

Development of Green Leases in Poland 2024 Review

WHAT ARE GREEN LEASES?

Green leases are property lease agreements that include clauses promoting sustainable development and environmental protection. In Polish legal transactions these clauses are typically incorporated into the lease agreement or as a separate attachment to it.

Within the framework of green clauses, both tenants and landlords aim to undertake actions to reduce the negative impact of the property on the environment and improve energy efficiency and sustainable management practices. The goal of green leases is to create more eco-friendly buildings, promote pro-environmental attitudes among tenants and property owners, and to improve the quality of life in local communities.

Typically, in Poland, green clauses are added to the lease agreement at the initiative of the landlord (the property owner). However, due to the necessity of non-financial reporting in connection with the CSRD directive or the possibility of obtaining so-called green financing, tenants are also increasingly seeking green leases. This is particularly the case for large companies and multinational corporations, which often want to implement their own catalogues of green provisions into agreements consistent with the standards adopted within their capital groups.

LEGAL FRAMEWORK

Legally, in Poland (unlike, for example, France, where there is statutory regulation regarding environmental annexes for large-scale leases intended for offices or commercial use), there is currently a lack of specific statutory regulations concerning green leases. Their conclusion is not mandatory, neither in the private nor in the public sector.

One exception is the provisions of the Energy Performance of Buildings Act, which require the submission of a copy (printout) of the energy performance certificate "upon conclusion of the lease agreement", and in the absence of fulfilling this obligation, impose the risk of fines on the landlord.

However, other existing regulations concerning environmental protection, energy efficiency of buildings, and ethical codes for developers and property managers also provide a framework for the implementation of green practices in lease agreements.

POPULAR GREEN CLAUSES

Due to the lack of a developed standard for green agreements, the content of introduced clauses depends on many factors (including, in particular, the type of building and its location). Such clauses have a very diverse nature and relate to, among other things:

- reducing energy and water consumption through the use of efficient technologies and savings practices
- waste segregation and promoting recycling
- using environmentally friendly materials and equipment in buildings
- reducing greenhouse gas emissions and other harmful substances
- supporting public transportation and alternative commuting methods for employees
- ecological building certification

DARK GREEN CLAUSES VS LIGHT GREEN CLAUSES

In green leases concluded in Poland, light green clauses currently dominate. These green clauses have a weaker binding force and are usually not overly burdensome for the parties. These clauses generally only constitute statements of the parties' joint willingness to cooperate to improve environmental performance and do not provide for sanctions for non-compliance. Examples of such clauses include provisions for mutual declarations of the lessor and tenant to exchange information on energy consumption and savings in the property or prohibiting the tenant from making changes that would reduce the energy efficiency of the building.

In contrast, dark green clauses are more burdensome because they impose specific, legally binding obligations on the parties and sanctions for non-compliance. Examples of such clauses may include the landlord's obligation to obtain a specific environmental certificate for the building within a specified period or the obligation to use only eco-friendly materials in fit-out works.

FUTURE PERSPECTIVES

The legal perspectives for green leases in Poland are very promising. Interest in these types of agreements is growing. With the increasing ecological awareness of society and the growing number of investors seeking sustainable investments, as well as initiatives such as the European Green Deal, it can also be expected that Polish law will evolve towards promoting green leases. Further statutory regulations on these issues cannot be ruled out either. It should be advocated, however, that new regulations are clear and provide a good incentive for companies to implement ecological practices in the Polish real estate sector.

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