MORAIS LEITÃO
GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

"GREEN LEASES" – IS THERE ANY ADDED VALUE?

by: Andreia Bento Simões and Manuel Bragança Santos | Lawyers

From *"Green Loans"* in banking and finance to the *"Green Public Procurement"* and the *"European Green Deal"*, the color *"Green"* has popped up in recent years as a label for environmental oriented measures. Most recently, *"Green Leases"* have been a growing trend in Europe, as more businesses move to reduce their carbon footprint and meet sustainability goals.

Recent studies demonstrate that 40% of worldwide CO2 emissions can be attributed to real estate so it's no surprise that owners and tenants of property alike are searching for ways to reduce the adverse effect that real estate has on climate change.

Firstly, to deal with a common misconception, a Green Lease is not a specific type of document and, currently, there is no industry standard *"green lease"* in place. Instead, it is better to understand the concept as being a series of clauses and provisions that can be included into the types of lease agreements that we already use.

The idea behind Green Leases is that landlords and tenants work together to make sure that their properties are more energy-efficient and sustainable. This includes implementing energy-saving measures such as improved insulation, ensuring that all appliances are energy efficient, and making use of renewable energy sources such as solar panels or wind turbines. It also involves encouraging tenants to implement green practices within their own premises, such as setting up recycling initiatives or installing waste management system.

In some cases, Green Leases can include special provisions that allow landlords to monitor how much energy is being consumed in their buildings. This helps them ensure that they are meeting their own sustainability targets by reducing the amount of electricity or gas they need to purchase from external sources. For example, they may be able to switch suppliers if they find another one offering a better deal on renewable energy sources.

Green leases are becoming increasingly popular in Europe due to the need for businesses and governments to reduce their carbon emissions. This is due to growing pressure from customers to show corporate social responsibility and a desire to stay ahead of regulations. In addition, some countries have implemented specific laws relating to Green Leases, such as France's Loi ALUR which requires all property owners and tenants in the country's main cities to enter into these types of agreements since 2017.

The benefits of having a Green Lease are considerable: not only do they help create a more sustainable environment, but they also offer cost savings for both parties involved in the agreement. For landlords this means reduced bills due to lower levels of energy being used in their buildings; while for tenants it could mean lower rental payments due to incentives offered by governments or other organizations keen on promoting greener approaches towards business operations. In addition, both parties gain from increased public goodwill, with customers often preferring businesses who demonstrate environmental responsibility.

In addition to being beneficial for businesses, green leases also support ESG (Environmental Social and Governance) objectives. By committing to sustainable practices such as reducing carbon emissions or using renewable energy sources, companies can improve their ESG score and demonstrate leadership in corporate social responsibility initiatives. This is especially the case with large landlords and tenants wanting to implement at least a light green shade in any new leases, from a reputational perspective as much as any commitment to environmental change. All in all, this can have a positive impact on their reputation in the public eye, resulting in increased customer trust and loyalty.

The European Union's Taxonomy Regulation has further increased the appeal of Green Leases by establishing a framework for assessing sustainable economic activities across all sectors of the economy. This provides an objective way of measuring how green investments are helping achieve EU goals such as climate neutrality by 2050, making it easier for investors to identify sustainable investments that align with their goals.

Green leases are especially relevant for asset managers and large and/or listed real estate companies. Why? Here are some of the reasons:

1. Higher purchase price when selling properties, or better financing terms when acquiring them;
2. A future sale of a property to an institutional investor or asset manager, where not only real estate certifications (such as LEED and BREEAM) are relevant but, also, the corresponding compliance with the Taxonomy Regulation is important if they want to establish or maintain business relationships with such financial market participants and companies of public interest;
3. Higher rents, since sustainable properties often attract tenants of a higher income; and
4. The scope of application of the Taxonomy Regulation may extend to property owners in the near future.

Green Leases are not without its challenges though, with issues ranging from deciding who bears responsibility for implementing various measures under an agreement right through to complications surrounding performance monitoring and enforcement if any party fails in upholding their commitments made under the lease terms & conditions. As such, it is essential for businesses considering entering into a Green Lease agreement, not only to understand what exactly is involved but, also, to seek appropriate legal advice before signing anything.

Ultimately, there can be no denying that green leases are here to stay, providing an increasingly popular option for businesses looking towards becoming more sustainable through property management solutions tailored towards reducing carbon footprints, whilst providing meaningful cost savings at the same time. With legislation in some European countries already mandating these types of arrangements - alongside growing pressure from customers demanding businesses to show corporate social responsibility - it seems likely that we will continue seeing further growth in this area over the coming years with companies keen on staying ahead of new regulations and being encouraged to take action now rather than wait until later when penalties start kicking in!