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EVERYTHING YOU NEED TO KNOW ABOUT BILL N°6864 ON COMMERCIAL LEASE AGREEMENTS

On 3 September 2015, bill n° 6864 *on commercial lease agreements modifying some dispositions of the Civil Code* (the "Bill"), drafted under the initiative of the Minister of Economy Mr Etienne Schneider, was filed with the Chamber of Deputies. The Government claims the Bill will increase the protection of the lessee while, as far as possible, maintaining a fair balance between the rights of both parties. As of today the Chamber of Salaries, the Chamber of Commerce, the Chamber of Trade and the judicial authorities have already issued their opinion on the Bill, stating among others criticisms that the text does not include a social aspect in the case of bankruptcy of the lessee and that some clauses of the Bill would be difficult to apply. **Here you will find the key points of the Bill in order to be well prepared to the most important changes that will arise as soon as it is passed.**

1. SCOPE OF THE BILL

The Bill applies to commercial, industrial and artisanal lease agreements, commercial centres and shopping malls.

It doesn't govern office lease agreements or lease agreements in relation to a liberal activity unless expressly stated in the written contract. Parties to such a lease can also freely decide that one or several clauses applicable to commercial leases will apply to their contractual relationship.

2. MAIN CHANGES PROVIDED BY THE BILL

Determinate duration of the lease contract

At present, a commercial lease agreement can be concluded for a limited or an unlimited period of time.

The Bill states that a written commercial lease should have a limited duration but does not fix a minimum period of time. If there is no provision about the duration in a contract or there's no

written contract, the lease will be deemed to be concluded for 3 years.

Early termination of the lease contract for financial difficulties

The Bill authorizes the lessee to terminate the contract anytime with a prior notice of 3 months when the enforcement of the agreement until its termination date would lead in the short-term to its bankruptcy.

This right is granted to the lessee under the cumulative conditions that (i) his bad financial situation is not the consequence of his fault or negligence and (ii) the lessee has paid all of the due rents and common charges at the date he uses his termination right.

In order to also protect the rights of the lessor, the Bill states that if the lessee terminates the contract within the first 2 years, he must reimburse the lessor the rent-free period(s) or the rent reduction(s) he benefited from, if any, as well as any fitting-out work paid for by the lessor. The parties can, however, decide otherwise in the contract.

Limited rented guarantee

Whereas at present there is no limit regarding the amount of the guarantee to be provided by the lessee, the Bill introduces a cap of 3 months of rent.

Prohibition of leasing rights (*pas-de-porte*)

The Bill forbids any payment in favour of the lessor at the date of the signature of the contract, handing over of keys or entry into the leased premises, excluding the guarantee(s) if any. Professional intermediaries are also not allowed to receive a payment beyond their contractual fees.

This provision aims to eradicate the phenomenon of leasing rights (*pas-de-porte*) – undeclared additional amounts of rent paid by the lessee – which has grown in Luxembourg since the '90s similar to the French model.

The Bill states that a lessee who has paid leasing rights (*pas-de-porte*) has 30 years from the payment date to ask for reimbursement unless another time-period is provided in the contract.

Preferential renewal

The Bill substantially modifies the current clauses on preferential renewal of the lessee regarding leases of more than 9 months.

The renewal right will no longer lapse after the 15th year of the lease but remains until the termination date of the contract. Then, the lessor will not be allowed to refuse to renew the lease during its first years.

From the 10th year, the lessor will have the right to refuse the renewal without justification but should pay an eviction compensation to the lessee that should not be less than 12 months of rent.

The lessor will be entitled at anytime to refuse the renewal of the lease to the lessee if one of the following conditions is met:

- the lessor has reasonable complaint(s) against the lessee;
- the lessor or his children intend to live on the premises;

- the lessor decides not to lease the premises anymore for commercial activities;
- a rebuilding or a transformation of the premises is to take place;
- the rented premises have become substandard or unsafe; or
- the rented premises do not comply with the law of 10 June 1999 *on classified establishments*, as amended and/or the law of 19 July 2004 *on municipal land-use planning and urban development*, as amended.

Suspended eviction

The Bill abolishes the suspended eviction described in Art. 1762-8 LCC and replaces it with a suspension from 1 to 9 months without prorogation of the judicial decision of eviction.

The judge will grant the suspension when the 3 following and cumulative conditions are fulfilled:

- payment by the lessee of all of the due rents and common charges at the date he asks for the suspension;
- effective running of the business assets (*fonds de commerce*) by the lessee; and
- suspended eviction will allow the lessee to organize the moving of his commercial activities.

Pre-emptive right in case of long-term lease

In the case of sale of the rented premises, the Bill grants a pre-emptive right to the lessee leasing the real estate for at least 18 years, under the condition that the lessee leases the whole building or that the rented premises are governed by the co-ownership rules.

The pre-emptive right does not apply in the case of a sale by public auction or if the real estate is sold to a family member of the lessor (parent or relative up to third removed included) or free of any cost.

Substitution to the lessee in the case of sub-lease

The Bill grants to the lessor the power of substitution to the lessee in the contractual relationship between the lessee and the sub-lessee so that the lessor and the sub-lessee become parties to the same agreement and the lessee is relieved of his obligations vis-à-vis the sub-lessee

Modifications of financial conditions of the lease contract

The Bill allows the parties to agree that the main terms and conditions of their lease agreement will be reviewed on fixed dates already defined in the contract or each time the lease is renewed.

Should there be no special provision in the contract relating to this, any of the parties could ask for a change of the main terms and conditions of the lease at the end of each three-year period.

3. ENTRY INTO FORCE OF THE BILL?

Provisions of the Bill will apply to all commercial, industrial and artisanal lease agreements in full force and to any future lease as soon as it is

passed and published in the *Memorial A, Recueil de Legislation*.

However, any lessee who is satisfied with a lease agreement already in full force and effect when the new law becomes applicable will be able to choose to apply that agreement rather than the new legal provisions.

A lessee choosing this option must inform the lessor by registered letter within 3 months from the entry into force of the new law. As a result, the new legal clauses will not be applicable to these parties, excluding suspended eviction, which is mandatory under all circumstances

For more information on the above or and any other topics relating to Real Estate, Zoning & Environment law please contact:

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