



Business & Commercial Law

Commercial Leases and Related Issues

When acting for a Landlord or Tenant in connection with a new Commercial Lease to be granted there are certain matters to be included in the Lease which ideally should be agreed between the parties in advance.

- The term of the Lease
- The annual rent
- How often rent is to be reviewed, if at all
- Who is to be responsible for the repair and maintenance of the interior and exterior of the premises
- Who is to be responsible for maintaining insurance on the premises
- Whether there are to be any restrictions on the Tenant's ability to assign the Lease to a third party or grant an Underlease to a third party
- The permitted use of the property
- The restrictions to be placed on the Tenant during occupation
- Whether the Lease is to have the protection of the Landlord & Tenant Act 1954 (see p2)

Once the basic terms have been agreed the Landlord's solicitors will produce an initial draft copy of the Lease for approval by the Tenant's solicitors. The Tenant's solicitors will then mark on the initial draft any required amendments for the subsequent approval of the Landlord's solicitors. Once the Lease is in an agreed form final copies will be prepared for signature by both parties.

During this process the Tenant's solicitors will raise appropriate enquiries relating to the premises with the Landlord's solicitors and will be particularly concerned to ensure that planning permission is in place for the proposed use of the premises, that if the Landlord is responsible for effecting insurance on the property that the property is fully insured, that there are no matters registered with the local authority as would potentially affect the use of the premises e.g. road schemes, planning applications or Enforcement Notices, that the premises do not contravene the provisions of the Disability Discrimination Act in terms of access and facilities and also that there are no environmental issues to be aware of.



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After Completion of The Lease

The Tenant is responsible for paying any Stamp Duty payable on the Lease within 30 days of completion. The amount of Stamp Duty is dependent on the term of the Lease and the average annual rent.

Following payment of Stamp Duty if the term of the Lease is greater than seven years the Lease document will need to be registered at HM Land Registry and the fee payable on application will depend on the level of rent.

Assignment of Lease

There is often a provision in a Commercial Lease to allow the Tenant to assign the Lease on to a third party with the written consent of the Landlord. The Landlord would of course need to see references for the incoming Tenant and be happy that the incoming Tenant can comply with the Tenant's obligations set out in the Lease including the payment of rent. It is often the case now that the Landlord will require the outgoing Tenant to sign a document called an Authorised Guarantee Agreement effectively stating that should the incoming Tenant not pay the annual rent and any service charge payable under the terms of the Lease, the outgoing Tenant will act as guarantor and settle any sums in arrears.

Landlord & Tenant Act 1954

This Act deals in particular with procedure for the renewal of Leases of business premises and also termination. The provisions confer a certain degree of security for the occupying Tenant provided that he or she has observed the obligations set out in the Lease document.

Under the 1954 Act a Tenant occupying business premises has the right at the end of the term of the existing Lease to negotiate the terms of a new Lease from the Landlord. The Landlord can only refuse the Tenant a right to a new Lease under certain circumstances, for example persistent delay in paying rent, neglect of the Tenant's repair obligations or if the Landlord requires the premises for his own occupation.

The renewal process can be instigated by either the Landlord or the Tenant. The Landlord can serve a 'Section 25 Notice' on the Tenant at least six months but no more than twelve months before the date specified in the Lease for termination and the Notice must state whether or not the Landlord is opposed to the grant of a new Lease. If he is offered reasons must be stated. The Tenant no longer needs to serve a Counter-Notice on the Landlord.

Alternatively the Tenant can serve a 'Section 26 Notice' on the Landlord again at least six months but no more than twelve months before the date specified for termination. The Landlord must then serve a Counter-Notice within two months if he wishes to oppose the renewal of the Lease.

Either party may apply to the Court for the renewal of the Lease. If a Section 25 Notice has been served the Landlord or the Tenant can apply to the Court at any time. If however a Section 26 Notice has been served the Court will not entertain an application for renewal made before the end of the period of two months beginning with the date of the request unless the application is made after the Landlord has served a Counter-Notice that the Landlord will oppose an application for the renewal.

The above provisions of the Landlord & Tenant Act 1954 can be excluded from a commercial Lease by the Landlord serving on the Tenant a Notice not less than 14 days before the Lease is to commence and the Tenant must then reply by way of a declaration. There is however an accelerated procedure whereby the above can be dealt with within the 14 day period.



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Commercial Property Sales & Purchases

The main stages of the Commercial Property Conveyancing process are similar in nature to those of residential conveyancing. Solicitors acting for purchasers of commercial property will however take care to carry out more detailed searches particularly to ensure that the actual or proposed use is authorised by the local authority and also that there are no environmental or contamination issues to be aware of.

Planning

There are a number of categories of authorised uses for commercial properties e.g.

- Class A1 – retail shops
- Class A2 – financial and professional services
- Class A3 – sale of food and drink
- Class B1 - business (of a Class permitted in a residential area)
- Class B2 – general industrial
- Class B8 – storage or distribution

It is important to ensure that the correct planning permission is in place.

Environmental Contamination

In all cases, but particularly when dealing with e.g. a purchase of a property on an industrial estate, it is vital to make full enquiries as to whether there has been or potentially will be an adverse effect on the property from contamination. A detailed environmental search will be carried out by the Purchaser's solicitors and specific enquiries raised if necessary with the Seller's solicitors. The danger is that if full enquiries are not made and the Purchaser completes the transaction he or she may be subsequently responsible for rectifying contamination problems at substantial cost.

Stamp Duty

As with commercial Leases and also purchases of residential properties Stamp Duty may be payable by the Purchaser on the price paid for the commercial property. The Stamp Duty rates are as follows:

£0 to £125,000 Nil
£125,001 to £250,000 1%
£250,001 to £500,000 3%
£500,001 plus 4%



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When dealing with a business acquisition there are certain important issues to be considered.

1. Tax

When acquiring a business it is often the case that the total price payable is apportioned between the relevant elements of the business i.e. property, fixtures fittings and equipment and also the goodwill of the business. The apportionment of the price may well have tax consequences for both the Seller and the Purchaser of the business and it is important to obtain advice as to the most tax effective apportionment.

One will also need to consider whether or not VAT is to be charged on the transaction. Generally speaking if the transaction is a sale of a business as a going concern VAT will not be charged on the price. If however VAT is to be charged it is important of course to ensure that both parties are VAT registered.

2. Employees

It is usually the case that any persons employed by the Seller of a business are taken on by the Purchaser and pursuant to the relevant Transfer of Undertaking provisions the Purchaser will also take on any entitlements accrued by each employee and also any ongoing claims. It is therefore vital prior to exchange of contracts and completion to ensure that no claims are being brought by any of the employees and also to see copies of the relevant employment contracts and records.

3. Supply contracts

The Purchaser will need to obtain details from the Seller of any existing supply contracts which the Purchaser will take on following completion.

4. Fixtures Fittings and Equipment

The Purchaser should check whether all equipment to be acquired by him is free from charges e.g. Hire Purchase Agreement or Credit Agreement so that the Purchaser can be sure that following completion the equipment passes to him or her absolutely.

5. Stock

In normal circumstances the stock in trade of the business is valued by the Seller and the Purchaser on the day of completion or at least the day before as of course stock levels will fluctuate over time. The Business Sale Agreement should include a provision allowing for any dispute between the Seller and the Purchaser as to the value of the stock to be referred to an independent firm of valuers.



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What Form Should My Business Take

When starting a business consideration needs to be given as to what form the business will take i.e.

- Sole trader
- Partnership
- Company Limited by Shares
- Company Limited by Guarantee

These forms have different structures and tax and accounting rules and sound advice will need to be sought as to the most appropriate form for a particular business.

Generally speaking in the early stages of a relatively small undertaking the form of Sole Trader or (if more than one person is involved) a Partnership may be suitable and the appropriate agreement can be drawn up to suit the business relationship. In terms of a Partnership this would deal with e.g. the split of profits and debts, holiday entitlements and other conditions for the Partners' investment.

If it is clear that the undertaking will need to employ a number of staff and/or enter into substantial contracts then a Limited Company may be preferable. Limited liability restricts the liability of directors, but directors may be required to give personal guarantees in relation to loans given to the business by e.g. a bank and the directors are also subject to personal duties such as:

- Not to make a secret profit
- To exercise his or her powers in the interests of the company as a whole
- Not to act so as to be guilty of wrongful trading

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- Family law
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- Claims and disputes
- Debt recovery
- Professional negligence
- Contested probate
- Bankruptcy
- Insolvency
- Property matters
- Charities and voluntary organisations
- Wills and trusts
- Probate
- Inheritance tax planning
- Powers of attorney



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