

Hints and tips to leasing a premises

Leasing premises is complex. It can involve: property law issues, planning issues, guarantees and specific legislation. Finding your way through the maze is time consuming. The following are some *hints and tips* to help you during the process.

Understand what you are leasing

This may seem obvious but a closer look at what you are leasing is essential. A lease will normally include:

- A description of the property
- A list of the chattels or fixtures and fittings and who owns them.

Carefully check the document for what you are leasing. You should also consider the following:

- Rent - is it inclusive of GST?
- Is there a rent free period?
- What is/are the option period or periods?
- How is rent increased - fixed percentage increase, CPI, Market Review or other?
- What are the outgoings and how can these be calculated?
- Will the landlord provide any works? If so, what are they and what costs will you be responsible for?
- What are your fit out requirements? What are the costs associated with these fit out requirements? Are you required to use a specified contractor to complete the fit out?
- What is the permitted use? Is it wide enough to cover your proposed trade?
- What is the area? Can that area be defined by walls or in any other way?
- What is the bond, deposit or rental guarantee? Does this increase from year to year?

- What are the requirements for renewing an option? If it is a Retail Shop Lease then the landlord must provide you with notice before you exercise your option.
- What Special Conditions are there within the Lease (if any)?
- What are your duties under the Lease? What are the landlord's duties under the Lease? Leases normally include duties such as keeping the premises clean. You should review these duties to ensure that there are no specific and unusual clauses.
- What are the insurance requirements? You should provide a copy of the insurance requirements to your insurance broker or insurance company to ensure that you can obtain this level of insurance.
- Does the Lease provide a plan? Is that plan what you have agreed to?
- What are the guarantee and indemnity provisions? These may need review by a lawyer.
- What are the signage provisions? You should provide details of your signage requirements to the landlord as soon as possible to ensure that you receive approval and consent prior to entering into the Lease.
- When will those landlord works be performed? What happens if the landlord does not perform those works?
- What Council requirements must be met for the premises?
- Does the building classification by the Council allow your proposed use?
- When are you required to redecorate the premises? What are the requirements of that redecoration? Are you able to meet those requirements?

- Do you require a mortgage over the lease? If so, what are the requirements under the Lease?
- Are there any relocation clauses?
- If there is a mortgage over the title then you may be required to obtain the Mortgagee Consent. Those costs should be obtained.

Understand your **costs**. You should also talk to your lawyer and the landlord about the costs. Sometime you pay the landlord's costs.

How do you lease the premises?

You will need a lease prepared. There is no specific form. The terms of each lease may be quite different although there are clauses which common to most leases.

At this point, consult your lawyer to review the lease and consider:

- What special conditions may be required
- What entity you should use to lease the premises – sole trader, partnership, company or trust?
- What due diligence will be required
- What costs will be incurred

Special conditions

Special conditions to the contract typically include:

- Due diligence – such as mechanical review of vehicles or plant and equipment or a review of the financial records of the company
- Rent free periods
- Special licence requirements

Each lease and each business is different and special conditions should be tailored to the business you are buying.

After the lease is signed

Each party has legal obligations that it must meet after the contract is signed:

The tenant must typically:

- Pay the deposit/bond or arrange a bank guarantee
- Complete the fitout

The landlord might:

- Provide certain works before you take possession

Special conditions may oblige either party to satisfy other requirements.

The Buyer should immediately apply for an ABN and a TFN.

You can **terminate** the lease in certain circumstances and there is no cooling off period for retail shop leases. Great care should be taken before deciding to terminate a contract.

Your **due diligence** requires special mention:

- your lawyer can conduct various searches of the premises
- your lawyer should review the lease and any other documents before you sign them
- your accountant should conduct a review of financial records

Your due diligence must usually be conducted within strict time limits. You may lose the benefit of the due diligence provisions if the time limits are not strictly observed.

Your due diligence should be tailored to the specific business/premises. For example, a business/premises conducted within a body corporate may require an inspection of the body corporate records.

Your costs

Costs will vary for each transaction. You should consider the following possible costs:

- Your legal fees including search costs
- Your accountant's fees
- The landlord's costs (if any)

- Insurance costs
- Bank guarantees or bonds/deposits for the lease (if any)
- Your bank's costs (if any)
- Your marketing campaign
- Working capital for the business
- Employing staff

This advice

This advice has been prepared as a guide only. It does not replace specific legal advice. We encourage you to contact *Matthew Yates* **0428 898 100** for specific legal advice.

Best of luck!

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