

Advantages and Disadvantages of Subleasing/Licensing

The Advantages

It's all about control

- The franchisor has a direct contractual relationship with the landlord.
- The franchisor retains control over the premises (over the franchisee sublessee/licensee).
- No risk of franchisee tenant terminating or varying the lease without the consent of the Franchisor.
- Franchisor can terminate tenancy and take over premises or sublease/licence to a different franchisee – easier than forcing landlord/tenant to assign lease to you.
- Harder for the franchisee to “walk away” from Franchise Agreement if franchisor controls the site.

The Disadvantages

- You are primarily liable – the landlord will expect you to comply with the tenant's obligations under the lease.
- Follow up – because you are the tenant, you will need to follow up to ensure the franchisee complies with the Tenant's obligations under the lease.
- Director's liability – directors of the Tenant entity need to be aware of their liability for reckless trading – i.e. agreeing or allowing the business to be carried on in a manner likely to sustained risk of serious loss to the creditors (e.g. allowing termination of a sublease).
- If franchisee absconds – you are left with the tenant's obligations.
- If the tenant entity has entered into more than one lease and doesn't have funds to pay any amounts due under a lease – there could

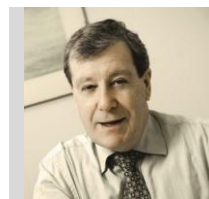
be a “knock-on” effect if the tenant is put in liquidation.

Tips

- We recommend a licence over a sublease.
- Make sure your sublease/licence contains the right terms and conditions – for instance a breach of the Franchise Agreement should be a breach of the sublease/licence and vice versa.
- The term should be expressed to automatically end if the franchise agreement is terminated.
- Take an active role in administration of the lease, keep abreast of rental payments, follow up rent arrears promptly – issue PLA notices
- Consider forming a separate company to hold each lease and guarantees and bank guarantees to be provided by the Franchisee.
- Prior to entering into any ATL or lease the directors of the tenant should satisfy themselves that the company has the means to meet the commitments under the lease.

We can help!

Please call for more information.



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