



Flynn O'Driscoll Legal Update

Top Ten Tips when Renting Commercial Property

If you are contemplating investing in renting commercial space in Ireland, Joy Comber, of Flynn O'Driscoll, Business Lawyers, has set out our top 10 tips.

1. Type of Agreement

Understand the type of agreement that you will you be required to sign. A Lease provides longer term security compared with a licence, which is usually available for shorter term occupancy. Licences can be a good option for new ventures such as for serviced offices but provide no security of tenure.

2. Know Your Business Needs

In addition to knowing what type of commercial property will be appropriate for your present and future business needs, understand what you will require to operate effectively from a property. Do you require flexibility in terms of opening hours? Do you need to grant concession agreements to third parties? Do you need the right to share possession with a group company or car parking for customers? Do you need exclusivity? The terms of the agreement are crucial to the success of a Tenants business. In theory Leases are negotiable. Knowing what

3. Negotiation of Terms

Retain a commercial agent who will negotiate and agree the best commercial terms for you. An invaluable source of knowledge of the local property market, a commercial agent will know what can be realistically and practically achieved in the market. Ensure that the Heads of Terms reflect your understanding of the commercial agreement with your Landlord. Although not legally binding, once agreed, it can be very difficult to change Heads of Terms. Badly drafted Heads of Terms or no Heads of Terms result in uncertainty and consequently delay and increase the cost of legal negotiations. Never sign any agreement without the advice of your solicitor.

4. Financial Obligations

Renting commercial property can involve a myriad of hidden costs. Understand your liabilities for the term. Obvious costs are rent, service charges and insurance. Understand



how these have been calculated, what they cover, when and how they will be reviewed and at what intervals they are payable. Ensure that you are happy with how the property has been measured. Be aware that upward only rent reviews are no longer permitted by law so that the rent can go up or down on rent review. It is important that the Landlord does not retain control over the rent review process as there is the potential for no rent review to be initiated in a poor rental market. There may be other costs associated with the renting of the property contained in the Lease, such as commercial rates and stamp duty. Your solicitor will be able to identify potential areas of financial cost and resist any inappropriate inclusions by the Landlord.

5. Security

Given the financial implications, careful consideration should be given to the party entering into the agreement. Ideally a limited liability company, though depending on the trading and financial record of the company, some security in the form of a rent deposit or personal guarantee may be required. Deposits are often a multiple of the rent. As it can increase start-up costs try to negotiate a reduced deposit and seek its release after a minimum period of time once a track record for meeting the obligations under the agreement has been established. Deposit monies should be held separately from the Landlord's personal funds. If personal guarantees are required, these would be sought from the directors or principal shareholders. Try to limit the terms of a guarantee. For example seek the release of the guarantee after a fixed period or agree a

rolling guarantee for the term of the Lease but with liability limited to one year's rent and outgoings.

6. Survey

Be fully aware of the overall condition of the property before entering into the agreement. Carry out a building survey. This is important from the perspective of the repair covenant which can expose a tenant to unforeseen cost. Depending on the nature of the agreement, each party will assume different responsibilities for repair and maintenance of the property, both internally and externally. As a general rule if a Lease is in excess of 5 years, it is likely that the tenant will be responsible. Try to agree a schedule of condition of the property with the Landlord at the outset recording the exact condition of the property at the date of the Lease with a provision in the Lease that the Tenant is not required to repair and maintain the property in any better state of repair and condition than exists at the date of the Lease.

7. The End of the Agreement

The agreement will regulate how the property is to be returned to the Landlord at the end of the term. Important considerations are repairs, alterations and occupational interests. Agree with the Landlord at the outset whether your fit out works or any alterations carried out during the term will need to be stripped out and the Premises reinstated to its original condition. In terms of repairs, the Landlord may serve, a Schedule of Dilapidations by the Landlord setting out the works to be completed before the end of the term or a payment in lieu of the works. Dilapidations can be contentious and very costly. Get proper advice in relation to the state of repair of the



premises at the outset and the extent of repair covenants under the Lease and manage the costs of ongoing repairs during the term of the Lease. Ensure that any occupational arrangements granted to sub-tenants or licensees expire before the end of the term to ensure that vacant possession is returned to the Landlord.

8. Break Options

It can be difficult to know how long a commercial property will be suitable for your business. Understand your options if you wish to remain on, in, or leave a premises. Negotiating a break clause can provide some flexibility enabling the termination of the Lease without having to find another tenant to replace you. Break clauses are strictly construed and can often be lost on technical grounds for failing to comply strictly with the terms of the break clause such as the time limits, compliance with covenants and conditions in the Lease and financial payments. Ensure that you are properly advised as to what the requirements of a break clause are and that you can comply with these. Recent case law in the UK has interpreted vacant possession as including the removal of tenant's fixtures and fittings. Your solicitor will seek to resist any onerous pre-conditions to the break. In the absence of a break clause, the alienation provisions in the Lease permit the assignment or subletting of the premises with the Landlord's consent, which cannot be unreasonably withheld.

9. Renewal Rights

Options to renew in a commercial Lease are not common as there may be a statutory right of renewal. A tenant's right to a new Lease depends on how long the tenant has been in occupation. Under Irish Landlord and Tenant law a business tenant may have the statutory right to a new Lease on the same terms as the

existing Lease (other than rent) provided that it has been in continuous occupation of the property for more than 5 years. Landlords usually require the tenant to waive these rights before signing the Lease. Given the investment costs in a property, efforts should be made to resist this requirement. Obtain the necessary confirmation at Heads of Terms stage. A licensee under a licence has no statutory rights of renewal.

10. Register Commercial Lease

On completion of the Lease, it is now a legal requirement to register particulars of the Lease on the commercial Lease register within 30 days of receipt of the stamp certificate from the Revenue Commissioners.

We will keep you updated as more of the sections are commenced.

Should you have any queries arising out of the foregoing please contact either of the undersigned who will be happy to assist.



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