

RENTING BUSINESS PREMISES IN THE UK

Methods of Holding Property

The ways of holding property in England and Wales are broadly similar to those in Ireland. The principal ways are as follows:

1. Outright purchase of a property by way of freehold or long lease. This will involve payment of the full purchase price.
2. Renting under a commercial lease. There are long and shorter term leases. It is now usual to agree that rights of renewal will not apply at the end of the lease; New leases will have to be negotiated at the end of the term. 15 year leases are quite common. As in Ireland, rent reviews are normally every 5 years on an upwards only scale. Lavelle Coleman has produced detailed booklets on Commercial Lease Terms in England and Wales which are available.
3. Licence Agreement. This is the use of property under a contract. There would be no exclusive possession. Typical examples include the use of facilities in a larger building or port facilities. Licence agreements tend to be more flexible than leases.

Renting or holding under a licence agreement is often the best option for a business in its early days, when it is getting established. It ties up less capital and allows it to be invested in the business instead.

Lease Issues

As well as the practical considerations in terms of location and convenience, there are legal considerations of which need to be fully assessed in advance of entering a lease or licence. The premises must have planning permission to allow for the particular type of use. The premises must comply with Building Regulations for the

particular business. The premises must also comply with Workplace Regulations under Health, Safety and Welfare At Work legislation.

Landlord and Tenant Law in England and Wales allows almost complete freedom to negotiate the terms of a Lease. The Tenant's right of renewal of a lease can be "contracted out" by following a simple procedure. The parties can agree whatever term (lease period) they like knowing that at the end of that term the Lease will end and the new Lease will be a matter for negotiation.

As in Ireland, it is possible to lease a premises on a monthly or quarterly basis without any definite period or "term" being agreed. This arrangement will roll over and can be terminated by either party at any time by giving notice. For example a Landlord may terminate for the purpose of negotiating higher rent or a tenant may terminate to leave the property.

Written Lease Agreements are typically for terms (i.e. duration) between three and thirty five years. Fifteen years terms are becoming very common. A tenant could, for example, negotiate a right to a further term at the end of the initial term typically at a revised market rent. A tenant could also have a "break option" (i.e. a right to terminate a lease on a fixed date). Break Options can be important in the early days of a business as they represent a limit on duration of the tenant's commitment.

Rent

Rent is usually agreed as a commercial matter, at the prevailing open market rates. Rent is usually due quarterly in advance. If the lease is for a short term (e.g. up to five years) a new rent had been negotiated at market rent at the end of the term. Rent free periods may be available, depending on the state of the market.

A personal guarantee from a director or shareholder where the tenant is a company without substantial trading record may be required. There is scope for negotiation in relation to the terms of the guarantee. For example, a guarantee can be limited in duration term or amount. Guarantees may terminate by agreement provided the accounts show sufficient free cash earnings after a certain period.

In longer leases, rent is reviewed at regular intervals usually every five years. As in Ireland rent reviews are usually on the basis of the higher of the pre-existing rent or reviewed market rent at the rent review date. The British Government has published a Code endeavouring to provide upwards and downwards only rent reviews.

Many leases granted in London and the South East in the early 90's remained at their initial rent granted in the late 80's early 90's due to rental values stagnating. However downward rent review clauses are very rare.

Where the premises is part of a larger building or services are being provided a service charge will usually be payable. It is important that a lease is reviewed in relation to the fairness of the service charge provisions.

A Lease can end up being a significant asset or a significant liability depending on the terms and conditions and on how the rental market has changed since it was granted. There is very little set down by law as to what lease may contain. Commercial leases will be typically be 30 – 60 or maybe over 100 pages long.

Typically, the key commercial terms of a lease are agreed through the valuer, estate agent or surveyor. The more detail terms and conditions of the Lease are then negotiated at length through the parties Solicitors.

Other Key Clauses

Liability for repairs can a contentious area. Landlords will frequently seek to impose onerous repairing obligation on tenants. An onerous repairing clause can require the expenditure of substantial sums of money. Professionally organised landlords tend to be rigorous in the UK in following up on repair requirements under so called Schedule of Dilapidations

Any alterations to the premises will usually require the Landlord's consent. A change of use will also usually require the Landlord's consent. An existing lease will typically specify a particular use. Any change to this use will require consent.

The clause regarding alienation i.e. transfer, sub-letting, mortgaging etc. are critical. Typically Landlord's consent will be required. The Landlord cannot unreasonably withhold or delay consent by law. However, unlike in Ireland, it is possible to specify certain criteria in relation to grant of consent in advance. The law in England and Wales gives better protection to tenants as Landlords have a duty to reply promptly and justify their reasons before refusal of consent. Any failure to grant consent can leave the Landlord liable in damages to a Tenant.

Lavelle Coleman has extensive experience in Business Leases in England and Wales. We have extensive experience in negotiating the terms of commercial leases from both landlord and tenants perspectives.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.