

# Commercial leases in Jersey and Guernsey – a comparison

Last reviewed: January 2025

---

As jurisdictions, Jersey and Guernsey have a lot in common. They both enjoy a unique constitutional position and draw on mixed legal sources that stretch back to Norman customary law, incorporating civil law and English common law. In respect of property law, and commercial leases in particular, practitioners face similar challenges in both jurisdictions. There is no statutory framework akin to the English landlord and tenant legislation in either island. Nonetheless, each island does draw upon English precedents and common law where possible (which is persuasive but not binding), perhaps surprisingly, more than on each other's authorities. In both islands there exists a strong doctrine of '*la convention fait la loi des parties*' meaning that leases are interpreted strictly in accordance with their express terms. There are no terms implied by statute into commercial leases (eg that the landlord cannot unreasonably withhold consent) unlike in England. This makes the drafting all the more crucial. The form of Jersey and Guernsey commercial leases is certainly similar but there are some fundamental differences between them, both in the drafting and in the underlying legal principles by which they are governed.

Both jurisdictions differentiate between 'movable' and 'immovable' property. In Guernsey, all leases are considered movable estate, whereas in Jersey, leases fall into two categories. 'Contract' leases, those granted for a term of over nine years, constitute immovable estate. 'Paper' leases, granted for nine years or less, constitute movable estate. Crucially, contract leases must be passed before the Royal Court of Jersey on Friday afternoons only and are registered in the Public registry, thus entering the public domain (and to be enforceable, this also applies to paper leases, if they contain an option to renew beyond nine years). This information can be a huge advantage to agents and other practitioners operating in the Jersey market, although some parties overcome the lack of privacy by the use of side letters. Contract leases attract stamp duty, which is calculated by multiplying the annual rent by the term of years (subject to a maximum of 21 years) then stamped at 0.5 per cent up to £100,000 and 0.75 per cent over £100,000. Any premium also attracts stamp duty. In Guernsey, leases do not attract stamp duty, nor is it necessary to register leases in order to bind a purchaser of the freehold (although leases can be voluntarily registered at the Greffe).

Further implications of this distinction include the fact that, unlike Guernsey leases, Jersey contract leases can be used as security for a lender, provided that the terms of the lease expressly allow this. Moreover, being immovable property, Jersey contract leases (except by expiry) can only be terminated by an Act of Court cancelling the lease and therefore the drafting of termination provisions and break options needs to reflect this. Otherwise the termination provisions in the leases of both jurisdictions are largely similar (ie termination is by expiry, upon an agreed break date or upon tenant's default or insolvency). There is no statutory continuation of business tenancies (as in England) in either island and therefore no need to include provisions to exclude any Act or deal with rent review at the end of the term, although tenancies can be presumed to have been renewed in the event of the tenant remaining in occupation beyond the end of the term (by 'tacite reconduction' or 'periodic tenancy').

Contracts relating to immovable property cannot be specifically performed (enforced by the Court) but Guernsey leases, Jersey paper leases and the first nine years of a Jersey contract lease can be, so it is vital to ensure that all correspondence and negotiations are strictly 'subject to contract'.

Overseas clients are often surprised to note that Jersey and Guernsey leases do not oblige the outgoing tenant to provide an AGA (authorised guarantee agreement) guaranteeing any future assignee's performance of its obligations under the lease. This is because there is no legislation akin to the English Landlord & Tenant (Covenants) Act 1995 in either island (and therefore no distinction between pre-1996 'old leases' and post-1996 'new leases'). The similarities between the two islands end here though in respect of assignment, as the position in Jersey is (and always has been) that the outgoing tenant is released from its obligations upon assignment, whereas in Guernsey the original tenant remains liable throughout the term (as was the position in England prior to 1996). The customary law of Guernsey also mirrors the English position in the presumption that a tenant may assign its lease without the consent of the landlord unless the lease provides otherwise. This presumption is reversed in Jersey, where alienation is presumed to be prohibited unless the lease expressly provides otherwise. Notwithstanding these differences, in practice, assignment provisions are similar in both islands, as are rent review provisions, being ordinarily linked to OMRV (open market rental value) or Jersey or Guernsey RPI or a combination of the two.

A consideration peculiar to Jersey is that *prima facie* goods and services tax (GST) is payable at 5 per cent on rental due under commercial leases. There are exceptions to this rule though, depending on the tax status of the landlord and/or the tenant (eg if either entity is an international services entity) and retailers and other businesses are generally able to offset any GST on their rent against their input taxes, as is the case with VAT. Guernsey has no equivalent to GST or VAT.

Property income is taxed in both islands at 20 per cent, and this includes rental, premiums and development profits and applies to non-resident landlords too.

This is a brief exploration of a very large subject. Should you wish to take further advice in respect of any of the issues raised in this article, or indeed any aspect of Jersey or Guernsey property law, please contact us and we would be delighted to assist.

## Contacts

A full list of contacts can be found [here](#).