

POLISH COUNCIL OF SHOPPING CENTRES

BEST PRACTICE MANUAL



Polska Rada Centrów Handlowych
Polish Council of Shopping Centres

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BEST PRACTICE MANUAL

OVERVIEW

Having regard for the principles of corporate social responsibility formulated in the Green Paper of the Commission of the European Communities, in 2009 the participants of the retail property market associated with the Polish Council of Shopping Centres (PRCH) decided to develop principles for more efficient achievement of business, social and promotion objectives, and sustainable development of the shopping centre market in Poland.

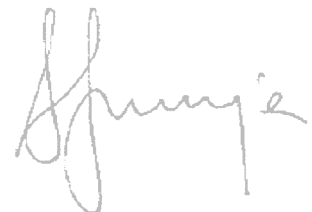
The meetings of working groups which brought together representatives of shopping centres and retail chains developed this Best Practice Manual of the Polish Council of Shopping Centres (PRCH Best Practice Manual). The team members wished to understand the position of the other party, but also to preserve the right to express an independent opinion. The PRCH Best Practice Manual is also a natural response to the market evolution and an attempt to establish some rules for the shopping centre market. This document has been prepared with the involvement of many persons and should be supplemented through active cooperation of all the retail sector players as the Polish market develops.

This set of best practices was developed by both the PRCH Retailers Club and the Investors Club. The manual prepared by the British Council of Shopping Centres and the Royal Institution of Chartered Surveyors was a major source of inspiration.

One of the guiding principles for the team of tenants and landlords working on the first version of the Best Practice Manual of the Polish Council of Shopping Centres was that only those rules were accepted which were not disputable. Matters which could not be agreed on are included in an appendix to the Manual to be used in any further work on the Best Practice Manual.

We would like to extend our thanks for the contribution into and commitment to the work on the PRCH Best Practice Manual to the board representatives of the following companies: *Apsys Polska, ECE Projektmanagement, Echo Investment SA, Mix Electronics, Vobis SA, Tchibo, Alshaya, Diva Polska, Olsen, Royal Collection*, and the following persons for the time they devoted to the preparation of this Manual:

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GENERAL RULES

This Best Practice Manual has been jointly prepared by tenants and landlords who are members of the Polish Council of Shopping Centres (PRCH) and should be used as a reference book.

The Manual presents a set of practices considered by professionals to be the best norms of conduct, which represent a compromise between a group of the tenants and landlords associated with PRCH.

This Best Practice Manual does not oblige tenants or landlords to abide by its rules or recommendations. It merely highlights recommended solutions deemed by experts of PRCH to constitute best market practice and should be treated as such.

However, if charges of negligence were filed against a landlord or tenant, the court in rendering its ruling would most probably consider the guidelines included in this Manual and examine whether the landlord or tenant acted in accordance with the commonly accepted rules.

The primary objective of the PRCH Best Practice Manual is to promote best practices in retail property management and operation in Poland for new lease agreements and lease renewals.

This publication may also be used by tenants and landlords operating together in shopping centres to further their professional qualifications. Each landlord and tenant should read the recommendations presented in this Manual within a reasonable time from its publication.

It should be borne in mind that the lease agreement is a document which details the rules for the management and operation of a shopping centre. This Manual does not affect the validity or content of the lease agreement. However, if used together with the lease agreement, it may help in effective shopping centre management.

The PRCH Best Practice Manual is applicable exclusively in the territory of the Republic of Poland.

LEASE AGREEMENT

I. THE ESSENCE OF THE LEASE AGREEMENT

1. The objective of the lease is to bind the landlord and tenant in an agreement under which the landlord undertakes to lease certain premises to the tenant for a fixed period of time and on conditions set forth in the lease agreement, whereas the tenant undertakes to pay the agreed lease rent and other charges agreed by the parties in the lease agreement.
2. The business objective of the lease agreement for the landlord is to derive income from rent and for the tenant to derive income from turnover in the leased premises.
3. It is best practice to use lease agreement templates which do not contain provisions undermining the essence of the lease agreement as a legal and business relationship between the landlord and the tenant.

Chapter 1. Designation of leased premises on the shopping centre plan

The analysis of attractiveness of the premises offered to the tenant before signing the lease agreement is of major importance in the process leading to the decision to sign the lease agreement. This also affects the evaluation of the lease's financial terms and conditions.

1. It is best practice to clearly specify in the lease agreement items which are crucial to tenants in the process of making a decision whether to sign the lease agreement, including the following:
 - the shopping centre plan, including the network of passageways and car parks;
 - the location of the leased premises on the shopping centre plan;
 - the location of other tenants, particularly anchor tenants.
2. Shopping centre plans and the location of the leased premises may also be specified in schedules to the lease agreement, provided they constitute its integral part.

Chapter 2. Determination of the standard of leased premises at the delivery date

1. It is best practice not to exclude in the lease the landlord's liability for design and workmanship defects of the shopping centre which may limit its functionality and the possibility of using the leased premises for the agreed use.

2. It is best practice to deliver the leased premises to the tenant in the standard including at least the following items:
 - connections made in accordance with the parameters set forth in the lease agreement for the following:
 - electrical system together with the distribution board and meters,
 - water and sewage systems leading to the border of the leased premises,
 - full and complete installations and legally required systems fitted, including security systems to protect people, particularly the top layer of the sprinkler system, the fire and sound alarm systems, and the fire hydrant system;
 - full and complete installations with fittings, including HVAC in particular, in the shopping centre standard specified in the technical schedule to the lease agreement.

Chapter 3. Relocation right (the landlord's right to change the leased premises during the lease term)

1. It is best practice for the landlord not to reserve for itself the unilateral right to change the leased premises during the lease term.
2. Any relocation requires renegotiation of lease agreement terms and conditions by the parties.

Chapter 4. The right to make structural changes to the leased premises during the lease term such as changing the shape, area and location of the premises

1. The tenant assesses the attractiveness of premises offered for lease at the initial stage of the decision-making process. Any subsequent changes to the parameters of the premises may invalidate the tenant's assessment on the basis of which the tenant decides to sign the lease agreement.
2. In the lease agreement the landlord explicitly undertakes to lease to the tenant premises with specific properties which should be preserved throughout the lease term. Therefore, any structural changes to the leased premises require renegotiation of lease agreement terms and conditions by the parties.
3. It is best practice for the landlord not to reserve for itself the unilateral right to make major changes to the leased premises following the lease agreement execution.
4. This principle may be subject to some limitations if such changes result from the requirements imposed by supervisory authorities or amendments to mandatory regulations. If any major structural change are made to the leased premises, the tenant should have the right to renegotiate the lease agreement terms and conditions, or to terminate or renounce the lease.

Chapter 5. Lease costs when business in the leased premises is restricted or impossible for reasons attributable to the landlord

1. It is best practice to include into the lease agreement provisions releasing the tenant from the obligation to pay the lease rent in the period when the tenant cannot run its business in the leased premises for reasons attributable to the landlord.
2. It is best practice to grant the tenant a rent concession for the time when the leased premises are unfit for the agreed use.

Chapter 6. Leased premises delivery date and the shopping centre opening date

1. It is best practice to define in the lease agreement the final date for the delivery of the leased premises to the tenant and the final shopping centre opening date, and to include the tenant's right to renounce the lease if these dates are not met.
2. On account of the shopping centre's size and many other factors affecting the property delivery within the planned time limit, the delivery date may be specified by using clearly defined time brackets.

II. FREEDOM OF THE LEASE AGREEMENT

1. The limits of the freedom of lease agreements set forth in Article 353¹ of the Polish Civil Code define the legal framework for the parties' rights to set out lease provisions.
2. Lease agreement provisions may not be contrary to the following:
 - the nature of the lease relationship,
 - the laws in force,
 - the principles of community life.
3. In setting out the limits of the freedom of lease agreements it is particularly important that the principle of equal treatment of the lease parties be respected. This involves an even distribution of the rights, duties and risks resulting from the lease relationship.

Chapter 1. Liability of lease parties for damage

1. It is best practice to adopt the principle of fault as the basis for the parties' liability for any damage.
2. Any release of the landlord from liability for damage, except from liability for intentional damage which cannot be excluded, constitutes, in fact, a tenant's waiver of legal protection of the lease relationship.

Chapter 2. Lease termination by the tenant/landlord

Standard lease agreements for retail premises used by landlords usually include a long list of situations in which the landlord can terminate the lease agreement with or without notice.

1. It is best practice to balance the extended list of circumstances authorizing the landlord to terminate the lease agreement with lease provisions providing for an early lease agreement termination by the tenant in specified cases.
2. It is best practice to include lease provisions giving the tenant the right to a rent concession or to renounce the lease agreement if the shopping centre commercialization level is below 70% (the number of lease agreements signed) as at the date of the delivery of the leased premises to the tenant or the shopping centre opening date.

Chapter 3. Tenant's right to a free selection of contractors and service providers

1. It is best practice for the landlord not to interfere in the selection of construction and fit-out contractors by the tenant, provided that the work of such contractors does not adversely affect equipment or installation warranties.
2. If, for technological or warranty-related reasons, the landlord needs to select a contractor, the prices for the work or services provided should reflect average market prices.

Chapter 4. The right to apply sanctions against the tenant after a prior written notice to the tenant to perform its obligations or to discontinue violations

1. It is best practice for the landlord to be authorised to apply sanctions against the tenant resulting from the lease agreement such as a contractual penalty or lease agreement termination only after a prior notice to the tenant to perform an obligation and the ineffective lapse of an additional time limit designated for its performance.
2. It is best practice to apply penalties which are appropriate to a given violation.
3. The landlord's right to terminate the lease agreement should be exercised only if the tenant negligently performs or fails to perform material obligations explicitly stated in the lease.

Chapter 5. Inclusion of additional regulations constituting an integral part of the lease and compliant with the parties' intention

1. It is best practice to respect the principle that any amendments to the lease agreement and schedules constituting its integral part which increase the tenant's financial obligations require a mutual consent of both parties, unless such amendments result from overriding mandatory changes to legal regulations.
2. It is best practice to make the lease agreement prevail over its schedules and regulations governing the operation of the shopping centre.

Chapter 6. Changes to the tenant's logo

1. It is best practice for the landlord not to restrict the tenant's right to change its business name or the logo of its store chain if the name or logo of its entire chain or a major part of it changes.

Chapter 7. Changes to the tenant's ownership structure

1. It is best practice to exclude the landlord's right to interfere in the tenant's equity or corporate changes and to oblige the tenant to inform the landlord about such changes (except for tenants operating in fewer than five shopping centres).

III. BUSINESS PARAMETERS

Chapter 1. Landlord's income

1. It is best practice for the landlord to make income solely from lease rent.

Chapter 2. Rules for lease rent adjustment

1. It is best practice for the rules of lease rent indexation to be geared to an explicitly stated index constituting the exclusive basis for any rent adjustment.
2. It is best practice for the first lease rent adjustment not to take place until after the lapse of the first twelve months from the tenant launching its business in the leased premises.
3. It is best practice to exclude in the lease agreement the possibility of the landlord applying the provision of Article 685¹ of the Polish Civil Code, i.e. the landlord's right to change the lease rent amount specified in the lease agreement.

IV. SETTLEMENTS AND SERVICE CHARGES

Chapter 1. Communication

Both the tenant and the shopping centre owner/manager should not play down the role of good communication which may be improved only through regular dialogue of all the parties involved in the shopping centre management and operation.

1. Communication and proper consultations between the shopping centre owner/manager and tenants should be regular and should build and promote good relations, cooperation and mutual understanding with a view to ensuring appropriate property management and building a strong position of the shopping centre on the market.
2. Effective communication is of key importance in best practice. Its objective is to ensure transparency in communication between the shopping centre owner/manager and the tenant in relation to management and services supplied.
3. Best practice principles include continued communication between the shopping centre owner/manager and tenants at various levels of property management, from daily contact of the shopping centre director with store managers through meetings of senior representatives of the owner/manager and tenants at the regional and central level, to regular meetings of all the shopping centre tenants.
4. According to the best practice principles the shopping centre owner/manager should organize regular meetings with tenants who should spare no effort to attend them.
5. According to the principles of best practice and good cooperation building, the shopping centre owner/manager and tenants should, without any undue delay, examine all requests, mutual obligations and provide feedback on all the important and current aspects of their operation.
6. In order to ensure best and transparent communication, the tenant should inform the shopping centre owner/manager about in-house persons responsible for the store operation in the shopping centre, persons responsible for service charges, marketing, finances etc., and the division of duties between the tenant's headquarters and branch.
7. It is best practice for the parties to provide each other with data on shopping centre footfall changes and changes to the turnover generated.

8. The shopping centre owner/manager should also provide tenants with contact details of persons who are in charge of the shopping centre operation, management and maintenance, contacts with tenants, accounting, debt recovery, leasing and so forth. Tenants should also be provided with contact details of the shopping centre manager and his subordinates managing the shopping centre, including the scope of their duties and responsibilities.

Chapter 2. Transparency

1. The principle of transparency is deemed to be one of the key elements of the Best Practice Manual and to facilitate good communication.
2. According to the transparency principle the tenant should have the right to audit property maintenance costs incurred by the shopping centre owner/manager. The tenant should report its intention to have an audit conducted upon reasonable advance request and the shopping centre owner/manager should make available to the tenant all the accounting documents supporting service charges incurred.
3. According to the transparency principle the shopping centre owner/manager should have the right to audit the tenant's turnover. The shopping centre owner/manager should report its intention to have an audit conducted upon reasonable advance request and the tenant should make available to the owner/manager all the relevant accounting documents and/or other documents to be reviewed, provided such documents have been specified in the lease agreement.
4. It is best practice to list and specify in the lease agreement all the marketing and service charges separately from the lease rent for the leased premises.
5. It is best practice to specify marketing charges in the budget of service charges.

Chapter 3. General rules for service charges

Improper service charges management is the reason for frequent misunderstandings between the shopping centre owner/manager and tenants. Applying best practice principles will reduce the risk of disputes between the owner/manager and tenants.

The main reason for such disputes is the lack of communication or inadequate communication between the tenant and the shopping centre owner/manager. It is the manager's responsibility to establish and ensure perfect communication so that the tenant knows what elements are included in service charges, what are the reasons for any changes in comparison to the plan adopted or the same period of the past year, and is confident that there have been no cases of any abuse or negligence in the shopping centre management.

Service charges are a sum of actual and reasonable expenses which are connected with the current shopping centre operation which are not individual costs of tenants' premises, and include in particular the following:

- costs of the current shopping centre operation, including service contracts,
- utility charges,
- public law charges,
- administration costs.

All the items in the settlement of service charges should be transparent and settled so that all the interested parties, i.e. the owner, manager and tenants, are aware of how they are generated. To this end, the shopping centre owner/manager is obliged, among others, to select service and products providers in a tender/beauty contest.

The settlement of service charges should be transparent and openly communicated to tenants. The shopping centre owner/manager has the right to receive a fee for shopping centre management and maintenance. The fee due to the owner/manager should not include any implicit margins or mark-ups.

Service charges should not include any of the following:

1. Initial costs incurred for the shopping centre construction,
2. Shopping centre extension costs,
3. Maintenance costs related to the shopping centre structural elements, excluding minor and current repair work,
4. Shopping centre improvement costs apart from the costs of normal maintenance, repair or replacement of elements, installations, fixtures and fittings,
5. Maintenance costs of vacant premises,
6. Costs of any additional lease should not be borne by other tenants,
7. Tenant solicitation costs, including the leasing agent's fee,
8. Costs of restoring the tenant's vacated space to its original condition,
9. Costs of work to prepare space for the new tenant, including fit-out costs,
10. Costs of recovery of overdue payments from shopping centre tenants,
11. Lawyers' fees in disputes between the shopping centre owner/manager and tenants,
12. Planning charges and betterment levies,
13. Income tax,
14. Costs incurred in connection with the negligence or mismanagement by the shopping centre owner/manager,
15. Costs of audits for property valuation conducted for the exclusive needs of the shopping centre owner, investors or manager.

Tenants conducting business activity in the shopping centre on the basis of a short lease agreement (also referred to as a passageway lease agreement, kiosk lease agreement or special lease agreement) should also participate in service charges.

Chapter 4. Management

1. The owner/manager should manage the shopping centre to the best of its abilities and diligence in order to provide optimum conditions for the development of retail chains and the best possible positioning of the shopping centre on the local market.
2. The owner/manager should maintain the shopping centre in a technical condition guaranteeing comfort and safety of persons present in the shopping centre.
3. Shopping centre management may be performed directly by its owner or commissioned with a specialized and experienced third party management company.
4. Irrespective of whether management is performed directly by the shopping centre owner or commissioned with a third party management company, best practice principles consist in ensuring due care and diligence in relations between tenants and the owner/manager.
5. The shopping centre owner/manager should establish transparent management procedures to enable the owner, manager and tenants to perform their respective obligations, and to ensure optimum and efficient service provision.
6. Tenants should have the right to be informed about procedures applied in the shopping centre, including the procedures for selection of service providers.
7. The shopping centre owner/manager should notify its tenants of any likelihood of the annual budget for common costs considerably and reasonably diverging from the adopted budget by 10% or more.
8. It is best practice for the shopping centre owner/manager to develop a method and form of notifying tenants of costs for a given settlement period and projected costs for the next settlement period.
9. The shopping centre management team should have expertise in modern management and relevant qualifications to ensure the best established operating standards.
10. Service charges may include costs incurred by the owner/manager for any necessary training and skills development of the shopping centre administration team related to property management, such as technical training and certification by the Association of Polish Electrical Engineers (SEP).
11. An adequate number of employees with suitable qualifications for effective and efficient service provision should be provided. The total service costs include their remuneration, insurance and taxes, statutory fees, training costs, other relevant add-ons and administrative charges

which should be defined. It is also best practice to optimize the costs of the shopping centre administration office.

12. Tenants who have received information on changes to the shopping centre management structure, ownership, organization and budgets made by the owner/manager should update their documentation on the shopping centre operation.

Chapter 5. Management fee

1. The management fee is an item of service charges.
2. The management fee should not be linked to the percentage of total service charges. Such connection is inappropriate and hinders the provision of best quality services in relation to prices (optimisation).
3. According to best practice principles the management fee should be transparent and proportionate to the work performed in relation to shopping centre operation and service management.
4. Similarly to tenants, the owner should bear costs of space, for instance office space, used for its own purposes. This does not apply to the shopping centre head office.

Chapter 6. Service standards and quality

All services should be provided in a professional fashion at all times.

Any failure to follow the procedures, guidelines and recommendations presented in this Best Practice Manual is contrary to best practice principles. Any departure from them should be appropriately explained by the shopping centre owner/manager.

1. It is best practice to review the quality and prices of shopping centre maintenance and repair services at least once a year and to hold tenders/beauty contests on a regular basis. The rules and methods of contractor selection and holding tenders should be clearly specified and made available to tenants.
2. Contractors and service providers, including the management team and the manager, should act in accordance with procedures provided for in relevant contracts.
3. Services provided should be beneficial and appropriate to the needs of the shopping centre, its owner/manager, tenants and their customers. The objective should be to achieve the best ratio of the quality of services offered to the price and efficient service, and not the lowest price possible.

4. The quality of services should be appropriate to the location, intended use and nature of the property. The level and standard of services offered at respective properties will differ, depending on the type, nature, age and complexity of the property.
5. Other additional services not included in the main charge may be supplied to the shopping centre. Tenants have the right to expect a similar level of transparency and responsibility in the provision of such services.
6. The tenant has the right to make individual agreements on utility supply to its premises, if permitted by technical conditions.
7. Tenants should actively support the shopping centre owner/manager in their actions which directly translate into the high quality and value of services, e.g. waste segregation and action aimed at efficient and profitable waste management.
8. The shopping centre owner/manager should monitor costs and, wherever possible, regularly request contractors to submit cooperation offers and quotations. If the shopping centre owner/manager and tenants are satisfied with the quality and prices of current services, the owner/manager should consider them as a benchmark in reviewing competitive offers.
9. The shopping centre owner/manager should request service providers to optimize service provision on a continual basis.
10. The shopping centre owner/manager has the right to use services of an experienced specialist company which can negotiate higher quality services and reasonable prices for the shopping centre (the service costs should be included in the service fee).

Chapter 7. Budgets and accounting

1. The shopping centre owner/manager should deliver to tenants a detailed settlement of costs with a commentary within the time limit set forth in the lease agreement, but not later than within three months following the settlement period provided for in the lease agreement.
2. Such settlement should contain a detailed breakdown of costs. Upon the tenant's request, the shopping centre owner/manager should provide reasons for any deviation from the adopted budget or settlement for the past period.
3. Settlements should have a fixed format and cover the period of 12 months, unless otherwise provided for in the lease agreement.

4. Budgets and settlements should be submitted with a report explaining individual costs and any deviation from adopted budget/settlement for the past period.
5. Upon the tenant's request, the shopping centre owner/manager may prepare a comparison of actual costs for the last two years or settlement periods.
6. The shopping centre owner/manager and tenants should immediately examine reasonable objections.
7. A tenant or auditor acting under a power of attorney may arrange a meeting in the office of the shopping centre administration or headquarters of the shopping centre owner/manager in order to review original accounting documents used to prepare a relevant settlement.

V. MARKETING AND PROMOTION

Chapter 1. General rules for marketing and promotion in shopping centres and retail chains

1. Best marketing practices are based on the following four key principles: informing, planning, measuring results and reporting.
2. Financing marketing and promotional campaigns is considered to be a common cost to be borne by tenants.
3. Shopping centre marketing costs can constitute a component of service charges or a separate budget item. According to the transparency principle, the landlord and the manager are obliged to create and present a marketing budget to tenants.
4. Irrespective of whether marketing costs are an element of service charges or a separate budget item, tenants have the right to receive accurate information on the amount of the annual marketing costs (in value or percentage terms) and the purpose of the marketing budget/plan.
5. Marketing plans should be prepared and submitted to tenants before the period for which they are made.
6. The marketing strategy should complement the shopping centre business strategy and be prepared for the entire shopping centre. It should, therefore, take account of the specific features and market positioning of the shopping centre. It should also be appropriate to the needs of the shopping centre, its tenants and customers, and the local market.
7. Tenants should take part in marketing campaigns for the shopping centre without any undue delay and in accordance with the owner's/manager's plan. If measures undertaken by the shopping centre are contrary to the policy and the marketing/image strategy of the tenant or retail chain, it is best practice for the tenant to inform the shopping centre owner/manager/landlord about it.
8. Marketing and promotion plans should be presented to tenants and monitored in cooperation with tenants in order to determine their effectiveness. Without dialogue and synergy of action the shopping centre owner/manager is unable to evaluate fully the effectiveness of its marketing.
9. It is best practice for both parties to provide each other with data on marketing effectiveness, particularly on changes to the turnover and footfall in the shopping centre and a given store (a change expressed in percentage terms).

Issues not regulated by the PRCH Best Practice Manual

1. Security of the landlord's claims through the tenant's voluntary submission to enforcement in a notary deed under Article 777 of the Polish Civil Procedure Code.
2. Exclusion of insurance subrogation resulting in the tenant's waiver of its right to assert subrogation claims against the landlord.
3. Fees prior to the shopping centre or store opening.
4. Payment periods.
5. The right to terminate the lease agreement in the event a bankruptcy petition is filed with a court.
6. Rules for store area measurement defined in the lease agreement.
7. Rules for the settlement of service charges (capex, lump payments, changing settlement methods during the lease term, currency and inclusion of common costs in the lease rent).
8. Costs to be borne exclusively by the landlord, e.g. property tax, betterment levy, planning charge, perpetual usufruct fee, land lease fee, shopping centre insurance, notary fees, land and mortgage register fees, cadastral tax and income tax.
9. Exclusion of costs related to the following from the list of service charges:
 - investments to increase the shopping centre's book value;
 - solicitation of new tenants, including the leasing agent's fee;
 - restoring the tenant's space to its original condition;
 - work to prepare space for the new tenant, including fit-out costs;
 - recovery of overdue payments;
 - non-recoverable payments;
 - lawyers' fees in disputes between the shopping centre owner/manager and tenants or service providers;
 - penalties and damages adjudicated.
10. Rules for the inclusion of costs of marketing research and footfall calculation systems.
11. Rules for the audit of service charges.



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