

Entering into a commercial lease as a tenant

This is our checklist of things to watch out for in a leasing proposal, particularly if you are not using the services of a tenant representative.

Incentives

Generally an incentive may be available if you ask for it. If the annual rent is on the lower end, this might be limited to 1 month's rent free, but if you are taking premium A-grade office space, then, depending upon whether it is a landlords' or tenants' market, incentives may extend to a fitout contribution and/or rental abatement up to a certain figure.

Check the leasing proposal carefully

Check the leasing proposal carefully before you sign it. The landlord's solicitor will prepare the lease in line with the leasing proposal and changes to the commercial terms of the lease will be hard to extract after the leasing proposal has been signed.

In addition, generally if you do not proceed with the lease after documents have been prepared you will be liable for the landlord's legal costs.

Therefore make sure that you are happy with the term, rent reviews, security and any option term.

Personal guarantees

We recommend that clients avoid providing personal guarantees where possible. You may need to consider trading off a larger bank guarantee or security deposit in order to avoid giving personal guarantees.

Make good

Check the leasing proposal to see what it says about make good of the premises. If you are taking over premises with an existing fitout you don't want to have to make good to base building standard at the end of the lease, as this can be very expensive.

Assignment and subletting

Make sure that it is specified in the leasing proposal that you have the right to assign the lease or sublet the premises with the landlord's consent (not to be unreasonably withheld).

Costs of lease preparation

These days if you are a tenant you should ask that each party bear its own legal costs. More often than not, this will be agreed to.