

# The long-term lease: Certain uncertainty?



**Although it is not very common to execute a lease contract for multiple decades (so called “100-year leases”), such a practice does exist. If you are planning to conclude or have already entered into a 100-year lease, read this article to find out about the potential risks lurking behind the door.**

## Practice

100-year leases are used mostly with respect to real estate. Reasons vary as to why contracting parties prefer a long-term lease as opposed to a lease for an indefinite period of time, purchase contract or easement agreement. Sometimes, due to regulation applicable to the administration of state/municipal property, a long-term lease appeals to developers as the best means to realize their project. But is this approach risk-free? Recent case law and the following discussion has caused increased concern amongst lawyers.

## Risks

Contracting parties should be aware of the fact that notwithstanding their agreement, the following risk scenarios can occur:

- the lease agreement can be considered invalid (null and void); or
- the lease agreement can be reclassified as a lease agreement entered into for an indefinite period of time instead of the definite period of time (which has a substantial impact on the conditions under

which such agreements can be terminated).

The above is not good news for investors where an extensive initial investment is conditional upon a long-term lease.

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## Invalidity

In fact, a long-term lease agreement may have identical commercial consequences as a property transfer or an easement, for which Slovak law stipulates strict rules (e.g. prescribed form of a contract, obligation to register contract in the cadastral registry, obligation to obtain certain approvals in the event of state or municipal property or property in co-ownership etc.). Lease agreements are less formal.

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## Reclassification into a Lease for an Indefinite Period of Time

Slovak law or court decisions do not stipulate what maximum period should be acceptable for long term leases. Is it 30, 50 or 70 years? The boundary is not defined. The Supreme Court of the Czech Republic ruled that a lease agreed for a definite period of time exceeding the usual human lifespan should be considered as a lease for an indefinite period of time (note: relevant provisions of Czech law and Slovak law are similar; in general, the decisions of Czech courts are often used as guideline or prediction for potential interpretation of Slovak law within the legal community in Slovakia). Although this court decision was based on specific circumstances of a particular case which cannot be generalized for all long-term leases, it left many questions unanswered, and the door for speculative court actions was opened. For example, rules for termination of a lease for a definite period of time differ from those applicable to leases for indefinite period of time. The “reclassification” of a definite lease period, into a lease for an indefinite period of time results in the contracting parties not being fully familiar with the terms of their own lease agreement.


Inconsistency in the interpretation of law can be used by the other party for unexpected termination of the agreement.

Both the above scenarios (i.e., invalid lease or reclassification of the agreement) can be problematic for an investor. It is likely that a court would have to be involved. Due to lengthy court proceedings with unpredictable results, Slovak courts do not seem to be an ideal solution to resolve uncertainty regarding a tenant’s right to leased property. The situation can become even more complicated if an investor, as the tenant, has already started to build or has built a building on leased land. In the worst case scenario, the investor can be ordered to demolish the building if it loses its right to use the leased land due to an unexpected and possibly speculative interpretation of its long-term lease agreement.

## Conclusion

Ambiguous interpretation of 100-year leases and lack of previous case law within Slovak courts on this topic make long term leases uncharted territory. Risk of invalidity or different classification of the long-term lease declared by a court cannot be completely ruled out. It is fair to conclude that these pitfalls are deserving of expert legal consultation. Do not let technicalities interrupt your business. Draft and negotiate your contract so that it is solid, stable and predictable.

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