Taking on Leased Premises

Taking on a Lease?

Are you getting expert legal advice?
No …..
You should. Besides the risk of accepting hidden liabilities, most things are negotiable if you know how.

Is the lease for more than ten years?
Yes …..
Short (five-ten year) leases are the current trend and provide greater flexibility.

Have you checked the "going" rate for the location, type of premises?
If no …..
An independent view is useful and can strengthen your negotiating position.

Is there a "full repairing" obligation?
If yes …..
As long as the lease is under five years you should try and negotiate to delete the clause or at least cap service charges. A property survey may be needed to detect possible liabilities.

Are you VAT registered?
If no…..
Beware: leases invariably allow the landlord to charge VAT at any time. Try to get your landlord to agree not to impose VAT during your term.

Is your lease a new lease?
If no ….
It may mean that you remain liable even after the lease has been sold on several times. Check your buyer is financially sound. Also, you may have to foot the bill to put the premises into a reasonable state of repair.
If yes …..
If you sell it later you will probably have to guarantee your buyer (but not any subsequent buyers). Check your buyer is financially sound.

Saddled with on-going liabilities, eg for later tenants?
If yes …..
Problem if no break clause exists. Negotiate if possible, especially for short-term leases.

Rent review after less than five years?
If yes …..
This is unusual unless lease is not a multiple of five (e.g. twelve years)

Upwards-only rent review?
If yes …..
Common, but worth trying to negotiate away.

Checked assumptions for calculating market rent at review?
No …..
Take care! Leases can contain wording that will cause large, unreasonable increases.

'Break clause' to allow you to end the lease early?
No …..
Get one if you can. Try and make sure it is exercisable after a certain date, not only that date – and that it is not conditional on full performance on the lease.

Know level of business rates?
Yes/No …..
Get valuer's advice – don't rely on unverified statements from landlords.

Being charged a premium?
Yes …..
Rare these days unless a very unusual retail site. Valuation essential to assess reasonableness.

Rent-free period offered?
Yes …..
Reflects state of market, but should be seen in context of the lease – the landlords' need to make money too.

Planning to improve your premises?
If yes …..
If adding genuine value to the asset, negotiate offset eg, a rent-free period. Otherwise, make sure works are not included in rent review valuations.

Have you checked planning permission for intended use?
If no …..
Take care! This is your responsibility. You have no claim against the landlords if you discover consent is required after moving in.

Taking on an assigned lease?
Yes …..
Take care! You may be taking on **all** liabilities for repairs etc, not just those from when you move in.
Also ….
The landlord must give consent, and will want to vet your financial status.

Offered right to transfer the lease and sublet?
No …..
Negotiate. It gives you the right to sub-let if you wish, now or later.

Taking on Leased Business Premises

A major part of the cost of running a business is having premises. Including rent, rates and repairs, it will typically take between ten and fifteen per cent of your overheads so it is vital to get the right premises – suitable for your needs, now and in the future, and on the right terms.

Few businesses have the capital to buy the freehold of new premises, so taking out a leasehold is the most common way to proceed. But remember that acquiring business premises is quite unlike buying or leasing a residential property. For one thing, you need to think about a lot more than the rent and the length (or term) of the lease. For another, the terms of business leases are much less standardised, which means that careful reading is always required. On the other hand, just about everything is up for negotiation if you can present a good case. Subject to market conditions at the time.

Be particularly wary of restrictive terms and conditions, otherwise your premises can become a problem you could do without. As many firms found to their cost during the last recession, the time to wish you had a 'break' clause or the right to sub-let is not when your profits are falling.

A range of expert advice is essential when negotiating a lease. In addition to a solicitor, you should be prepared to use a surveyor and/or a valuer so that you gain specialist advice on "going" rates and terms for the type of premises in question, to report on the possible liabilities for repairs and prepare planning permission.

Checklist

- Do you know the 'going' rent, terms, etc for your premises?
- Do you know what is accepted practice for the terms of the lease, taking into account type and market conditions?
- Have you checked the level of business rates that will be levied?
- Are you sure the term (length) of the lease is appropriate for your business plans?
- Is the lease flexible? Will it allow you to surrender the lease early?
- If you have a full repairing obligation, have you had a thorough survey on the state of the premises?
- Have you checked that you have planning permission to use the premises for your type of business?
- Will your bank, accountant and lawyer give a good reference about your business to the landlord?
- Have you checked the rent review clause carefully? Is it fair enough?