

Once you have decided on your business plan, one of the most important decisions to make is the type, location and cost of the premises from which you will operate. The terms of any lease will also dictate how easy it will be for you to use your premises to the best advantage of the company. The temptation is sometimes to sign up to a lease too hastily, with the result that tenants can often “repent at leisure” when they discover the limitations of the terms to which they have agreed.

If you are intending to take on a short business lease of premises it is often wise to instruct an agent. A good agent who knows what you require will know where to look and what to recommend and he or she can negotiate terms to suit your needs as far as possible.

Some companies may wish to start in serviced accommodation and some information about this is included at the end of this section.

Rent and other outgoings

The level of rent will largely depend on how much you can budget for this in your business plan. However you should be aware that there are likely to be other outgoings, in particular service charges, insurance and rates.

Rent

This is usually payable quarterly in advance, which means a quarter of the annual rent becomes due on 25 March,

real estate

24 June, 29 September and 25 December each year and this amount is due on those dates for the following quarter. If the rent is not paid on the ‘due date’, the rent will be in arrears and the landlord is likely to have the right to terminate the lease as well as sue you for the rent or take goods for the amount of rent owed.

Service charges

These are charges that the landlord makes for keeping up the ‘common parts’ such as lifts, stairways, gardens, car parks etc. These are usually payable at a different time from the rent and some will be payable in advance with a balancing figure payable at the end of the financial year once the work has been done.

Insurance

The landlord will usually be under an obligation to insure the building against fire and other disasters which may damage the building. There will then be a term in the lease whereby the premiums for this insurance will be payable by the tenant. However, this will not cover any equipment you have brought onto the premises, and will not cover any business interruption you may suffer as a result of a fire. You should ensure that you take out your own insurance for these risks.

Rates

As a tenant you will usually be responsible for the business rates payable on the premises unless these are specifically included in the rent payable.

The term of the lease

A relatively short term of say two to five years will probably be the most attractive to young and start-up companies.

When considering the length of the term, it is worth remembering that you may well be liable for the rent throughout the term even if you leave the premises before the end of the term.

Break clauses

One way of being able to move out of the premises during the 'term' and not be liable for the rent for the rent term, is to negotiate a break clause into the lease. This means there is a provision in the lease which allows the tenant to serve a notice on the landlord terminating the lease after, say, one or two years.

Security of tenure

Generally business tenants have security of tenure in their premises under the Landlord and Tenant Act 1954. This means that, provided you are in occupation for the purposes of your business, at the end of your lease you have certain rights to obtain a renewal of the original lease from the landlord, other than in certain circumstances, (such as where the landlord needs the premises back for its own use or where he/she intends to extensively redevelop or refurbish the premises), in which case you would be entitled to some compensation for having to leave.

However, where the tenant only wants a short term of say six months to five years, a landlord will often require that the lease be excluded from this Act. This is a very common practice but does mean that a court order has to be made excluding the lease. This will be done by agreement between you and the landlord. Your solicitor will have to sign an application to the court on your behalf and submit it to the district judge for the order. If you do enter into an "excluded lease" this will mean that you will not be able to occupy the premises after the term comes to an end, unless you negotiate a new lease at that time.

Alterations

If you want to alter the layout of your premises as the needs of your company change, you will have to ensure that your lease allows you to do so. You will probably have to get consent from the landlord to carry out any alterations. The landlord will expect to be reimbursed for

the costs of preparing any formal documents. However the landlord cannot unreasonably withhold his/her consent.

Before entering into a lease it is important to check that the building already has all the cabling and other services that your company requires, as putting in these services after you have signed up to a lease without the agreement of the landlord, is likely to be an 'alteration' requiring the consent of the landlord later.

Repairs and decoration

Tenants are usually responsible for carrying out repairs to the building and carrying out redecoration at intervals during the term of the lease. The extent of this responsibility will vary and can be negotiated. However, once agreed, failure to carry out repairs etc will be a breach of the agreement and can give the landlord the right to serve a notice on the tenant requesting that the repairs be done. Failure to stick to the agreement may also result in the landlord terminating the lease.

Permitted use of the premises

There is usually a clause in the lease which will limit the use for which the premises can be occupied. This may be because the landlord wants to restrict the use but there may also be planning restrictions on the use of the premises. Always make sure the permitted use will include that carried, or proposed to be carried out by your company.

Dealings with the premises

Sub-letting

You may decide to obtain premises that are larger than you need at the beginning but will allow your company to expand. First of all consider carefully the realistic needs you will have for expansion during the term of the lease. If you decide to take on extra space, then it makes sense to sub-let that part you do not need to another tenant. You will then become that sub-tenant's landlord. In order to do this you will have to ensure that your lease allows this and you will almost certainly have to obtain the landlord's consent in the same way as for carrying out alterations. The sub-lease to the tenant may have to be approved by your landlord and its terms must impose back-to-back obligations to match those which you have accepted in your lease. The term of the sub-lease should also be shorter than the term of your lease. You could also sub-let

the entire premises to another tenant if you wished to move out. However, the landlord will want to make sure that the new tenant is suitable and of sufficient financial substance to be able to pay the rent.

Assignment

Another way of being able to leave the premises during the term, would be to 'assign' the lease. This means that the lease to you is 'sold on' to a new tenant in your place.

Again the landlord's consent will be required but he or she cannot withhold this unreasonably. Even where you assign the lease in this way you will usually be required to "guarantee" that the new tenant will pay the rent and keep to the terms of the tenancy. This guarantee will fall away only when the new tenant himself assigns the lease or the term of the lease expires.

Rent review

If you take a lease for more than five years, you are likely to find the landlord will want to be able to put the rent up after that time. The ability for him to do this will be contained in a "rent review clause". The complexity of these clauses and timings will vary from lease to lease but at the time of negotiating a new lease this should be looked at carefully so that you know the basis on which the rent is likely to be raised by the landlord in the future.

Serviced accommodation

Some start-up companies prefer to move into serviced accommodation in the first instance. This means that rather than enter into a lease, you can set up business in serviced office accommodation. There is no security of tenure as there would be under a lease and you would occupy under a licence agreement. The charges made would usually cover such items as business and water rates, heating and lighting, regular cleaning and maintenance. A reception and other office services will often also be provided at an extra charge.

Staff accommodation

Occasionally key staff need to be provided with temporary rented accommodation. This can be difficult for a small company, especially where residential properties are at a premium. One way of addressing this is for the company to lease a house or flat and, as a term of the lease, have permission from the landlord to allow employees to occupy this either on a licence or an assured shorthold

tenancy. This arrangement is not always as straightforward as it seems, as the lease from the landlord will not be governed by housing legislation, whereas the occupation by an employee may be. Alternatively your staff may need tenancy advice or advice on house purchase if they intend to move into the area.

Some steps to take:

- Decide on:
 - the sort of property you want;
 - the best area for your business;
 - the amount of annual cost you can afford;
 - how long you want to commit to the property.
- Instruct a good agent.
- Check for any 'hidden costs' (such as service charges, repairs, insurance, rent review).
- Is there the opportunity to stay on after the end of the tenancy or to end it earlier?

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