

Stop before you set up shop

Last reviewed: November 2020

We look at the main issues for a retailer to consider when taking on a lease in Guernsey or Jersey.

Getting started

Often a retailer will view premises and decide on the store they wish to occupy before making any professional appointments. Negotiating the deal themselves can seem like a tempting, cheap and quick option. However, it is important to be aware that, once they have agreed to take the premises on certain terms (which often involves signing up to 'Heads of Terms') it will be harder to renegotiate the specific terms of their letting later on.

We would therefore recommend that, prior to agreeing to take a lease of a property, a retailer appoints both a commercial property agent, who can provide advice on market conditions as well as the suitability and value of any potential premises, and a lawyer who can work with the agent to assist in the negotiation of the terms at the outset, rather than having to battle to renegotiate terms at the lease drafting stage.

Once the right premises have been found, due diligence investigations should be carried out on behalf of the retailer to confirm that there are no restrictions on the permitted use (e.g. the type of business that can be run or goods that can be sold) and/or condition of the premises.

Depending upon the extent of the liability the retailer will be taking on under the lease, they may also wish to have a survey conducted of the premises and/or to instruct their lawyer to check title.

Lease terms

When it comes to the terms of the lease, the retailer should not be tempted to accept a 'standard form' and should carefully consider its requirements. For example:

Term

How long do they want the lease to run for? In Guernsey and Jersey, unlike in England, there is no security of tenure for commercial tenants on the expiry of the term of the lease and therefore the terms of any new lease are a matter of negotiation between the landlord and tenant at the relevant time.

A tenant may wish to consider whether a longer term with an option to determine, or a shorter term with an option to renew, would be preferable as the exact terms of these will need to be negotiated.

Rent and rent review

What is included in the rent? What about rates and taxes? In Jersey, it is important to check the position with regard to GST on the rent and other payments and whether your landlord is resident in Jersey for tax purposes.

If taking a lease of part of a building it is likely that a service charge will also be payable – has the retailer considered what this will cover and how much it is likely to be, particularly if the landlord is planning major

maintenance work? It may well be prudent to negotiate a service charge cap or to try to exclude certain major repair items.

In relation to rent reviews, the commercial property agent will be able to advise the retailer of the advantages and disadvantages associated with a review to market rent and/or a review in line with the Retail Prices Index.

Deposit or guarantor

Landlords often require either a deposit or a guarantor to secure the tenant's obligations under the lease.

If these are required the terms will need to be negotiated.

Alienation

The key way for any tenant to dispose of its interest during a lease term is to either assign it or pass on its obligations by way of a sublease. Often these alienation provisions cannot be exercised without the landlord's consent but the extent of any restrictions on the giving of such consent should be negotiated by the retailer's lawyer.

On a more practical level, certain businesses may require bespoke alienation provisions, for example a doctor's surgery might want to be able to grant subleases or licences to medical consultants or a hairdressing salon may wish to allow for the establishment of a beauty salon.

Alterations and rent free period

It is likely that a retailer will want to make alterations to the property before commencing trading, whether it is to alter the layout, put up signs or even install heating or air conditioning units. As most leases will contain restrictions on alterations, a retailer should aim to obtain the landlord's consent to its proposals prior to entering into the lease. The landlord is likely to require full specifications and plans and planning or building permission may be necessary.

The amount of any rent free period for fitting-out purposes under the lease should be negotiable between the parties. The retailer's commercial property agent can assist with this and the agent and the retailer's lawyer can assist with negotiating the terms of the yielding up provisions (which will dictate to what extent the works need to be undone by the tenant at the end of the term) and any licence for alterations to document the terms of the landlord's consent to the alterations.

Licence to trade – Jersey

A potential retailer must ensure it holds a licence to trade under the Control of Housing and Work (Jersey) Law 2012. This licence will also cover the number and status of employees that may be taken on. The Mourant Ozannes [Jersey Employment team](#) can provide all necessary advice and guidance.

Conclusion

There are key issues for a retailer to consider when negotiating and entering into a lease in Guernsey or Jersey. If these issues are dealt with at the outset, with advice and assistance from the appropriate professionals, it can prevent time consuming and costly errors from being uncovered at a later date and ultimately assist with the successful establishment and operation of the retail business from its new premises.

Contacts

A full list of contacts can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED