

A Guide to the Real Estate Market of England & Wales

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INTRODUCTION

This guide has been compiled to introduce and assist business people through the complexities and stages involved in acquiring leasehold or freehold office premises, touching also on their disposal, throughout England and Wales. It provides an outline of some of the principal points that potential office occupiers will need in order to assess options and their associated costs and decide upon precisely the kind of premises which are right for their business. In addition, the guide helps to explain the principal legal complexities involved in a property transaction and defines, in the glossary, the most commonly used terminology in the property business.

It should be stressed that this is a guide only and whilst it covers in general terms most of the important aspects, professional advice from both Solicitors and Chartered Surveyors should be sought on specific properties.

THE ROLE OF THE CHARTERED SURVEYOR

In relation to the acquisition of office premises Chartered Surveyors have a very important role to play in assisting companies, whether established in this country or not, to find suitable premises. Having identified the right office accommodation they negotiate the most advantageous terms on behalf of their clients, with a minimum of delay.

A Chartered Surveyor in this country has to undergo a unique training, similar to that of a Solicitor or Accountant, and, having qualified, must abide by a strict code of conduct and competence. Chartered Surveyors are required to undergo a continuing professional development programme throughout their professional careers to keep abreast not only with changes in the surveying profession but also with the property industry and commerce at large.

Surveyors do not act as brokers between parties as they only represent a single party in a negotiation - either acting for those disposing of premises or those acquiring, therefore ensuring that there is no conflict of interest.

PART I

PROPERTY TENURE

Introduction

Historically, all land in the United Kingdom was held by the Crown but over the centuries this has evolved into two principal forms of land ownership - freehold and leasehold. Licensed interest and tenancies at will also form part of property tenure but to a much lesser degree and as such we have only covered these in a very limited form.

Freehold

Ultimately all land in private ownership is held on a freehold basis with the owner holding the property in perpetuity. The owner may be in occupation of the property or he may have forgone the right to occupation by granting a leasehold interest and in such instances he would therefore hold a reversionary freehold interest.

The rights of freehold ownership are limited by various factors, under both Statute and Common Law, including the Law of Property Acts, the Landlord and Tenant Acts and the Town and Country Planning Controls. The freehold title may be restricted by covenants which run with the land and also by easements over the property in favour of other properties.

Leasehold

A leasehold interest is granted from a freehold estate or a superior leasehold interest. A lease is a contract for a term of years certain and is usually subject to both positive and negative covenants.

Licences

A licence is also granted from a freehold or leasehold and is a legal consent for a right to do something that would otherwise be illegal or wrongful. It may be gratuitous, contractual or coupled with an interest in land. A gratuitous ("mere" or "bare") licence can always be revoked (i.e. cancelled), but revocability of a contractual licence depends on the terms of contract. A licence coupled with an interest in land may be irrevocable and, unlike the other two categories, may be binding on successors in title of the licensor. One example of a licence is permission, usually required in writing, given specifically by an owner to a tenant, enabling something to be done that would otherwise be a breach of a term of a lease.

A licence does not transfer any interest in the land but may authorise the licensee to enter the licensor's land for some specific purpose. It differs from a leasehold in that the licensee does not have a paramount control of the land and may only enter thereupon for the purposes of the licence; the licensor may enter the land and use it in any way not inconsistent with the rights of the licensee.

Tenancy At Will

A tenancy at will is derived either from a freehold or leasehold interest and is a tenancy with no fixed term which continues so long as, in general, the tenant is willing that it should do so; it is an equitable interest and is created either by agreement or by implication of law. There may not be a contractual relationship between landlord and tenant by formal document.

PART II

PROPERTY LEASES

Introduction

The basis of the legal relationship between the landlord or lessor (who can either be the freehold owner or a superior leaseholder) and the tenant or lessee is contained within a written contract, the lease, and is supplemented by Common Law and the statutory legal framework. There are essentially three main types of commercial leases: short term, medium term (or more commonly, "institutional") and long term.

Short Term Leases

These usually run for a term of up to five years, being particularly attractive to occupiers who anticipate a change of circumstance such as rapid growth, which will require them to move at the expiration of the term. Many such lettings are undertaken by tenants who have taken larger premises than they require initially with the view of expanding into the additional space at a later date, e.g. after five years.

Medium Term or "Institutional" Leases

These are the most common and run historically for 20, 25 or 30 years. However in situations of oversupply the leases may be for no more than 10 or 15 years. The name mainly derives from the fact that the freehold is normally held as an investment by an institution such as an insurance company or pension fund, with the lease being drawn upon a full repairing and insuring (FRI), or clear lease, basis. Such a lease confers responsibility upon the lessee for the whole cost of repairing and maintaining (and insuring) the property.

Long Term or Building Leases

These commonly run for at least 99 years. They are usually of interest to occupiers who wish to acquire a long term interest in land where the freehold is not available and are regarded, in general, as investments.

Building leases also fall within this category and arise when a tenant takes a long term lease in land and is required by the landlord to erect one or more buildings on it. Such leases are often taken by developers who will develop the land and in turn let the building(s) to occupiers.

PART III

THE LEGAL PRINCIPLES IN THE ACQUISITION OF OFFICE PROPERTY

Freehold

The purchaser will usually pay a capital sum to the vendor (normally the existing freeholder) in return for the freehold title in the property. The property can either be vacant, part occupied or fully let. The latter is regarded as a true investment property as there is no beneficial occupation available to the purchaser but only the immediate benefit of an income stream.

Leasehold

When a tenant takes a lease from a landlord, he will pay a rent to the latter for the benefit of that lease and, generally, for the right of occupation.

Essentially a leasehold interest can be acquired on two bases:-

A New Lease

A tenant will take a new lease from a landlord for a specified number of years. The landlord can either be the freeholder or a tenant holding a leasehold interest, who has the right to immediate beneficial occupation of the premises to be leased. In this case the lease granted is known as a sub or underlease. In return the tenant will pay a rent to the landlord throughout the term of the lease.

When taking a long leasehold interest the tenant will frequently pay a capital sum to the freeholder either with the right to receive a proportion or all of the income from the existing occupational tenants, in the instance of an investment, or for the right to occupy all or part of the premises themselves. Either way the tenant will pay to the landlord either a peppercorn (i.e. nominal) or geared rent (i.e. a proportion of the market rent).

An Assignment

Generally, under the terms of an occupational lease a tenant has the right to assign, and often sublet, his leasehold interest for a period of years up to the expiration of the term. The assignor, or existing tenant, can therefore assign his lease to an assignee or new tenant, having first satisfied the various provisions within the lease with regard to the alienation provisions which includes obtaining landlord's consent. The assignee will take on the existing lease and covenant directly with the landlord to adhere to its terms and conditions, without alteration and pay rent directly to him.

As rentals are generally reviewed 5 yearly, the passing rent contained within the lease can be below the open market rent and in such instances an assignee may pay to the assignor a capital sum. This sum may reflect not only the capitalised value of the differential between the passing rent and the open market rent up until the next rent review, (known as the profit rent) but also the value of the existing tenant's fixtures and fittings, if any. During times of an oversupplied market this payment can be reversed and the assignor will pay to the assignee a capital sum as a financial inducement for the latter to take the lease (reverse premium).

A New Lease or an Assignment

There are both advantages and disadvantages in taking assignments of existing leases as opposed to taking new leases. These will be a reflection of the prevailing market conditions at the time when the lease contract was originally negotiated in comparison to the conditions of the market at the time of the potential assignment.

Market Conditions

In times when demand exceeds supply it is likely that a lease will be drafted with the tenant's obligations and rights more in favour of the landlord. If the office market falls thereafter the passing rent contained within the lease may be higher than that which could be negotiated at the date of the proposed assignment. This differential is often reflected by the existing tenant either paying a capital sum to the assignee or providing a rent free period to reflect this higher level of rent or a blend of the two. Conversely, when supply exceeds demand a tenant is able to negotiate more favourable lease provisions which, amongst other things, could include break clauses and a less onerous rent review clause. In a rising market the passing rent could often be lower than the open market rent at the time of the proposed assignment and therefore there could be a cost saving. In such instances it is common that the existing tenant will seek a capital sum or premium to reflect this rent differential. See above.

Dilapidations may well become an issue at the expiry or determination of the term, involving the tenant in potential costs associated with the damage incurred during occupation – removal of fixtures and fittings may be only part of the claim (see Glossary of Terms, pages 24 and 29) and page 9 para. e).

Fixtures and Fittings

Office premises held under a lease which the tenant is seeking to assign have nearly always been fitted out by him e.g. partitions, kitchens etc. which cannot be removed without causing damage. This can also be the case in the instance of an underletting. Again, depending on prevailing market conditions, the tenant may seek a capital sum from the assignee to reflect the value of these items. Such fixtures and fitting are normally very personal to a tenant's occupancy of the accommodation and can be of little or no value to another tenant or indeed of negative value should they be expensive to remove. Of course, there are some instances where all or a majority of these fixtures and fittings can be utilised by the assignee and thus could save considerable time and expense in fit-out works.

Legislation

New legislation is continually being introduced which affects leasehold transactions. For example, the introduction of VAT on rents (unless otherwise agreed, the landlord has sole discretion on whether to charge VAT or rent) could potentially affect all leases drawn subsequent to the passing of the Finance Act 1989 which brought about these changes, as the drafting of leases prior to that date would not have separately covered that eventuality. Again, a tenant's or landlord's negotiating position very much depends on the prevailing market conditions and in this instance should a market be experiencing an oversupply, then a tenant negotiating on a new lease may be able to mitigate or totally remove the effects of VAT, subject to the impositions of statute, on rent so far as that particular lease is concerned.

PART IV

THE LEGAL PRINCIPLES IN THE DISPOSAL OF OFFICE PROPERTY

Freehold

The disposal of a freehold interest is usually quite straightforward and generally there are no restrictions on how a freeholders can dispose of his interest subject to any covenants or easements which may affect the freehold title.

Leasehold

A tenant cannot normally vacate the premises and cease paying rent to his landlord at any time he wishes. It should be noted that the legislation enforcing this is also to protect the tenant's interests.

If a tenant has taken a lease for a fixed number of years, then he remains responsible for adhering to the covenants including the payment of rent until the expiration of the term unless he can either assign or underlet the premises (see paragraph below) or persuade the landlord to accept a surrender or indeed, at the initial negotiations prior to the commencement of the term, agree the incorporation of options to break the lease. Break option(s) may be for a fixed or rolling date but may not necessarily coincide with the date when the tenant wishes to vacate. The inclusion or otherwise of these options is very much dependent on the market conditions at the time of the initial negotiation. Options to break can be solely for the benefit of either the tenant or the landlord or they can be mutual, depending upon the initial negotiations.

If the lease does not contain a break option and the landlord does not wish to take a surrender, the only way that an existing tenant can dispose of a leasehold interest, depending on the precise wording of the lease contract, is by way of an assignment, or underletting, as mentioned above. It is important to bear in mind that should a tenant assign his lease to a third party then he continues to maintain an indirect relationship with the landlord, unless that lease was granted after 1st January 1996, until the expiration of the term of the lease. This is covered under Privity of Contract. In effect, the original tenant and subsequent assignees, however many there may be, remain responsible for the full term of the lease and if the current assignee in possession defaults, then the tenants up the chain must comply with the lease i.e. the payment of rent and fulfilment of all the obligations contained within the lease.

If the lease is granted after 1st January 1996 it will be subject to the provisions of the Landlord & Tenant (Covenants) Act 1995. The government's intention was to solve the problems caused by privity of contract as set out above. This Act effectively relieves an assignor from having to guarantee its assignee, subject to an Authorised Guarantee Agreement, while still protecting a landlord's investment value. An AGA has become the norm, but can be negotiated out by a tenant, which is a mechanism similar to the effects of Privity. The principal difference is that an assignor only has to guarantee the first assignee and no more. Through negotiation it is possible to ensure that a tenant can eventually succeed in being released.

PART V

LEASE PROVISIONS

Introduction

It is wise to remember that an initial draft of a lease is prepared in the landlord's favour as it is almost always drafted by his solicitors. Of course the interests of the tenant are also detailed but the bias, at the initial stage, prior to lawyer's negotiations is towards the landlord. The draft will include a number of legal principles to protect both landlord's and tenant's position.

The paperwork involved in the lease can be lengthy and complex. A single document might be eighty-ninety pages in length – mercifully most are between thirty and fifty pages long. Apart from the main terms of the lease, which would comprise a description of the property or demised premises, the parties, the period of the tenancy and the rent, the lease deals with such matters as the method of rent payment, the permitted use of the property, alienation, the obligations of the parties and the rent review provisions.

Method of Rent Payment

Generally the lease will provide for the rent to be paid directly from the tenant's bank to the landlord's by way of electronic transfer. Rent is normally due in advance upon the four Quarter Days; 25th March, 24th June, 29th September and 25th December. Some occupiers find it contrary to their business requirements to pay rent in this manner and thus a landlord may agree but only very rarely to issue an invoice for the rent due and accept payment by cheque, bankers draft etc.

Permitted Use

The lease will specify within the user clause the permitted use of the premises i.e. offices, banking etc. and will specifically prohibit others.

Alienation

The lease will restrict a tenant's alienation rights of assignment, underletting and shared occupation. Generally leases will allow a tenant to assign his entire interest and in many cases he will also have the ability to underlet the whole premises. Provisions may also be included to underlet parts but these are usually restricted to the number of under tenants or occupiers allowed or by area which may be underlet.

In addition, a tenant will usually have the ability to share occupation with associated or affiliated companies subject to either specified criteria set out within the lease or by reference to the relevant statutes.

It is important for tenants to try to agree the most flexible provision possible not only for his own occupational purposes, perceived or otherwise, but also to aid the future disposal of the premises.

See also page 6 regarding Privity of Contract and the Landlord & Tenant (Covenant) Act 1995. This is also an issue that needs to be addressed at the outset of negotiations.

Rent Review Provisions

It is standard practice for leases of office premises for a period in excess of five years (although this is not always the case) to contain a provision for the review of the rent payable.

This usually occurs at five yearly intervals. The reason for the inclusion of the rent review clause is to update in monetary terms the economic value of the interest conferred by the landlord on a tenant, as the initial rent fixed may no longer reflect the current market value of the interest. The object of a variable rent can be seen therefore as a way for the landlord to periodically secure the true value of the interest.

The provisions of rent review clauses are based upon prevailing market conditions, whether a landlord's or tenant's market, and, in the majority of cases, will be on an upward only basis (i.e. the rent can stay the same or increase but not fall) to protect the landlord if the review takes place during or following a declining market.

The lease will usually include a mechanism to trigger the rent review operation and can often be initiated by either the landlord or the tenant but it is typically activated by the former in order to protect his interest. The usual method is by way of a notice which might include a proposal for the revised rent which, in the opinion of the landlord, is the new open market value for the premises at the specified review date.

Once the review mechanism has been initiated, which can be subject to strict time limits, it is common for the landlord and tenant, or their respective advisers, to discuss the principles behind the rent review clause in order to ascertain the revised rent. The valuation of the revised rental will usually be based upon certain hypothetical assumptions. The basis of the valuation may not therefore reflect the circumstances of an open market transaction in all respects.

Over recent years there has been much legal argument over how these hypothetical assumptions are to be interpreted and this has led to much litigation in the courts.

The principal negotiations between the landlord and tenant at the time of the original drafting of the lease are more normally on the removal/inclusion or modification of these hypothetical assumptions.

Should the landlord and tenant, or their respective advisers, not be able to agree an acceptable new rent, then the lease provides for a method which finally and conclusively settles the amount of the new rent because only in that way can it be rendered certain. This is normally achieved by providing for determination of the rent by an independent third party, who would either be an arbitrator or an expert. Where the rent is to be ascertained in this way, the third party will normally ask for written representations from the landlord and tenant, or their advisers, setting out the reasons for their respective opinions of value.

The third party's decision is binding on both parties and must be accepted in nearly all instances. The tenant is not able to vacate the premises and cease paying rent should he not agree with the revised rent and similarly a landlord cannot evict a tenant should he feel similarly aggrieved.

The only way for a tenant or landlord to break the lease at this stage without negotiation is if either or both benefit from a break option which coincides with the rent review date.

The Obligations of the Parties

The lease will also cover the obligations of both parties. The tenant's obligations, for example, will include:-

- a. To pay the rent;
- b. To keep the property in good repair both externally and internally or, in a multi-occupied building, pay a proportion of the cost incurred by the landlord in doing these works (but not within the demise);
- c. To pay for insurance and all relevant taxes;
- d. To use the property in a manner so as not to diminish its value;
- e. To return the property to the landlord in good and substantial repair at the end of the lease so that the property retains its full value. This means that the property should be reinstated to the condition, if not better, in which it was let to the tenant (or original tenant, in the event that an assignment transaction has occurred). In theory this includes the removal of tenant's fixtures and fittings. A list of the works required is served on a tenant which is known as the Schedule of Dilapidations. It is more usual in practice for the tenant to pay a capital sum to the landlord at the end of the term to cover the cost of these works rather than undertaking the works himself.

If the tenant fails to pay the rent or is in breach of the other obligations set out under the lease, then he may be sued for damages or ultimately forced to forfeit the property. However, these remedies are subject to the final decision of the courts.

The landlord also has obligations to the tenant. These include:

- a. To allow the tenant quiet enjoyment of the premises;
- b. To insure the building against certain risks; and
- c. To provide specified services and maintain and repair the property in the case of a multi-tenanted building.

Service Charge and Insurance

If the building is multi-tenanted, a tenant may be liable to pay a service charge. This represents his share of the cost incurred by the landlord in providing, amongst other things, air-conditioning, central heating, security, together with the cleaning and maintenance of the common parts. In addition, this charge will also include a proportion of the cost incurred by the landlord in repairing and maintaining the building both internally and externally. The service charge is payable on the same Quarter Days as the principal rent, normally with the provision for a balancing payment at the end of the accounting year to reflect the actual costs incurred.

A lease that incorporates such a service charge is commonly referred to as a proportional or effective full repairing and insuring lease (FRI) and the tenant's liability is usually defined as a percentage of the total cost. This percentage is usually based on the net internal floor area occupied relative to the floor area of the building.

Should a tenant occupy an entire building then the lease is generally of a full repairing and insuring nature and as such there are no common services. The tenant therefore would be fully responsible for the building and thus the lease would contain no service charge provisions unless it was within an office campus where as estate charge may apply.

An additional service charge may be levied on the occupiers of units within an office campus development in order to pay the cost of maintaining the common areas e.g. landscaping, estate security etc.

A landlord will normally insure the buildings and mechanical services, e.g. lifts, plant etc. and will recover the costs of the premiums from the tenant or tenants. However, since only the landlord's property will be covered by this policy it will be necessary for a tenant to insure his own fixtures and fittings separately. The landlord's insurance premium is calculated on a similar basis to the service charge above.

Guarantor/Rental Deposits

It is worth noting that most landlords prefer to grant leases to organisations who are proven to be of sound financial standing. To ascertain this they are likely to ask for at least three years' audited accounts together with references from existing landlords, bankers, accountants and solicitors, if applicable.

Even if a business is a subsidiary of a multi-national corporation but shows little or no operating profit, or is in a start-up phase, landlords may insist upon additional security, such as a parent company guarantee, bank guarantee or rental deposit.

Security of Tenure and Tenant's Rights to Compensation

In order to protect a tenant, English law provides that he can renew his lease at the end of the term (Landlord and Tenant Act, 1954, Part II). In the event that the property is required by the landlord for redevelopment, or for certain other reasons specified by statute, then the tenant has the right to statutory compensation for forgoing his rights for renewal. Often a landlord and tenant agree to exclude a lease from the Security of Tenure and Compensation Provisions as contained within the Landlord and Tenant Act 1954, Part II (as amended), in which case at the end of the lease a tenant will not be entitled to renew or indeed receive compensation. This is known as "contracting out of the Act".

Value Added Tax

Value Added Tax (VAT) is a form of purchase tax imposed upon the end consumer of certain goods and services and is currently charged at the standard rate of 20% of the contract price. It is intended that the producers should charge VAT on their sales. VAT registered buyers recover VAT paid by them from H M Customs & Excise who administer the tax. End users who are not registered for VAT cannot reclaim VAT charged by suppliers and paid by them.

Land does not normally attract VAT, but was introduced in connection with non-domestic land and buildings by the Finance Act 1989. The owner of an interest in land may elect to charge VAT on the income (rent) from land and buildings although he may not have incurred VAT on its purchase. The implication of this election is that the agreed rent is effectively increased by the prevailing rate of VAT unless the tenant can recover this tax.

Under these regulations all developments and refurbishments have and will incur VAT on construction costs and thus a landlord has the choice to either absorb the VAT or elect to charge VAT on rent to recover the tax paid out initially. In particular, during a difficult market and in a location when the likely tenant is one who cannot recover VAT in full or only in part, a landlord may forgo such an election in order to secure a tenant, higher rent or both.

The effects of VAT legislation on property are very complex and as such each situation must be considered individually to determine whether the instant transaction or works are subject to VAT and at what rate.

It is usually prudent at the outset of negotiations to agree whether or not a lease will be VAT-free or otherwise. Where a tenant is VAT registered and can recover VAT paid on rent, potential successors (assignees or lessees) may not have this ability and therefore may not consider the premises favourably. Such a provision therefore may affect the future lettable of the premises.

In connection with assignments of existing leases it should be noted that any capital inducement from the assignor to any assignee may attract VAT at the standard rate.

PART VI

PROPERTY AND ASSOCIATED COSTS

Introduction

In any property transaction costs are incurred. These generally fall into three categories: professional fees together with associated costs; initial capital costs; and subsequent revenue costs.

Professional Fees

Legal Fees and Associated Costs

Depending on market conditions, a tenant will generally either pay all the costs of preparing legal documentation and as such would have to pay the landlord's legal fees as well as his own or alternatively pay his own costs alone. This is a matter of negotiation.

Charges vary, but many solicitors base their fees on the time spent, although it is increasingly standard practice to negotiate a fixed sum at the outset. It is of course wise to agree the fee arrangements at the outset and ascertain your liability for the cost of the landlord's solicitor, if applicable.

Legal costs are generally incurred whether or not a transaction proceeds to a successful conclusion.

In the instance where a lease is to be assigned or the premises are to be sub-let, a potential occupier will usually bear the costs of obtaining the consent of the superior landlord for both approving them as occupiers as well as approving their proposed fitting-out works. These costs are not usually significant.

The various fees mentioned above would also be subject to VAT.

In 2003 legislation brought about two important changes in respect of leases. From October 2003, many if not most leases will become registrable at H M Land Registry to protect tenant's ownership. Certain other attendant rights may also need to be registered against the landlord's neighbouring land. Your lawyer will be able to advise you about both these aspects and also the level of Land Registry fees, which are relatively modest.

A second major change is the replacement of Stamp Duty with Stamp Duty Land Tax (SDLT). Commercial leases are likely to bear substantially increased tax both on grant of new leases, but also on some leases at the fifth anniversary and in certain circumstances on assignment and on holding over at the end of the lease. Again, your lawyer will advise the extent of tenant's liability.

The SDLT is calculated on the gross rent over the term of the lease discounted for Net Present Value (NPV). Currently the rate of duty payable is 1% of NPV, but with a zero rate band slice of £150,000 for non-residential property and in some cases on mixed use property.

SDLT is also charged on freehold transactions at rate bands varying from 0% to 4.8% on the whole of the purchase price depending on value. Tax is payable within thirty days of the tenant or owner having a right to occupy the property.

The tax changes with effect from 1st December 2003 are complex, but there are significant reliefs and exemptions available. Please take specialist advice on this from Hexell Wylie or your lawyers.

Surveyors' Fees

These are generally negotiable on a square metre (square foot) basis but were initially based on the scale fee originally set out by the professional body of the Royal Institution of Chartered Surveyors. The scale fee set out for a leasehold acquisition equated to 10% of the annual exclusive rent agreed or the rent passing, whichever was applicable, together with 2.5% of any premium paid. With regard to a freehold acquisition, the stated fee varied depending on the purchase price agreed, but over a figure of £1 million charged at 1%. These fees must be agreed on or prior to the appointment of the surveyors.

Should a building survey or any other specialist advice outside the normal agency field be requested, then this work will be charged in addition to the above on a basis to be agreed.

Again the above fee is subject to VAT.

Capital Costs (Expenditure)

Considerable costs can be expended in fitting out the accommodation which might be incurred through refurbishment, partitioning and provision of carpeting, furniture and telephones etc. In most instances professional advisers will have to be appointed and such appointments may include space planning consultants, architects and Quantity Surveyors. The total costs will vary considerably depending on the work involved and the standard of finish required. It is worth mentioning that dependant on market conditions, a lessor may be prepared to cover some or indeed all of these costs, usually by way of rent free periods, or more unusually by way of a capital sum.

Revenue Costs

Introduction

Three elements make up the overall costs of occupying premises:

The landlord's charges (rent and service charge), business rates (local taxes), and the costs of running the offices (occupational costs).

Rent

Landlords charge a rent based on the area of space occupied which is often referred to as the net internal area (NIA). This is the space occupied by the tenant excluding any service core areas or common parts such as lifts, staircases, lobbies and WC's. Measurement to calculate this area is usually defined by a measuring code issued by the Royal Institution of Chartered Surveyors.

Service Charge

The tenant, in a multi-occupied building, will be liable for a service charge, the amount of which very much depends on the service provided. Occupiers of both multi-occupied and single occupied buildings within an office campus development will be liable for an estate service charge, as referred to earlier.

Insurance

Again, this has been referred to previously and is dependent upon prevailing insurance premium rates. Insurance premiums now attract a consumer tax.

Business Rates (local taxes)

Business rates (rates) are a tax levied by the local authority to cover the costs of providing services in the area. These charges have a significant impact on the overall costs of occupying premises. Rates are calculated by applying the national non-domestic rate (Uniformed Business Rate - UBR), which is revised annually, to the rateable value of the building. The UBR is set by Central Government on the 1st April each year and will generally be increased in line with the rate of inflation. .

The rateable value is determined through periodic revaluation's by the Valuation Office (a Central Government Department) of the property's rental value, details of which are recorded at the local rating office. Currently rating revaluations take place every five years.

Occupational Costs

Occupiers will normally be responsible for organising and paying for the services essential for the running of their business, i.e. electricity, telephone and security within the demised premises.

PART VII

THE STEPS TO ACQUIRING OFFICES

Stage 1 Defining the Brief

Careful planning is essential to a smooth running and successful move. There are a number of different fundamental decisions to make if you are to keep costs under control and get the best possible use out of your new office premises.

The starting point is to decide whether there are any time or cost constraints and, given those, some basic criteria for the location of the offices. You might like to ask yourself the following questions:

A. Location of Offices

- ◆ Is it necessary to locate within the core of the central business district or its immediate fringes?
- ◆ What transport facilities are available to ensure ease of access for employees and clients?
- ◆ Is the location of competitors significant to the decision?
- ◆ What local facilities are essential for employees and business?

It should be noted however that the availability of the right premises may dictate the ultimate location.

B. Size of Accommodation

- ◆ How many people will need to be accommodated in the new premises and what space will they require?
- ◆ What allowances need to be made for computer installations, a reception, meeting rooms, dining rooms, kitchens and storage?
- ◆ To what extent should there be allowance for the growth of the business and over what time scale?

You will need to establish early on in the planning process how much space is required. This is essential if the new office accommodation is to be used efficiently - of prime concern with the increasing costs of occupying space. It is usually prudent to appoint space planners at an early stage to identify precisely your detailed occupational requirements. We are very accustomed to working closely with space planners to jointly provide the optimum solution for the client. Such a report may encompass the following, if appropriate:-

- ◆ Space requirements broken down to show departmental, individual and corporate needs.
- ◆ Workstation standard showing the items of furniture required by each individual.

- ◆ Working/departmental relationships as exist within the organisation and which seems to effect the space planning approach.
- ◆ Total space requirements to include an allowance for primary circulation
- ◆ Specification necessities, i.e. air-conditioning, raised floor etc.

C. Style of Building

- ◆ What style of building is most appropriate to the business and corporate image - should it be modern, traditional, prestigious, purely functional or a combination of the above?

D. The Facilities

- ◆ What facilities are essential to the running of the business - air-conditioning, raised floors, 24 hour access, car parking, U.P.S., standby generator?
- ◆ Would either a Shell and Core or Developer's Finish be more appropriate for the fit-out requirements? This is a question that the appointed fit-out consultants will advise on.
- ◆ Are there special requirements for air conditioning, lighting or power and can the buildings being considered, cope with these special requirements?

E. Tenure

- ◆ Is either freehold or leasehold property best suited for the business and what are the advantages/disadvantages of these two options?
- ◆ How much flexibility will be needed within the terms of the lease?
- ◆ What financial constraints are there in terms of available capital and ongoing occupancy/revenue costs?
- ◆ What are the occupancy costs per employee?

The vast majority of office occupiers prefer to lease a building rather than to acquire the freehold interest, both for the reason of cost and because leasing potentially gives them greater flexibility particularly as it is often difficult to plan with a great degree of accuracy future space requirements much beyond a five year time horizon.

The purchase of a freehold however may provide the greatest degree of flexibility. Subject to funding and normal investment criteria based on the risk/return ratio, a company may wish to invest in a larger building than suitable for its immediate requirements and devise a strategy for leasing the surplus accommodation, to take account of future expansion. This should be the most secure method of devising such flexibility, by the purchase of a long lease or freehold.

F. Lease Term (or length of lease)

- ◆ When should anticipated changes in the business, and thus space requirements, occur in order to establish precisely the lease term required?

This is a particularly important aspect in terms of the future ability to dispose of the premises and indeed the company's continuing liability in respect of the lease in the event that you assign the interest before the expiration of the term.

G. Timing

Step I - Initial Planning

- ◆ When is occupation of the new premises required?

A successful move depends largely on allowing enough time. Hexell Wylie will draw on their wide experience to help you create a timetable which has realistic targets and goals.

It will be obvious that not all these questions can be answered easily. In areas, such as space requirement and the type of tenure best suited to business, professional advice is required at an early stage in the planning process of any move.

Step II - Search and Evaluation

With the timetable and overall brief agreed, the search for premises can begin. It is important to ensure that all the available options are being covered so that the final shortlist of properties gives sufficient choice within the criteria set.

As a very active firm of Real Estate Consultants, Hexell Wylie is well placed to help. Our contacts with other commercial agents, developers, investors and local authorities are very wide and we augment them with a comprehensive database which covers properties in a number of categories:

- ◆ Those available to let through Hexell Wylie and via other agents.
- ◆ Those about to come on the market
- ◆ Those under construction or with planning consent.

We will search the market widely to match requirements with suitable opportunities. Each property is analysed and a report prepared for the client, including a shortlist of the best prospects. Together, we examine the shortlisted properties in detail, often with the help of the space planning consultants. It is obviously important at the outset to establish that the identified offices will suit the requirements in terms of space. A preliminary space planning exercise should be carried out prior to the next step, together with obtaining some indication as to the capital cost involved in fitting out.

If requested by the client we will undertake a detailed financial appraisal of each of the shortlisted properties to establish and compare the potential financial liabilities over the respective terms of the leases. This is provided in a cash flow format.

Step III - Negotiation of Heads of Terms

With a shortlist established, the next stage is to prepare a negotiating strategy. The client will need to consider and seek the answers to a number of questions which in the case of leasehold properties will include the rent, rent free and premium. We match our specialist knowledge with comparisons to other comparable transactions taking place in the market.

In a market where there is a substantial over supply of available office accommodation developers/landlords have been known to take assignments of tenant's existing leasehold interests in order to induce letting activity within their own schemes/buildings. As alternatives to the assignment route, other landlords have been prepared to cover, for a specific or indefinite period, a tenant's outgoings on their existing premises or pay a capital sum to cover such liabilities for a period of years. Although far from common place, if the margins prove attractive to a landlord, then this may also form part of the negotiations.

Hexell Wylie pride themselves and are known to have a fearsome reputation, for negotiating the most beneficial terms on their clients' behalf. We negotiate every aspect of the acquisition of a freehold or leasehold interest, taking each point to the ultimate position, confident that we can achieve the best possible results for our clients.

Once these matters have been resolved or clarified, Hexell Wylie will arrange for a Heads of Terms or offer letter to be drafted on the first choice of property which will, subject to approval, be sent on the client's behalf, to the potential landlord.

If, after a period of negotiation, the terms are acceptable in principle, we will arrange for the client, if appropriate, to have undertaken a detailed evaluation of the structure of the building and the services within it. In all instances we will arrange for a measurement of the Net Internal Area to ensure that the client only pays for the usable accommodation provided.

Step VI - Legal Negotiation and Space Planning

Both the legal negotiations and the space planning by your specialist consultants will run concurrently to ensure that full benefit is derived from any rent-free period negotiated.

A. Negotiations of the Lease

We will assist the client in briefing their solicitors on what has been agreed, so that work can begin immediately in reviewing the draft legal documentation while the detailed space planning is taking place, so helping to save time. We will ensure that the legal documents properly reflect the Heads of Terms agreed and the prevailing market conditions. The solicitors, assisted by us where appropriate, will negotiate the terms of the proposed lease document and recommend an acceptable legal agreement.

B. Space Planning and Alterations

Whilst the legal negotiations are taking place, the client will need to plan the use of the space in the building in detail. A good space plan will provide direct benefits in at least two ways. Firstly, it increases productivity by improving efficiency and raising morale of employees. Secondly, it will cut down on wasted floor space, often resulting in substantial savings in occupancy costs.

The need for alternations, or fitting out, will vary greatly depending on the type of accommodation being acquired and the use to which to is being put. It may simply be a matter of installing partitioning and providing cabling for an open office area or, it may involve a shell and core fit out, including the installation of air-conditioning, suspended ceilings, raised flooring, partitioning and decoration. This is a specialist job and it is advisable to take on a consultant to work with the client. The Hexell Wylie acquisition team will help and work alongside other consultants. The planning falls into two phases:-

- 1. Preliminary Planning**, Clients briefings, space planning, preliminary budget estimates and sketched design. This would also form part of Step II.
- 2. Creative** Detailed designs, colour schemes and selection of fixtures, fittings and furniture.

During this stage it is essential to decide upon the number of telecommunication lines required, whether they be British Telecom, or other providers, and place the order with the relevant company. Delay in doing so will hinder occupation of the offices.

Step V Formalising the Agreement

On completion of the previous four steps, a binding commitment between landlord and tenant in the form of a lease or Agreement for Lease is exchanged. At this point you will be in a position to progress further the planning process and building works.

It is usual that completion of legal documentation follows within a matter of weeks. This is not always the case when an Agreement for Lease is exchanged. The tenant will then hold the lease and the landlord the counterpart.

Step VI Fitting Out

We see this period as the final phase before occupation. It is divided into two distinct sections:-

A. Detailed Planning

Revised budgeting, documentation of all work, including partitioning layout, furnishings, colour schemes, decoration, the seeking of Landlord's consent and any statutory consents. In order to maximise the benefit of any rent-free negotiated, the client may choose to embark on the detailed planning process prior to formalising the lease under Stage V but, if the transaction subsequently fails to proceed, there is a risk of paying abortive fees to your professional team.

B. Works

Organisation of tenders, implementation of works, contracts administration, supervision and payment approvals.

Step VII - Occupation

On completion of these works, the client is now able to take occupation of their offices.

PART VIII

CONCLUSION

There is no doubt that the various traditions, regulations, laws and market peculiarities affecting the leasing or purchasing of offices in this country are complex. Furthermore tenants and their surveyors are dealing with very large sums of money, whether rental or capital and mistakes can be extremely expensive. Conversely, shrewd negotiations can be money saving or even profitable and allow for future flexibility regarding disposal of the premises if business circumstances change.

The vast majority of property transactions in the City are negotiated between two firms of surveyors or agents, each party being represented by a separate firm. We have set out above a surveyor's task when representing you to find premises and without question a good surveyor will always put his clients interest before his own and as such we would always advise you to use the services of a Chartered Surveyor/Incorporated Valuer.

We have noted over the years in practice, those transactions where a tenant or purchaser has chosen to act alone, without professional advice. It seems to us inevitable that those transactions either fail to be completed, or the terms agreed are highly disadvantageous to the tenant/purchaser.

Only an experienced practitioner can be expected to have knowledge of:-

- ◆ Estimated rental value of the property.
- ◆ Likely period of void and rent free period.
- ◆ Market practice.
- ◆ A negotiating skill which can achieve the best possible result in the context of the market at that time.
- ◆ Knowledge of supply and demand of properties.
- ◆ The strengths and weaknesses of the landlord/owner.
- ◆ Assessment of the competition in the market.
- ◆ Ability to deal with problems as they arise (see text above).
- ◆ Assessment of covenant status.

GLOSSARY OF TERMS

Act of Parliament - A formal document setting out a law which has been passed by Parliament and received the Royal Assent.

Agent - One who acts on behalf of a principal.

Agreement for Lease (or sale) - A contract to enter into a lease (or sale). Under section 42 of the Law of Property (Miscellaneous Provisions) Act 1989, the contract must contain all the terms of the transaction and be signed by all parties. For breach of the alleged contract or there must be a sufficient act of part performance.

Alienation - The transfer of an interest in property to another, e.g. sale of a freehold or grant or assignment of a lease.

Alienation clause (provisions) - Within the UK this is a clause controlling a lessee's right to assign and/or sublet.

Alteration - In property terms this normally means physical changes to a building or structure which may or may not amount to improvements.

Amenity - In property terms something tangible which makes the human environment more pleasant, e.g. landscaped open space within an urban area or a swimming pool in a private garden.

Arbitration - A method of resolving a disagreement between two parties by presenting their different views to an independent arbitrator. The award is binding on the parties but an arbitrator's decision can be challenged in a court of law in certain circumstances.

Arbitration clause - A clause in a contract providing for disputes arising from the contract to be referred for the decision of a third party (arbitrator). Common examples are disputes over rent review clauses or the terms of building contracts.

Arbitrator - An impartial person who is appointed to settle a difference between two parties.

Assign - To transfer an interest in a property, especially a lease.

Assignee - One who receives an assignment, e.g. the assignee of a lease, for so long as he retains that interest and stands in the position of tenant under the lease.

Assignment - The transfer of a property interest, especially a lease, from one party to another.

Assignor - One who makes an assignment.

Beneficial occupation - The physical possession and control of land and/or buildings in a manner entitling the occupier to full use and enjoyment of the premises.

Breach (of contract) - An act, or omission, contrary to one or more of the provisions in a contract and therefore giving the aggrieved party a right to enforce specific performance, to rescind the contract and/or to claim damages, the remedy available depending on the nature of the breach.

Break clause - A clause in a lease which gives the landlord and/or the tenant a right, in specified circumstances, to terminate the lease before its normal expiry date. It usually defines the length of notice to be given and may be subject to contractual or statutory financial provisions.

Broker - An agent or middleman who acts for a vendor or a purchaser in a transaction.

Building survey - An examination of a building by a surveyor (which may include specific tests by the surveyor or other experts) in order to produce a written or verbal report. Such a report would cover, for instance, the condition of the structure, fixtures and fittings, services and plant installations. Depending on the instructions given to the surveyor, these physical features would be described in relation to safety, stability, strength, efficiency and economy in use, ease of maintenance and other factors as required.

Building Surveyor - An individual who is competent to undertake building surveys, prepare building specifications, place contracts with builders, supervise repairs, restoration or new works and generally manage allied works on behalf of clients to whom he will owe the normal duty as an agent or employee, depending on the terms of his engagement.

Capital costs (expenditure) - Money spent on acquiring or improving capital assets, such as land, buildings, plant and machinery as distinct from expenditure of a revenue nature such as money spent on maintenance of existing assets.

Central business district (CBD) - The functional centre around which the rest of a city is structured. Characterised by the presence of comparison shopping, office accommodation, leisure facilities, buildings for recreational use, public museums, art galleries and governmental functions. Generally the area of the highest land values within a city.

Chartered Surveyor - A surveyor who is a qualified member of the Royal Institution of Chartered Surveyors being a Fellow or Professional Associate in one of seven divisions, each covering a different field of activity.

Clear lease - A lease under which the landlord has no actual or contingent liability for outgoing (other than tax), e.g. one let on full repairing and insuring terms or one where the full costs of meeting the landlord's obligations is recoverable from the tenant by an adequate service charge additional to the rent.

Code of Measuring Practice - Guidelines for the measurement of buildings published jointly by the Royal Institution of Chartered Surveyors.

Common Law - That part of the law of the realm built up over the centuries from the principles and rules laid down by the judges in cases decided in courts of law and not by legislative enactment by the legislative authority.

Common Parts - The parts that are multi-occupied in a building which are not let to individual tenants but are either retained by the landlord e.g. for the provision of services, or held in common by the tenants for the purpose of providing access for themselves and their visitors e.g. halls, passages, lifts and stairways.

Compensation - A payment to make amends for the removal or curtailment of rights in property or for an injury, including the payment to the owner for lawfully taking a property against his wishes e.g. by compulsory purchase.

Completion - The final step in the legal process of transferring ownership of property, e.g. when the documents in connection with a sale of land are delivered and when originals and counterparts (see below) are exchanged.

Contract - A legally binding agreement. A contract for the disposal of an interest in land is unenforceable in the absence of a sufficient memorandum in writing or a sufficient act or part performance by one or other of the parties.

Counterpart - A legal document, especially the landlord's copy (signed by the tenant) of a lease (the tenant's being termed the "original" or the "lease").

Covenant - 1. A promise, 'undertaking', an obligation given by one party to another. 2. An obligation undertaken by a party and effected by deed e.g. in a lease, obligations of the landlord or tenant. 3. A subjective assessment of the character and quality of a tenant under terms of being able and willing to comply with the terms and conditions of the lease. In valuations the quality of the covenant will normally influence the yield adopted. A tenant of sound standing is often referred to as a "good covenant".

Crown land - A general term, not used in statute, for any land where an interest belongs to the monarch in right of the Crown or of the Duchy of Lancaster or of the Duchy of Cornwall or belongs to a government department or is held in trust for the monarch but occupied for the purposes of a government department.

Damages - Money recoverable by court action by one suffering a loss or injury resulting from breach of contract, breach of statutory duty, or under either statute or tort.

Deed - A document, being written evidence of a legal transaction, which has been executed as a deed, to testify to the agreement of the parties concerned.

Deemed grant – of a new lease to impose a charge to SDLT on certain landlord and tenant situations where a transaction has not yet taken place. The purpose is to prevent avoidance of tax.

Defects liability period (retention period) - An agreed period following practical completion of a building, engineering or other constructional operation during which the contractor is obliged to remedy any defects appearing in the building caused by the failure of materials or workmanship to meet the requirements of the building contract. Amounts specified in the contract will be withheld until such time as defects are remedied.

Demise - 1. Strictly speaking, this is synonymous with a lease and means the granting of a right to the exclusive possession of property for a term less than that held by the grantor. 2. Colloquially used to signify the premises demised, i.e. the area of property the subject-matter of a lease (demised premises).

Developer's finish - A standard of finish that enables a tenant to occupy the premises subject to carrying out their own fitting out works i.e. partitioning etc.

Dilapidations - These are items of disrepair which arise through breach of contract, especially by one of the parties to a lease, giving rise to a right of damages or remedial action.

Disposal (Disposition) - The transfer of land by, for instance, sale, assignment, granting of a lease, death, gift or exchange.

Easement - A right appurtenant to a parcel of land entitling the dominant owner to use the land of the servient owner in a particular manner, or constraining the legal rights otherwise enjoyed by the servient owner, e.g. a right of way, right to light, right of support. Strictly speaking easements cannot exist 'in gross' i.e. personal and unattached to the ownership of land, but rights similar to easements can be created by statute, usually for the benefit of public utility undertakings, and these are commonly referred to as 'statutory easements'.

Exchange of contracts - The first formal and legally enforceable step in the disposal of real property, i.e. when the parties exchange signed, dated copies of the document embodying the terms of the deal.

Expert - A person having special experience, knowledge and skills in a particular subject.

Fee simple absolute in possession - The only form of freehold ownership which can exist as a legal estate under the Law of Property Act 1925. A fee simple is the highest form of freehold land tenure under English Law, in which a 'fee' signifies heritability of the tenancy and 'simple' that there is no qualification as to the heirs who may succeed to it. 'Absolute' means that it will last for ever, i.e. it is not determinable, except that the land will revert to the Crown as bona vacantia if the owner dies intestate and without heirs, 'in possession' indicates either physical possession or the right to take rents and profits, e.g. the rent payable by a tenant under a lease.

Fixtures (and Fittings) - Chattels which are so affixed or 'annexed' to land or a building as to become in fact part thereof, thereby losing their character as chattels (or moveable) passing with the ownership of the land. Whether or not a chattel or moveable has become a fixture depends on both the degree and object of annexation. For example, if the article cannot be removed without serious damage to itself or to the land or building to which it is attached, prima facie it will be a fixture, however, if the purpose of the affixation is to enjoy the article (e.g. fixing a valuable tapestry to a wall) rather than to benefit the use of the land or building, it may not have become a fixture. Those fixtures which are commonly regarded as easily removable are often described as 'fittings'; hence the expression 'fixtures and fittings'.

Floor Area - The aggregate superficial area of a building, taking each floor into account. The RICS Code of Measuring practice distinguishes the following categories and should be consulted for full details:

- (a) Gross External Area (GEA)
- (b) Gross Internal Area (GIA)
- (c) Net Internal Area (NIA)

Floor Load - The live or superimposed load on the floor usually expressed in pounds per sq.ft. (1lb/sq/ft/) or Kilo Newton's per sq. metre (kN/m).

Freehold - In general this is used as shorthand for the tenure of an estate in fee simple absolute in possession. Strictly speaking however, freehold includes fee simple, entailed interest (formally 'fee tail') and tenancies for life.

Freeholder - One who holds a freehold interest.

Full Repairing (and Insuring) Lease (FRI Lease) - A lease under which the lessee is responsible for the whole cost of repairing and maintaining (and insuring) the property.

Geared Rent - A rent which is calculated as a given proportion of:

- (a) The rental value of, or the actual rent(s) received from the subject property; or
- (b) The rental value of a broadly similar property or less usually, one of a different kind.

The purpose of gearing is often to reflect any capital contribution made by the tenant but may be for some other reason e.g. lack of evidence of rents or properties similar in all respects to the subject property, in which a rent comparison method will be used.

Guarantor - A third party to a contractual relationship who guarantees certain undertakings by a party to the contract, e.g. that rent will be paid and tenant's covenants performed under the terms of a lease.

Head lease - A leasehold interest held directly from the freeholder and subject to one or more underleases in the whole of, or part of, the property.

Heads of terms - Fundamental points of an agreement intended to form the basis of a formal contract. In a letting these usually include duration of a lease, the initial rent and obligations and rights of the respective parties, right of assignment, sub-letting, maintenance, insurance and use.

Immediate landlord - In a chain of interest, e.g. freeholder, head lessee and occupying tenant, the interest immediately above that of a particular tenant.

Independent expert - Someone with relevant specialist knowledge who is appointed to resolve a difference between parties e.g. as to a rent review or the interpretation of a clause in a lease. He uses his own specialist knowledge in addition to any evidence presented to him. His decision is final and binding on the parties but, unless his contract of appointment provides otherwise, he can be sued by an aggrieved party if his decision is manifestly negligent.

Inherent defect - A defect within the structure of the building which was inadvertently 'built-in' at the time of design or construction or both.

Insurance - The process whereby one party (the insurer) indemnifies the other party (the insured) against the financial consequences, in whole or part, of any loss by way of damage or injury suffered by the insured on the occurrence of certain specified perils.

Interest (in property) - A right of ownership or some right over land in another's ownership. The term embraces legal estates and legal and equitable interests.

Investment - 1. Using a capital sum, other than for the purpose of trade, to acquire an asset which will, hopefully, produce an acceptable flow of income and/or appreciating capital value. 2. An asset acquired by the process described in 1. above.

Land Charges Register - A register for those land charges imposed upon unregistered land. It is one of the registers maintained by the Land Charges Department of the Land Registry under the Land Charges Act 1972. It should therefore be inspected by or on behalf of an intending purchaser of such land before completion.

Landlord - The owner of an interest in land who, in consideration of a rent or other payment (e.g. a premium), grants the right to exclusive possession of the whole or part of his land to another person for a specific or determinable period by way of a lease or tenancy.

Land Registry – The register of land under the supervision of H M Land Registrars. By 2013 all land in England and Wales will be registered and all leases but the shortest (probably less than three years duration) will be compulsorily registrable on grant or assignment. A scale of fees according to value of transaction applies and must be paid on making an application.

Latent defect - A hidden or concealed defect inherent in the design or construction of a building, which could not be discovered by inspection, despite reasonable care.

Lease - 1. The grant, subject to consideration, of a right to the exclusive possession of land for a definite period (or one capable of definition) which is less than that held by the grantor. 2. The right so granted i.e. the leasehold estate. 3. The original document granting the right. In practice the term 'lease' is usually reserved for a lease for a term exceeding three years.

Leasehold - An estate or land held for a 'term certain' or on a periodic tenancy.

Lessee - The grantee of a lease.

Lessor - The grantor of a lease.

Let - 1. To grant a lease or tenancy especially a short tenancy. 2. To award a building contract.

Licensee - The grantee of a licence.

Licensor - The grantor of a licence.

Negotiation - Discussion, written or otherwise between two or more parties on different sides, the aim being to reach a common agreement.

Negotiator - Someone who conducts negotiations, usually an agent, with a view to reaching agreement with another party or parties, or their agents, in a property transaction, e.g. sale, purchase, letting or rent review.

Net Internal Area (NIA) - The usable space within a building measured to the internal finish of structural, external or party walls, but excluding toilets, lifts and plant rooms, stairs and lift wells, common entrance halls, lobbies and corridors, internal structural walls and car parking areas.

Occupational lease - A lease under which the lessee occupies the land or premises demised rather than grants a further interest to a sub-lessee.

Offer - A presentation or proposal, the acceptance of which may, in certain circumstances, create a contract. To be legally binding when accepted, an offer must be definite as to the parties, the subject - matter and the consideration. In addition, in the case of property transactions, section 40 of the Law and Property Act 1925 provides that to be enforceable the contract must be evidenced in writing. If made 'subject to contract' it does not normally bind the parties involved, but in Scotland it does.

Open Market Value - 1. The best price which might reasonably be expected to be obtained at arm's length for an interest in a property at the date of valuation subject to any statutory assumptions which may be required. 2. For the purpose of asset valuations, which is defined by the RICS Guidance Notes on the Valuation of Assets, defined as the best price which might reasonably be expected to be obtained for an interest in a property at the date of valuation assuming five specified factors.

Open Register – From October 2003, H M Land Registry is moving rapidly to compiling a complete register of all titles throughout England and Wales: within two years (2005) the register and all documents comprising each register (leases, assignments, correspondence etc.) will be open to all as of right. However in certain circumstances, commercially or personally sensitive parts of documents may be excluded from public scrutiny on application to H M Land Registry. Please consult with Hexell Wylie and your solicitors for advice on the application for exclusion of parts of documents from the open Register.

Options to break - See Break clauses.

Original – The copy of the contract, lease, licence or other deed or document which is executed by the landlord.

Owner - Strictly speaking, in relation to landed property this means the freeholder but generally also includes a leaseholder.

Passing rent - The rent which is currently payable under the terms of a lease or tenancy agreement.

Peppercorn rent - A token rent payable as consideration to a landlord, being either of a notional amount of money or, more imaginatively, an English rose or a peppercorn. In modern times this usually occurs when the tenant has paid a premium to the landlord.

Possession - Control over landed property either by occupation and use or, in the case of a landlord, the right to receive the rents, if any, and to exercise the rights and duties in connection with the lease.

Perpetuity - 1. The quality of continuing for ever. 2. Something having that quality e.g. a freehold estate.

Premises - 1. That wording at the beginning of a conveyance or lease giving the date and naming the parties and the words of conveyance including the description of the land(s) (with or without buildings) which is the subject of the document. 2. Land alone or a building or part of a building e.g. an office, together with its land (if any).

Premium - 1. The price paid by an actual or prospective lessee to a lessor, usually in consideration for the rents being reduced to below what otherwise would be payable. 2. Incorrectly, but commonly, the price paid for the purchase of (usually) a leasehold interest. It may represent a capital payment to reflect that the rent payable is below market value or, alternatively, recognise a special value for the purchaser above market value. 3. The periodic amount payable to an insurer by the insured as consideration for the insurance policy.

Privity of contract - The direct relationship between two parties to an agreement which, for each of them, is legally enforceable e.g. the relationship between an original lessor and the original lessee that persists throughout the entire term of the lease (and any extension thereof under an option), even after the assignment of either interest in the property. Changed in leases granted after 1st January 1996.

Profit Rent - In valuing a lessee's interest(s) the sum of the rent(s) received from a sub-tenant(s) and the rental value of any space occupied by the lessee and of any unlet accommodation, less the total rent(s) payable to the immediate landlord(s), with the appropriate adjustments for differences in the terms of the leases.

Quarter Days - (English term days) Lady Day - March 25th; Midsummer - June 24th; Michaelmas - September 29th; Christmas Day - December 25th.

Quiet Enjoyment - The expression for implied right for a tenant to be given possession of the entire property and his entitlement to recover damages if there is substantial physical interference by acts of the lessor's or someone claiming under the lessor.

Rates - Historically that part of a local authority's funds raised by charges based in the occupation of land and buildings within their area. However rates are now taken by Central Government and redistributed to the local authorities.

Registration of Title – Registration of an owner's (freeholder's or tenant's) title at H M Land Registry. Registration provides certain state guaranteed elements of protection and operates as notice to all of the owner's estate in the land.

Reinstatement - The act of putting a part or the whole of a building or structure back into the condition which existed at some relevant previous date.

Rent - Under a lease or tenancy, a periodic payment by the tenant to the landlord for the use of the land. Although usually a sum of money, rent can take other forms, e.g. payment in products or in services. However, the payment must be certain or capable of being ascertained.

Reversionary interest - That part of a grantor's estate or interest in property left after the grant of some lesser interest, e.g. the interest of a landlord after granting a lease.

Rent Free Period - An agreed period usually for several weeks or months, during which a lessee is allowed to occupy the demised premises without payment of rent: (a) In consideration for the tenant incurring expenditure on such matters as fitting out the premises or carrying out repairs and improvements; (b) to reflect market conditions which favour the tenant, e.g. where the space available for letting exceeds the total tenant demand in that area; (c) virtue of both (a) and (b).

Rent Review - A provision in a lease whereby the amount of the rent is to be reconsidered at stated intervals, e.g. every five years, or on specified dates. The method and procedure for reviewing the rent are outlined in the lease. Failing an agreement between the parties, there is normally provision for reference to a third party, i.e. an arbitrator or independent expert.

The Royal Institution of Chartered Surveyors, (RICS) - The principal professional body in the British Isles concerned with surveying, It was founded in 1868 by the amalgamation of three surveyors' clubs and has since been joined by, among a number of bodies, the Chartered Land Agents Society, the Chartered Auctioneers and Estate Agents Institute (both in 1970), and the Institute of Quantity Surveyors (1982). The institution was granted a Royal Charter in 1881 and now has well over 80,000 members, including overseas members, in seven divisions. The present divisions are Building Surveyors, General Practice; Rural Practice; Land Surveyors; Minerals; Planning and Development; and Quantity Surveyors.

Schedule of Dilapidation - A list of the requirements of repair and maintenance which a tenant (or landlord) is obliged to make good under the terms of the lease or tenancy of a property. This can be in the form of either an interim schedule prepared and submitted during the lease or tenancy or a terminal (final) schedule on the expiry of the lease or tenancy. In the latter case, the tenant's obligation is usually discharged by a cash payment based upon an agreed estimate of the cost of the relevant repairs or, if lower, the loss in value (if any) of the landlord's interest resulting from the disrepair.

Security of Tenure - 1. The right of a tenant to remain in possession of demised premises in accordance with the terms of the tenancy. 2. The statutory right of certain classes of tenant to remain in occupation of the demised premises beyond the expiry date stipulated on their existing lease or tenancy. The three principle classes of tenant who enjoy such a security are those who occupy certain residential, agricultural or business premises. The rules, constraints, exceptions and conditions applicable to these classes are contained in specific legislation i.e. the Rent Acts, the Agricultural Holdings Acts or Part II of the Landlord and Tenant Act 1954, respectively. 3. Exercising the right to remain in possession will give rise to a deemed grant of lease for twelve months.

Service Charge - The amount payable by a tenant on account of services provided by his landlord.

Shell & Core - A standard of finish whereby the developer completes the structure, main plant and cores, i.e. common areas, but leaves the interiors of the office floors without ceiling, floors etc. Capital allowances are often given to a tenant to bring the offices up to an agreed standard of finish.

Sinking Fund - A sum of money set aside at regular intervals to earn interest on a compound basis either: (a) To be set off against the diminution in value of a wasting asset e.g. a lease, or (b) To meet some future cash liability.

Stamp Duty Land Tax – Introduced by FA 2003 on 1st December 2003 to replace Stamp Duty. Most freehold and leasehold transactions are chargeable to SDLT. Consult accountants or solicitors for details of the rates of tax payable.

Statute (laws) - The part of the law which derives from legislation, i.e. Acts of Parliament.

Subject to Contract - A phrase which qualifies a proposed agreement so that it is not legally enforceable in England and Wales until a formal contract has been entered into by the parties.

Sublease (underlease) - A lease held from a lessor who has a superior lease of, or including, the demised premises.

Sublessee (underlessee) - One who holds a sublease.

Subtenancy - A tenancy held from a landlord who has a superior tenancy of or including the demised premises. The term is synonymous with sublease where the demise is under seal but also includes an oral or written agreement (not under seal).

Subtenant - One who holds a subtenancy.

Superior landlord - The owner of a superior interest in property.

Superior lease (Superior tenancy) - A superior interest which is not the freehold e.g. a lease subject to an underlease.

Surrender (of lease or tenancy) - Voluntary termination of a lease or tenancy by the tenant for years (or life) yielding up the balance of the term to the immediate landlord (or reversioner).

Tenancy - 1. Strictly speaking, the interest of a person holding property by any right or title. 2. More usually, an arrangement, whether by formal lease or informal agreement, whereby the owner (the landlord) allows another (the tenant) to take exclusive possession of land in consideration for rent, with or without a premium either; (a) For an agreed period or, (b) On a periodic basis until formally terminated. 3. Under the Landlord and Tenant Act 1954 Section 69(1), this means a tenancy created immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for lease or underlease or by a tenancy agreement or in pursuance of any enactment (including this Act), but does not include a mortgage term or any interest arising in favour of mortgagor by his attorning tenant to his mortgagee.

Tenancy Agreement - A lease for three years or less, not under seal.

Tenant - A person (or body of persons) holding a tenancy.

Tenant's Fixtures - Objects installed by a tenant which although strictly fixtures are, if capable of being removed without doing serious damage to the property, nevertheless lawfully removable by the tenant on vacating the premises. To qualify as such they must be: (a) Trade fixtures, i.e. attached to a property for the purpose of the tenant's particular trade; (b) Ornamental and domestic fixtures, i.e. chattel or moveable affixed to a house for ornament or the better enjoyment of the object itself.

Tenant's Improvements - Improvements to land or buildings to meet the needs of - and carried out wholly or partly at the expense of - the tenant. When subsequently seeking a renewal of his lease, he may, under the Landlord and Tenant Act 1954 be entitled to the rent being assessed on the assumption that his improvements have not been carried out. If he vacates the premises he may become entitled to compensation under Part I of the Landlord and Tenant Act 1927; the basis of such compensation will reflect the extent to which his improvements have increased the rental value of the premises to the benefit of the landlord.

Tenure - The basis upon which property is held: freehold, leasehold or commonhold (which is a particular form of freehold analogous to condominium title).

Term - 1. The duration of the lease. The term commences from the date specified in the lease, which is not necessarily the date when the document is executed or registered. 2. In a lease or other contract, one of the provisions expresses the agreement between the parties.

Under Offer - Where an offer for a property has been made and accepted in principle but the transaction is still subject to contract.

Under-let (sublet) - The grant of a lease to an under tenant (sublessee).

User Clause (user covenant) - A contractual provision especially one in a lease, specifying a use or uses to which the property in question may be put and/or the use or uses which are prohibited.

Vendee - A purchaser, especially one who buys land.

Vendor - A seller, especially one who sells land.

Warranty - An express or implied undertaking of the truth of a statement, whereby the warrantor becomes legally responsible in the event of the facts being otherwise than as stated, e.g. a vendor may give a warranty that the property being sold is fit for a particular purpose or is in a given state of repair.