

Commercial Leases in Jersey



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Introduction

This briefing note is intended as an overview of some of the legal issues which should be considered when leasing commercial premises in Jersey. More detailed guidance or advice on specific subjects is available on request.

Movable and immovable property

In Jersey, leases fall into two categories: the “Contract Lease” and the “Paper Lease”.

Contract leases

Leases granted for a term of over 9 years must be passed before the Royal Court of Jersey on a Friday afternoon and they are registered in the Public Registry: hence the term “Contract Lease”. Because a Contract Lease is passed before the Royal Court, it is a public document and constitutes Immovable Property.

Contract Leases attract stamp duty on a sliding scale which is calculated by multiplying the annual rent by the term of the lease (up to a maximum of 21 years). Any premium paid by the Tenant also attracts stamp duty but deposits do not.

Paper Leases:

Leases granted for 9 years or less constitute Movable Property and do not need to be passed before the Royal Court. A Paper Lease can be completed on any day and simply involves the parties executing the lease. However, if a Paper Lease has the option to renew to extend the term beyond 9 years, then it will need to be registered in the Public Registry as a Contract Lease to be enforceable.

Paper Leases do not attract stamp duty.

Due to the Contract Lease/Paper Lease procedure (and the related stamp duty implications) leases are typically made for 9 years or less, or 21 years in the case of a Contract Lease.

Heads of Terms

There is no such thing as a standard commercial lease in Jersey! Any proposed transaction should begin with a document, which clearly sets out the primary terms that both parties have agreed to, known as “Heads of Terms”. The purpose of Heads of Terms is to reduce legal costs and give the parties more certainty as to the material terms agreed.

This document is normally drafted by the Landlord. At this stage the parties usually have not engaged their legal representatives, so when negotiating the terms of this document all communication should be on a “subject to contract basis”. This means that nothing is binding until the final form lease has been completed. However, in reality, if the Landlord has the stronger bargaining position, many Tenants find it difficult to depart from the agreed Heads of Terms during the course of finalising the lease once they have had an opportunity to take advice from a lawyer and commercial surveyor.

If you are in any doubt or do not have any prior experience in leasing commercial premises, do not be afraid to seek legal advice before signing the Heads of Terms. A qualified, specialist commercial surveyor can also advise you on the commercial terms (such as the rent per square foot) to make sure they are in line with the market.

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Planning and building permission

As the Tenant, one of the most important first things you need to do is to check that the premises have planning and/or building permission which allows your proposed use and that there are no restrictions on your ability to use the premises (ie. a limitation on working hours or noise emissions).

If the premises do not have planning or building permission for your proposed use, you will need to submit an application for planning permission to Planning and Building Services. We strongly advise that you deal with any necessary application prior to completing the lease, as Planning and Building Services are not guaranteed to approve your application and once you have completed the lease you will be tied in for the duration of the term (or at least until the first break date!). Even if you have received favorable pre-application advice, this does not mean that your application will be approved. Remember to allow approximately 8 to 12 weeks (sometimes this can be longer) for your application to be processed.

Repairs and Alterations

The Tenant under a Contract Lease will, almost certainly, be expected to take the premises on a “fully repairing and insuring basis”. This will include being responsible for the exterior and structure of the premises, along with any other tenants in the building. A Tenant under a Paper Lease of 9 years may also be expected to occupy on the same basis. For shorter Paper Leases, the Tenant is likely to only be responsible for internal decoration and repairs.

Alterations and improvements to the premises generally require the Landlord’s consent, even if they involve minor alterations such as the installation or removal of partitioning. Both the Landlord and the Tenant need to check the wording of the Lease carefully and ensure that any procedural requirements (ie. the provision of plans and specifications) are adhered to. A formal Licence for Works may also be required to document the approval. A lease usually states that the Tenant is responsible for meeting the Landlord’s costs and expenses in giving any approval which includes the Landlord’s legal costs of negotiating and finalising a Licence for Works.

In addition to Landlord consent, certain alterations and improvements such as external signage may also require statutory approval from the Planning Department.

Rent Review

Rent reviews vary in Jersey leases but typically they will be:

- Open Market Rental or Retail Prices Index increases (whichever is higher) in longer leases; or
- Retail Price Index only, or no increase at all, in shorter leases.

Service Charge

If the building is multi-occupied, a service charge may be payable for services and the costs of common areas including external repairs, cleaning, utilities, lift maintenance and a management fee. Service charges are usually based on the percentage of the lettable floor area occupied by the Tenant. A commercial surveyor can advise on whether or not the service charge is reasonable.

Termination/Cancellation

Termination is typically by expiry (ie. when the term comes to an end), upon an agreed break date or upon the Tenant’s default or insolvency. However, if a party/ the parties wish to cancel the lease before the expiry of the term, special rules apply depending on whether the lease is a Contract Lease or a Paper Lease.

As a Contract Lease constitutes Immovable Property, only the Royal Court can cancel a Contract Lease before its term has expired. The drafting of termination provisions and break clauses therefore need to reflect this. This is the case notwithstanding any provision in a Contract Lease to the contrary, such as a provision entitling the Landlord to cancel the lease for a breach of covenant by the Tenant. A Contract Lease can, of course, “expire” automatically once the term of the lease comes to an end.

Paper Leases can contain more flexible termination provisions and so do not require Royal Court approval.

There is no statutory continuation of business tenancies in Jersey (as in England).

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It is therefore strongly recommended that Tenants approach their Landlord at least six months prior to the expiry of their lease term to allow time to negotiate a new lease or seek alternative premises, if necessary.

Assignment

Although there is no presumption under Jersey law to this effect, it is usual for a Jersey lease to allow the Tenant to sublet or assign the whole of the premises and for the lease to expressly provide that the Landlord's consent is not to be unreasonably withheld. The terms of the individual lease will need to be considered in the event of such a request from the Tenant and a Landlord should ensure that any specific requirements (ie. the need for a guarantor) are adhered to.

In Jersey, the outgoing tenant is usually released from its obligations on assignment (ie. it is not required to provide a guarantee of any future assignee's performance of its obligations under the lease). This is because there is no legislation similar to the Landlord and Tenant (Covenants) Act 1995 in England where the original tenant remains liable throughout the term of the lease, or until the assignee assigns the lease to another assignee.

Goods and Services Tax (GST)

GST is payable at the prevailing rate (currently 5%) on rent and other payments due under commercial leases. There are however exceptions depending on the tax status of the Landlord and/or the Tenant (e.g. if either entity is an International Services Entity). Retailers and other businesses are generally able to offset any GST on their rent against their input taxes (as is experienced in the UK with VAT).

If you would like legal advice or further information on any of the above, please contact us using the contact details below.

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