenant and handle most of the exchanges with the landlord. This negotiating phase constitutes a secondary, but important, role for many Swiss commercial leasing brokers.

From an operational point of view, before the commercial leasing broker commences any activity, the process presumes a foreign company that wants to lease a commercial property in Switzerland has entered into a search mandate for commercial premises. Usually, this services agreement will take place through email. However, it is advisable to execute and sign a written contract that reflects the provisions of the search mandate agreed between the parties and defines the precise scope of the broker's mission before the broker begins searching, to avoid misunderstandings and future disputes. This search mandate will contain the prospective tenant's precise leasing criteria, such as:

- The type of premises the tenant requires.
- The neighbourhoods contemplated and the specific uses or facilities required.
- The amount of rent the company is willing to pay.

It is highly recommended to include as much detail as possible in the search mandate.

The amount of the commercial leasing brokers' fees is an incredibly important and often decisive issue. In Switzerland, the law does not impose a specific method of calculation, or cap the maximum amount that a broker can charge. The parties are free to agree the fees they consider appropriate for the broker's services. However, if the client makes excessive demands, the broker may be able to charge more than agreed. If the broker's performance is unsatisfactory, the client may be able to seek a reduction in the agreed fee. In practice, in commercial lease matters the broker's fees usually amount to between 15% to 18% of the first year's annual rent. These brokerage fees are due when the lease agreement, containing the agreed terms, has been concluded. The broker's fee, whether the broker was instructed on the basis of "introduction only" or on the basis of "introduction and negotiation", are only payable if the broker's role was instrumental in the conclusion of the lease agreement.

In Switzerland, the brokerage contract is practically of great importance. From a legal point of view, the brokerage contract is a specific agency contract between the principal (the foreign company looking for premises) and the agent (the broker) regulated by the Swiss Code of Obligations. For more information on the Swiss Code of Obligations, see [Lawyers](#).

One of the main characteristics of the agency agreement under Swiss law is the duty of care that the agent owes the principal. This fundamental obligation is anchored in the law, which states that the agent is liable to the principal for the diligent and faithful performance of the business entrusted to them. Consequently, when entering into the brokerage contract, the broker undertakes to safeguard the interests of the foreign company to the best of their abilities.

Property Managers

Property managers are entrusted with the management of landlords' properties and as such they act as the landlords' representatives for all matters that concern those properties. They constitute the main point of contact for prospective tenants and brokers that need to engage in negotiations with a landlord.

However, while property managers can also be a first point of call to find premises, they can only offer for rent the premises that are located within the buildings that the property manager has under management. Unlike commercial leasing brokers,

property managers do not charge search fees or commissions to rent the commercial premises that they offer. Their fees are borne by the landlords.

Therefore, if a company is looking for premises and does not quickly find a match fitting its criteria after contacting a few property managers, it is advisable at that stage to seek the services of an independent commercial leasing broker.

Lawyers

Swiss tenancy law is regulated in a way that extensively secures the rights of tenants (see, for example, Articles 269 to 272 of the Swiss Code of Obligations (Protection against Unfair Rents or other Unfair Claims by the Landlord and Protection against Terminations of Leases of Residential and Commercial Premises)). The main objective of protecting the rights of tenants as the (presumed) weaker party, while also considering the landlords' legitimate interests, makes Swiss tenancy law a highly developed and complex.

The fact that the general legal framework favours the tenants and protects their rights results in landlords using the law as much as it permits to safeguard and pursue their own legal rights. As a result, prospective foreign tenants will need specific legal advice. Prospective foreign tenants should seek the services of lawyers specialised in lease law when leasing Swiss commercial spaces, especially when negotiating the terms of the lease.

Specialist lawyers should be able to inform and advise a prospective foreign tenant of the rights that the law mandates they have when leasing commercial property. In addition, they will be able to advise as to the most appropriate lease structure. For example, it may be preferable for a foreign company moving to Switzerland to take an assignment of a lease instead of entering into a new lease with a landlord.

Because of the specificities of Swiss leasing law and how they may affect subsequent choices following conclusion of the legal documents, any foreign company that wants to lease commercial premises in Switzerland should take proper legal advice.

Lawyers can also be well-equipped to assist in the negotiations, where needed, with other representatives (for example, commercial leasing brokers). They can facilitate negotiations; the local lawyer and the landlord's legal counsel (or legal department) will be familiar with legal concepts and terminology, which may speed up negotiations and possibly avoid miscommunication and misunderstanding. Having a lawyer assist with lease negotiations can also be useful in readdressing the inequality in negotiations between a landlord (who is likely to be experienced in Swiss law) and a foreign commercial tenant (who may be less so).

To conclude important commercial leases, it is prudent that the local lawyer and the legal department of a company setting up in Switzerland co-operate closely.

Architects and Other Professional Planners

Architects and other professional planners (for example, interior designers, engineers, surveyors, or contractors) are third-party experts who are also frequently involved during the negotiation stage of a commercial lease in Switzerland. Their technical knowledge is useful for a prospective tenant who is considering entering into a commercial lease.

First, their expertise enables them to prepare accurate reports on the condition of the premises for which the lease is being considered. If an architect inspects the premises before the prospective tenant signs the commercial lease, they may be able to detect any potential defective condition(s) in those premises. Early identification of such issues means that they can be dealt with in negotiations, avoiding the need for any dispute after the execution of the lease or the handover of the commercial space to the tenant.

Second, the early involvement of architects and other professional planners means that the prospective tenant can check whether the target premises are suitable for any works that the tenant may wish to carry out to accommodate their current requirements and their future activity. Architects and professional planners can help the parties to the lease visualise (through the use of plans and models) what the tenant's proposed alterations would look like. Given that landlord's consent is required for such works, their involvement can be very useful. Similarly, architects can suggest technical solutions that will meet the expectations of both parties and therefore facilitate the signing of the lease. After the lease agreement has been entered into, the professional plans and models that have been drawn up also enable the landlord to control the extent and the quality of the works executed by the tenant to ensure they respect the parties' agreement.

Contractors

In Swiss leasing transactions, the role of the contractors is similar to that of the architects and other professional planners. They actively assist in all matters relating to the works or arrangements requested by the prospective tenant to the prospective premises.

Once the landlord has provided consent to the proposed works, the (general) contractors can carry out those works in close co-ordination with the architects and other professional planners.

In Switzerland, there are contractors that are known as "total contractors". They can replace professional planners. A total contractor not only carries out construction works but also acts as a planner, drawing up the plans necessary to conduct the works (for more information, see [Architects and Other Professional Planners](#)).

Office Location Considerations

Although financial requirements are of primary importance when opening an office, establishing an office in the right location for the organisation can be a significant driver in delivering a positive culture and success in the business. A suitably experienced and qualified commercial leasing broker (see [Commercial Leasing Broker](#)) can assist the tenant in formulating and prioritising the tenant's lease criteria. Some factors the tenant should consider include:

- **The number of employees in the office and how they will work in the office.** The human resources department should consult on the plans to staff the office and plans to allow hybrid or other flexible working arrangements. This will dictate the size and layout of the space that the tenant requires and allow the tenant to prepare cost projections that are based on the rentable square meterage of the premises.
- **Business requirements.** The tenant's specific needs for its business, such as:
 - a particular office layout;
 - security;
 - specialised technology or other equipment;
 - delivery and visitor access; and
 - parking.
- **Commuting and transportation access.** Where the employees are likely to live and how accessible the office is from those locations.
- **Tax incentives.** Whether there are local tax or other incentives to lease space in a particular area of a city or region.

- **Safety and security.** Whether the building is in a safe and secure location.
- **Amenities and services.** What amenities the tenant expects to have in the building and services it expects the landlord to provide.
- **The landlord's financial condition and reputation.** Whether the landlord is viewed favorably in the market and has sufficient financial backing to satisfy its lease obligations.
- **Character of surrounding area.** What services, restaurants, and stores are accessible in the surrounding area for employees.

Principal Types of Leases and Structures

Under Swiss law, a lease agreement is defined by the Swiss Code of Obligations as a contract in which a landlord grants a tenant the use of land and property in exchange for rent. For more information on the Swiss Code of Obligations, see [Lawyers](#).

Generally, a lease agreement can be entered into in two main ways:

- By the conclusion of a direct lease between the landlord of the commercial premises and the tenant.
- By the subletting of the commercial space to the tenant under the direct lease.

Each of these methods results in the formation of a new lease agreement within the meaning of the law, meaning that there is no specific distinction under Swiss law as to the legal nature of a direct lease or a sublease agreement. In addition to these two options, and for commercial leases only, a tenant can also assign the lease of its commercial premises to a third party. For a tenant to be able to sublet or assign a lease, lease, the landlord's prior approval is required, which cannot be withheld without good cause.

Whether a tenant will be able to sublet premises or take an assignment of an existing lease will depend on the available opportunities in the market and also the prospective tenant's circumstances. The different features of entering into a direct lease, a sublease agreement or a lease assignment are briefly set out below.

Direct Lease

A direct commercial lease between a landlord and a tenant is a straightforward option in legal terms. This type of lease is only subject to the general rules of contract law. The parties must therefore reach an agreement on the points the law deemed essential for the formation of a direct lease, which will include:

- Provisions dealing with the handover of the premises for use by the tenant with the extent of such premises being precisely described and defined.
- The amount of rent to be paid.
- The duration of the lease.

A direct lease can be concluded for a determined or an indefinite period:

- Direct leases of determined duration automatically come to an end on the expiry date.
- Direct leases of an indefinite period can only be terminated by the terminating party giving notice of termination to the other party in compliance with the legal (or contractual) terms and notice periods provided for in the lease.

A direct lease agreement is valid without any particular form and can be an oral arrangement. However, it is prudent to document the lease in writing for evidential purposes.

Sublease Agreement

Sublease agreements are specifically authorised under Swiss law, and the legal provisions governing them are mandatory (that is, the parties cannot exclude the right of the tenant to sublease its premises, and cannot make it more difficult for the tenant to sublease its premises than is provided for by the law).

The Swiss sublease agreement is a regular lease agreement within the meaning of the law, regulated by the same rules as the principal lease agreement. The original tenant becomes the sublandlord and the third party becomes the subtenant under a subleasing agreement. However, a sublease agreement creates no contractual relationship between the principal landlord and the subtenant. Its formation is subject to all the same requirements as a direct lease agreement between the landlord and the original tenant.

To be valid, a sublease agreement requires the principal landlord's consent. However, the principal landlord cannot refuse its consent unless it can provide "good cause" for such refusal. In a subleasing context, the law considers that "good cause" is present where:

- The tenant refuses to inform the landlord about the terms of the sublease.
- The terms of the sublease do not largely correspond to those of the principal lease and the sub-landlord seeks to obtain an advantageous position (for example, the sublease rent is much higher than the principal rent with no justification for that increase, such as the provision of additional services). Under Swiss law, a sublease contract enjoys the exact same legal terms as the main lease.
- The sublease creates major disadvantages for the landlord (for example, the agreed use of the premises is significantly altered by reference to the principal lease, or the subtenant's commercial activity competes with the landlord or with other tenants in the building).

Entering into a sublease agreement without the landlord's consent can have significant consequences for the original tenant. In certain circumstances (namely, if the landlord could have legitimately objected to the subleasing), the absence of consent can allow the landlord to terminate the original tenant's lease with immediate effect. Swiss leasing law compels the tenant to request the landlord's consent to sublease, and grants the landlord the above grounds to refuse such consent under Article 262 of the Swiss Code of Obligations. As a result if the tenant does not obtain the landlord's consent to sublease and the landlord would have had a legitimate ground to refuse such consent, the main lease can be terminated with immediate effect (after the landlord has given a warning of such termination). The tenant may challenge such a termination in court, but is unlikely to succeed where the landlord had a legitimate ground to refuse its consent to the sublease.

Lease Assignment

Swiss law allows a tenant to assign its lease to a third party with the landlord's written consent, which the landlord can only withhold for good cause (see [Sublease Agreement](#)).

Once the landlord provides its consent to a lease assignment, the third party is subrogated to the rights and obligations of the original tenant under the original lease with the same terms and conditions, and the landlord cannot adjust those terms and conditions. Unlike a sublease (which constitutes a new lease contract), a lease assignment directly relates to the original lease and allows a third party to become the new tenant of that original lease. Foreign companies seeking rental premises can benefit from taking an assignment of a lease because if the original tenant negotiated advantageous terms and conditions, the foreign company will take the lease on those terms.

Due Diligence

Legal Due Diligence

Legal due diligence must be carried out by the prospective tenant of commercial premises before a lease is executed.

Swiss contract law is characterised by the principle of good faith, meaning that a tenant who rents commercial premises is assumed to have (at least briefly) taken into consideration the condition of the premises and their main legal characteristics. If the tenant fails to do this (either deliberately or due to negligence), the principle of contractual good faith will prevent the tenant from later claiming ignorance of any elements that are detrimental to their needs or interests which should have been discovered if the tenant had considered the condition of the premises and their main legal characteristics.

The exact timing of the due diligence depends on the state of negotiations and the arrangements between the parties. Usually, a prospective commercial tenant will only invest time and expense in extensive legal due diligence if that tenant is certain it will lease the commercial premises, or at least considers it has a good chance of leasing them.

The legal due diligence to be conducted when taking a lease in Switzerland encompasses two main aspects:

- Private law due diligence.
- Public law due diligence.

Private Law Due Diligence

Private law due diligence is essentially "landlord related" and "premises related" due diligence. Landlord related due diligence aims to ensure that the landlord enjoys all the necessary legal rights to be able to lease the commercial premises that are being offered for lease, legitimately. A lawyer for a prospective tenant should ascertain the landlord's legal capacity to dispose of the premises (that is, ensure that the landlord is the rightful owner of the premises or, in the case of subleasing, the original tenant who can create a valid and effective sublease agreement in respect of the premises).

A lawyer conducting premises related due diligence aims to determine whether there are any land encumbrances or privileges associated with the premises that could affect:

- The use of the property (such as easements).
- The landlord's financial situation (mortgages and other liens on the plot).
- The premises in any other manner (special rights).

Most premises related due diligence will be conducted through the land registry of the Swiss canton in which the property is located. All cantonal land registry offices in Switzerland provide public extracts of the plots recorded in the land register,

and are available to view to the public. These extracts are easily accessible electronically and contain the main information regarding the plot, including the identity of the landlord. However, they do not enjoy what is known as "public authenticity status" (meaning they cannot be relied upon) and are only given for information purposes.

In cases of doubt, it is therefore advisable to request an official extract of the plot in paper form. This official extract is issued by the cantonal land registry authority, is certified, and enjoys public authenticity status, meaning that whoever is in possession of it can legitimately rely on the information contained in it (provided they are acting in good faith). Furthermore, an official extract contains all the land details about the plot (rather than only a limited selection of the main information). The official extract therefore also enables a prospective tenant to identify any easements precisely, pledges, and liens, annotations of any personal obligations, and any restrictions on the landlord's legal capacity to dispose of the plot.

Public Law Due Diligence

In conjunction with private law due diligence, a prospective tenant should also conduct public law due diligence on the commercial premises (that is, to identify any zoning and/or environmental law issues). This is particularly important where a foreign company intends to lease premises in Switzerland for specific commercial activities (retail, leisure, restaurant, catering, industrial activities, and so on), as it is essential to ensure that the state regulations concerning zoning and the permitted use of the premises allow for the intended activity.

Zoning. These matters are governed by state zoning law, which in Switzerland is first enacted at a federal level (Federal Act on Spatial Planning) and then implemented at the canton level, with numerous cantonal implementation statutes governing zoning and construction (for example, there are 26 different cantonal statutes and regulations in this regard). For this reason, the advice of experienced local legal counsel is strongly recommended to companies wishing to establish themselves in Switzerland.

Likewise, a prospective tenant should also consider what types of equipment are permitted in the area in which the premises are located. If the tenant's activity requires the premises to be equipped with special equipment, or to be connected to certain public networks (machines or other equipment), the relevant legal provisions concerning permissible equipment must be observed. As with spatial planning, the legal rules concerning the equipment permitted on plots and premises within any particular area can be found in federal legislation (for the main principles) and in cantonal laws (for their implementation and any potential additional restrictions).

Additionally, certain commercial activities in Switzerland are subject to administrative authorisation by law or are subject to a state monopoly. In these cases, it is necessary to assess if the proposed activity can be conducted at all, or the likelihood of obtaining any necessary administrative authorisation(s) to conduct the activity, in co-ordination with the competent authorities and local legal advice. An example of the application of the above rules (concerning permitted equipment and administrative authorisations) is the use of the premises as a private medical clinic, which would require both:

- An administrative authorisation to operate.
- The equipment and the premises to meet very specific requirements.

Environmental law. Environmental law can also be relevant for tenants of commercial premises. Although it is primarily concerned with the landlords of premises, environmental law can also impose obligations on the actual users of the premises (that is, the tenants). The federal state has enacted certain statutes on the protection of the environment (for example, the Federal Act on the Protection of the Environment, the Federal Act on the Protection of Nature and Cultural Heritage, the Federal Act on the Protection of Waters, and the Noise Abatement Ordinance of 15 December 1986), but many other environment regulations are also enacted at the level of the cantons.

For background information, see [Country Q&A, Environmental law and practice in Switzerland: overview](#).

Ownership

Under Swiss law, individuals and entities can hold real estate as:

Freehold or leasehold.

Single owners.

Co-owners. Co-owned real estate can be sold without the consent of all co-owners.

Joint owners. Real estate can only be sold with the consent of all joint owners.

How the property is owned does not generally affect the due diligence that is carried out on the property, but exceptions to this principle may exist in specific cases (for example, when a condominium has very stringent rules regarding the use of certain premises).

The most common form of collective ownership for commercial premises is condominium ownership. This legal form of ownership is characterised by each co-owner having a specific share of co-ownership over the entire property, together with an exclusive right to use a specific part of the building erected on the plot. This exclusive right can be provided over a commercial area, which is often situated on the ground floor of a building and is used mainly for residential purposes. The Swiss condominium ownership system has no real implications for the tenant of the premises. Each condominium ownership share possesses its own separate entry in the land register, enabling a tenant to refer to this entry as though it were the same as that of one single, individual owner of the property.

Building Rights

Ordinarily, a building constructed on a plot of land becomes the property of the owner of that plot of land. However, in Switzerland, building rights can be granted over a plot of land to a person/entity that is not the owner of that plot of land, resulting in a separation of the ownership of the plot of land itself, and the building built on that plot. Effectively, the holder of building rights has an easement entitling them to erect or maintain a building built on a plot of land, even though that rights holder is not the landlord of that plot of land. Building rights can be granted over commercial premises so it is relevant to consider them in the context of commercial leases.

Generally, the legal position of a holder of building rights over a commercial building is similar to a traditional landlord, in that they own the building. This type of legal ownership has minimal impact on a tenant in the ordinary course of leasing arrangements. However, if that building ownership changes (that is, if the holder of the building rights assigns those rights to a third party), this can have significant consequences for a tenant of that building.

In the event of a change of ownership of the building (or an equivalent legal act), the law grants a legal privilege of early termination of leases to the new owner of the building. This allows the new owner to terminate leases in the building before their contractual expiry date, provided the new owner meets both the following conditions:

- It can demonstrate that it has an urgent need for itself (or, for a natural person, for themselves or for that person's relatives) requiring the lease(s) to be terminated.
- It complies with the notice period prescribed by law (that is, for commercial premises, a six-month notice period).

This extraordinary termination right applies equally to leases for determined or indefinite periods. This means that this termination right can be exercised by the new owner (provided the above conditions are met) with six months' notice even where:

- An indefinite lease provides for a longer notice period than six months.
- A fixed-term lease has more than six months left to run before its expiry.

A change of ownership in these circumstances can therefore put a commercial tenant at risk of having their lease terminated (much) earlier than contractually stipulated with the landlord. Such early termination can have serious financial consequences for a commercial tenant and must therefore be avoided as far as is practicable. The only efficient protection against this risk is the registration of the lease agreement in the land register (see [Lease Registration](#)).

Restrictions on Leasing by Foreign Tenants

There are no restrictions under Swiss law concerning the leasing or purchase of commercial real estate by foreign tenants, provided such foreign tenants are allowed, under immigration law, to establish themselves in Switzerland. In contrast, Switzerland has a longstanding statute which imposes extensive restrictions on the acquisition of residential property in Switzerland by foreign persons (Federal Act on the Acquisition of Real Estate by Persons Abroad). However, this Act only applies to purchases of residential property, meaning that persons/entities abroad can purchase or lease commercial property free of any restrictions.

Physical and Financial Due Diligence

Architects can be asked to visit and inspect the premises during the negotiation process to see whether the premises are defective or have any issues. A person other than an architect can also be entrusted by the future tenant to inspect the premises (this is not subject to any legal regulations or restrictions). The inspection is simply a precautionary measure that is recommended to avoid any unpleasant surprises regarding the state of the premises after the signing of the lease.

With regard to the issue of financial due diligence from the landlord's perspective, the landlord will want to assess the financial standing of its prospective tenant. For that reason, the prospective tenant should have provided to the commercial leasing broker or the landlord (most of the time though the property manager) details of its bank statements or accounts before the parties entered into the lease negotiation, so that the landlord and its advisers can confirm that the tenant's finances are such that it can afford the financial and other commitments under the lease. By the time the lease is being negotiated by lawyers, there is very little for the tenant's lawyer to provide.

On the issue of financial diligence from the tenant's perspective, it may be advisable to check the landlord's financial status to make sure that the landlord will be able to afford the maintenance and any potential repair works to the property (if these are needed). This can also be done by ensuring that the landlord has entered into the necessary insurance contracts which are usually represented in standard lease agreements.

Legal Documents

Preliminary Agreements

Swiss contract law is based on the fundamental principle of freedom to contract, which applies at the stage a lease agreement is negotiated. Consequently, there are no mandatory negotiation protocols or pre-contractual documents required in Switzerland. The negotiation process relies on the parties' intentions and the arrangements agreed between them. The structure and terms of the negotiation process therefore depend, in practice, on the (financial and structural) particulars of the commercial lease being negotiated.

Where the proposed commercial lease is not very complex (in terms of its financial structure, or the layout of the premises, or other particulars), negotiations often take place verbally or through email exchanges. Consequently, the parties must reach a proper consensus on the essential legal elements of the lease (see [Principal Types of Leases and Structures](#)), and (where relevant) any other subjectively essential elements of the lease required by the landlord or the prospective tenant.

Once an agreement has been reached, there is no legal requirement to execute a written lease as a lease agreement does not require any specific form to be valid. However, whilst a lease agreement is technically valid at this stage, it is usual practice for the landlord (or the landlord's representative) to submit a written draft lease agreement to the prospective tenant, who will have it revised by its own legal advisers before both parties execute the final lease agreement in writing.

For more complex leases (where the financial structure or the particulars of the premises call for a longer negotiation process, or where works in the premises are either planned by the landlord or required by the tenant), it may be necessary to shape the negotiation in a more formal manner. As a result of the principle of freedom to contract, there are wide ranging options for negotiation available and the parties will need to determine which options best suit them given their circumstances. In practice, the most common negotiating options that are used are:

- A term sheet. See [Term sheet](#).
- A letter of intent. See [Letter of Intent](#).
- A negotiation contract. See [Negotiation Contract](#).

Term sheets and letters of intent are not specifically regulated by the Swiss Code of Obligations (for more information on the Swiss Code of Obligations, see [Lawyers](#)). While they have been widely adopted in Switzerland, they are not binding documents per se under Swiss law, unless this has been specifically expressed by both parties.

Occasionally, the parties can enter into a binding promise to conclude a lease (see [Binding Promise to Conclude a Lease](#)).

Term Sheet

A term sheet essentially indicates that the landlord is, in principle, willing to enter into a lease arrangement with the tenant on the terms contained in the term sheet. However, it does not constitute a formal offer or commit the landlord to exclusive negotiations with the tenant to whom the term sheet is given, unless otherwise agreed. Essentially, a term sheet constitutes the basis for an upcoming negotiation in good faith.

Letter of Intent

A letter of intent is similar to a term sheet, constituting an agreement between the parties on the scope and methods of negotiation to be used, with a view to the conclusion of a future contract. It can take many different forms depending on the intended transaction. A letter of intent can include terms that restrict the negotiating freedom of the party who issues it. Therefore, if a landlord does not comply with the negotiating process set out in a letter of intent, that landlord will be deemed to have acted in manner contrary to the good faith owed during the pre-contractual phase. This may result in the landlord being liable if that non-compliance results in financial damage to the prospective tenant.

Negotiation Contract

A negotiation contract is a binding contractual agreement under which the parties agree to conduct their negotiations in a certain way. Although the negotiation contract covers pre-contractual negotiations, it is not merely a pre-contractual arrangement but a proper contract which is binding on the parties. As with any other contract, it can be enforced and its breach can give rise to damages for the injured party.

Exclusivity Periods

A letter of intent and a negotiation contract can (and often do) include a clause providing for an exclusivity period while lease negotiations are being conducted (though such an exclusivity period can also be included in a term sheet if the parties agree to this).

Binding Promise to Conclude a Lease

During the negotiation phase of a commercial lease agreement, the landlord and prospective tenant can also agree to enter into a binding promise to conclude a lease agreement at a later date. Such a promise goes further than merely structuring the negotiating phase, and legally binds both parties to execute the lease agreement by the date agreed in the promise. Where a landlord or tenant breaches the terms of such a promise, a court has the power to order the breaching landlord/tenant to execute the terms of that promise as agreed by the parties.

Primary Documents

Commercial leases in Switzerland typically consist of the main lease agreement and the general terms and conditions for commercial leases that are in force in the canton where the premises are located (which are usually issued by the relevant professional association of landlords).

Commercial leases usually include a detailed technical plan of the premises together with a breakdown of the charges to be borne by the tenant, if this has been agreed upon (see [Box, Tenant Lease Negotiations](#)). Proof of the security deposit made by the tenant and any other relevant documents are usually also attached to the lease agreement. Though there is no legal requirement to conclude a lease agreement in writing under Swiss law, it is customary to execute a written lease agreement.

A lease agreement becomes binding on the parties once it can be demonstrated with certainty that both:

- The parties have reached agreement on all the essential legal elements of the lease, together with any subjectively essential elements as required by one or both of the parties.
- The parties have demonstrated a common willingness to be bound by the lease agreement from a certain point in time.

In this regard, if despite agreement on all the essential elements, the parties do not intend to be bound until a written lease agreement is signed, they must expressly provide for this or such intention must be apparent from their conduct interpreted in good faith. Otherwise, the lease agreement is concluded at the time when the parties have agreed on all the essential elements of the lease. In fact, case law of the Swiss Federal Supreme Court has concluded that, even where pursuant to commercial and business practice a lease would ordinarily be concluded in written form, such an intention to only conclude a lease agreement in written form cannot be automatically deduced merely from such ordinary commercial/business practice. An express agreement on a written lease must be concluded between the parties.

Executing the Lease

Preparing for Lease Execution/Lease Execution

No particular steps are generally required once an agreement has been reached on all the essential (legal and subjective) elements of the lease. If the lease needs to be executed in writing as agreed by the parties, the lease documentation must be prepared and signed by the parties to execute it (see [Primary Documents](#)).

After Lease Execution

After execution of the lease, the landlord must deliver the premises in a condition fit for their agreed use and must maintain them in that condition for the duration of the lease. If the landlord fails to fulfil these obligations, the tenant can exercise the following rights under the law:

- Request the repair of the premises subject to the lease.
- Request a proportional reduction to the rent.
- Initiate a claim for damages.

The parties will therefore usually conduct an initial examination of the premises after the lease is executed, so that all possible defects and the state of wear and tear to the commercial premises can be duly recorded in a report, which is then signed by both parties (or their representatives). The importance of this report is twofold:

- It enables the tenant to exercise the above-mentioned rights where the state of the premises does not match the conditions agreed in the lease.
- It establishes the state of the premises at the date the tenant takes occupancy.

This report is also significant at the end of the lease, to enable a comparison of the initial state of the premises with the state in which the tenant returns the premises to the landlord (as the law provides that the tenant must return the property in a state that accords with the use of the premises during the lease).

Taxes Payable on Leases

There are no applicable taxes on leases that are charged at a federal level. At a cantonal and communal level, the situation can vary greatly, depending on the location of the premises. Usually, the cantons levy a tax on the lease if the parties agree to the registration of the lease in the land register. The triggering event for taxation, and the amount of tax due, must be checked locally with the help of specialised local counsel.

In addition, a landlord has the ability to subject its building to Value Added Tax (VAT) (though this can only be charged on a building's commercial spaces). Where VAT is charged, the landlord will charge the applicable VAT amount directly to the tenants of such commercial spaces. Consequently, the annual rent for those commercial premises will be increased by VAT at the statutory rate of 7.7%. A commercial tenant can account for this in their own VAT return if that tenant is also subject to VAT for its own business activity. However, the VAT aspects of business premises is a complex tax issue requiring specific legal advice from a local tax expert.

Lease Registration

The law states that the parties to a lease can agree to have it registered under a priority notice in the land register. This registration is made through an annotation in the register's entry for the relevant plot of land (or share of co-ownership). Registration of a lease results in that lease becoming legally effective against all third parties acquiring rights over the property following its registration. The lease also becomes "attached" to the plot (or co-ownership share) until it is terminated. This means that a new purchaser/owner of the building rights in the property will therefore not be able to make use of the legal right concerning the early termination of leases (see [Building Rights](#)).

Finally, the registration of a lease in the land register may be subject to a special tax (registering tax or similar) depending on the canton where the premises are located. The amount of the tax is normally calculated by reference to the actual rent and the duration of the lease, but this can vary according to each cantonal tax statute. For this reason, the fiscal costs associated with registration of the lease should also be checked locally with the support of a legal adviser.

Tenant Lease Negotiations

A tenant's ability to effectively negotiate the lease depends on several factors, including:

- The state of the rental market.
- The creditworthiness of the tenant.
- The size of the premises in relation to the building size.

Below is a brief overview of some of the key lease provisions for an office tenant. The actual lease will include additional provisions and terms may differ depending on the specifics of the transaction.

- **Base rent, operating expenses, and other additional rent.** These amounts represent most of the tenant's ongoing financial obligations under the lease. Base rent is typically calculated on a per square metre basis. Provided that it has been agreed by the parties, the tenant is also obliged to cover the ancillary costs. The parties must specify in detail the list of ancillary costs that are to be borne by the tenant. If the list is not precise enough, the costs that are not clearly part of the list are to be assumed by the landlord. If the parties agree on it, an additional rent can be charged based on the tenant's usage, a per square metre charge, or the tenant's proportionate share, depending on the type of expense and type of lease.
- **Permitted use.** The permitted use clause affects the tenant's flexibility in how it uses the premises and its ability to sublet the premises. A sublease agreement that would provide for an important change in the permitted use entitles the landlord to refuse its consent regarding the sublease (see [Principal Types of Leases and Structures](#)).
- **Initial tenant improvements.** If the tenant requires improvements to meet the tenant's needs before it takes occupancy, the parties must negotiate who will perform and pay for the work.
- **Assignment and subletting.** Assignment and subletting provisions are mandatory rights under Swiss law.
- **Options.** A tenant can negotiate for a variety of options that provide flexibility if business circumstances change. Possible tenant options include:
 - expansion;
 - renewal;
 - purchase; and
 - termination.
- **Repairs and maintenance.** Provisions concerning a guarantee against defects are mandatory under Swiss law.

- **Security deposit.** Most landlords require the tenant to deliver a security deposit (either in cash or a letter of credit) or a guarantee from a creditworthy parent or principal.

Important Questions to Ask Your Switzerland Leasing Attorney/Lawyer

- Are there transfer or other taxes payable on the creation or assignment of a lease?
- Are there any legal restrictions limiting the maximum term of the lease (including renewals)?
- Are there any laws requiring landlords to allow a tenant to renew its lease?
- Are there any restrictions on rent that may be charged under the lease?
- Are there any laws permitting tenants to terminate their lease before the stated expiration date?
- Are there any laws allowing the tenant to assign or sublease without the landlord's consent?
- Are there any laws allowing the landlord to restrict assignments or subleases by tenants?
- What is the common form of eviction proceeding and what is the customary length of time for that proceeding?
- Are there any legal restrictions on a tenant mortgaging or pledging its leasehold interest as security for a financing?
- Are there any requirements for landlords to hold security deposits in separate accounts and, if these requirements exist, can there be one separate account for all tenant security deposits or must each security deposit be held in its own separate account?
- Are there any required statutory or other legal disclosures to be made to all tenants?
- Are there any taxes on rent or other taxes that landlords:
 - are required to collect from tenants; or
 - typically collect from tenants?
- Are there any limitations on the ability of landlords or tenants to exercise self-help?
- Must remedies such as acceleration of rent be expressly stated or are they implied?
- Are there any expedited remedies for a tenant default and what lease provisions (such as waiver of jury trial) would be required for a landlord to seek expedited remedies?
- Are there any formal requirements for the execution of a lease?
- Must a memorandum of lease, or other document, be recorded/registered for the lease to be enforceable by the parties or against third parties?



END OF DOCUMENT