

Agreement to Lease Checklist



- **Tenant entity**
 - Who is going to be the tenant? Think about incorporating a separate tenant entity per lease (to contain liability). Make sure the tenant company is incorporated prior to execution or the person signing will incur personal liability? Do you need the ability to assign/novate the ATL to another party (e.g. franchisee). Note that the original party will remain liable even if you have nominated another party as the tenant.
- **Landlord Contributions**
 - At present it appears that Landlord inducement payments will be taxable from 1 April 2013 (not yet law). These are (any payments derived by a person in connection with an “agreement which grants an estate or interest in land.” Will catch assignments and extensions of leases, contributions to relocation cost, covering tenant’s rent/break cost or interest free loan.
 - When is the landlord contribution required to be paid back? (e.g. change of tenant) Who is it payable to and when? What are the conditions for payments?
- **Landlord Fitout Obligations**
 - There should be an itemised list setting out the landlord’s obligations. Exactly what must the landlord do and when? Think about what the landlord needs to do prior to commencement of trade. What happens if the landlord does not meet these obligations on time?
- **Personal Guarantees**
 - Consider who should be providing the guarantees? The franchisee’s directors/shareholders (prior to commencement). Try to get these limited if at all possible. Ask for release of PG’s on assignment and provision of replacement PG’s.
- **Bank Guarantees**
 - Ensure form is agreed prior to entry into Agreement to Lease.
 - The Agreement to Lease should be conditional on the form being agreed.
 - Ask for Bank Guarantee to be released on assignment and provision of replacement Bank Guarantee and end of term.
- **Fitout**
 - What approvals are required? Is there a Fitout period (rent free)? Do any landlord works need to be completed prior to start of Fitout period. Make sure insurances are in place.
- **Rent**
 - CPI or Market?
 - Suggest a cap if CPI? (note current CPI for quarter ended March 2013 = 0.9% but has been as high as 5.3% for June 2011 quarter (all time high was 44% in September 1918)
- **Commencement Date**
 - Should be after expiry of Fitout period?
 - Does it need to coincide with another event – e.g. centre reaching a specific stage of development, major tenant commencing trade, certain level of tenancy?
- **Upfront costs**
 - What deposit is required? and when (on satisfaction of conditions?)
 - Tenancy coordination cost
 - Landlord’s legal costs (is standard that each party pays own costs now).

- **Conditions**

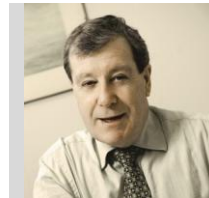
- What should the Agreement to Lease be conditional on?
 - Board approval;
 - Resource and other consents;
 - Obtaining a franchisee;
 - Major tenant signing up;
- Certain level of tenancy for rest of centre.

- **The Lease**

- What are the terms and conditions of the Lease? Refer to our Lease Checklist for issues to consider when reviewing and negotiating the terms of a lease.
- The form of the lease must be agreed prior to entry into the Agreement to Lease or

such agreement must be a condition of the Agreement to Lease

This checklist is intended as a guide to some of the things to think about when negotiating a lease. Each individual situation will need to be carefully reviewed to establish the full list of issues which will need to be negotiated.



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