

## **Five Facts About...negotiating commercial leases**

We often become involved in the negotiation of commercial leases after all of the major terms have been agreed and set down in outline form in Heads of Terms by the Landlord's agent. Even at that early stage, there are some pitfalls to watch out for and we have set out five key issues below.

### **The right to renew**

The Landlord and Tenant Act 1954 includes a statutory right for a tenant to apply to court for a new lease at the end of the term of the old one. The landlord can only resist that application in a certain set of narrowly defined circumstances, making this a very important right for tenants. However, it is possible to give up the right by contracting out of it or "excluding" it. This is something to watch out for in early stages of negotiations because it is usually included in the Heads of Terms. As a rule of thumb, you can expect to have this right if your lease term is five years or more and you can expect it to be excluded if your lease term is under three years but each case is different e.g. a landlord may insist that all leases in an office block are excluded so that he has the flexibility to change the configuration of the office suites later on.

### **Rent Deposits and Guarantees**

These days we see more and more landlords requiring rent deposits and guarantees. If your business is less than three years old it is likely you will be asked for one, or even both, of these forms of security. If your business is a limited company, its directors may be asked to provide guarantees. If you feel that your business' financial circumstances don't justify a rent deposit and/or guarantees, it's a good idea to raise this as early as possible.

### **Repair**

Generally, tenants find themselves responsible for all repairs one way or the other, directly responsible for internal repairs and indirectly responsible for structural repairs through a service charge. Responsibility for repairs will depend on various factors such as the type of property (e.g. an office suite in a building may have different repair and service charge obligations to a warehouse on its own plot) and the length of the term. You should make sure that you know exactly how this will work before reaching an agreement on the rest of the terms of the lease.

### **Ask about VAT**

VAT isn't automatically payable on rent but some Landlords elect to charge VAT. This can make a considerable difference to your annual outlay so it's best to make sure you know where you stand from the outset.

### **Environmental Matters**

It's reasonable to expect you to clean up any of your own environmental damage but it's not unusual for leases to include provisions expecting you to clean up any environmental harm which is discovered during the term of the lease, even if the damage was done by a previous tenant. This is often something which is just slipped into the draft lease and battled out between the solicitors but, if you're taking a lease of an industrial unit, there's no reason not to clear the air on this issue from the outset. Although the risk of prior environmental harm may be relatively small in many



**Hitchin Office**, 7/8 Portmill Lane, Hitchin, Hertfordshire SG5 1AS  
Tel: 01462 628888 | Fax: 01462 631233

**Welwyn Garden City Office**, Gate House, Fretherne Road, Welwyn Garden City, Hertfordshire AL8 6RD  
Tel: 01707 887700 | Fax: 01707 887701

[www.hrjlaw.co.uk](http://www.hrjlaw.co.uk)

cases, you don't know what the tenant before last was doing at the property (or the one before that etc) so you don't have any way of assessing the extent of the risk and clean up costs can be considerable. The Landlord should have provisions in its leases which enable it to recover from whichever tenant actually caused the damage in any case.

For more information about commercial leases and all other commercial matters, contact a member of our Commercial Property team on 01462 628888.