

Corporate Relocation Projects and Pre-Let Agreements

Ogier has extensive experience advising and implementing the legal aspects of corporate relocation projects. Our objective is to ensure that clients' accommodation strategies align with their corporate business objectives.

1. What is a Corporate Relocation?

A corporate relocation occurs when a corporate occupier exits its business operations from one property and relocates them to another.

Fundamental to that relocation process is the securing of business continuity and minimal disruption to the core business operations of the corporate occupier. At the same time the corporate occupier will want to minimise its exposure to paying double rent at both its existing and new premises.

2. Pre-let Agreements

A corporate relocation will often involve the entering into of a pre-let agreement between the corporate occupier and its proposed new landlord if the new premises are to be occupied under the terms of a lease.

The pre-let agreement (also known as an Agreement to Lease) ensures that the new premises are secured for fitout and occupation by the corporate occupier within a timeframe that enables it to relocate from, and make good dilapidations to, its existing premises without disruption to its business continuity.

Where the proposed new premises are to be new build (bespoke or not), or where the landlord and tenant are to carry out works in the premises before occupation can take place, the processes under the pre-let agreement can be very complex.

Issues concerning detailed plans and specifications, planning permissions, requisite consents, housing consents, landlord's works, tenant's fitout works, insurance, target dates for practical completion, inspection rights, practical completion protocol, certification of practical completion, variation to the build, delays, extensions of time, liquidated damages, lease commencement date, contract of lease date, measurement of net internal area, rent calculation provisions, rent free periods, defects liability periods, collateral warranties, back stop dates and rescission rights require precise and pragmatic drafting all within the context of the corporate occupiers timetable for exiting and relocating from its existing premises.

Sometimes, a corporate occupier can negotiate a 'holding over agreement' with its existing landlord. Such an agreement allows the corporate occupier to remain in occupation of its existing premises after expiry of its existing lease and pending the availability of its new premises on practical completion.

However, this is not always the case and the existing landlord may have a new incoming tenant of its own to cater for. In such circumstances, a delay to the landlord's works at the new premises could, in a worst case scenario, leave the corporate occupier without premises from which it can run its business operations. In those circumstances the pre-let agreement would require detailed provisions dealing with the allocation of risk so that the corporate occupier is not put to any additional expense in the event of having to relocate to temporary accommodation pending practical completion of the landlord's works and completion of its own fitout at the new premises.

3. Project Management

The key to a successful relocation project is to plan as carefully as possible and to allocate risk under the related legal documents appropriately.

A relocation project benefits significantly when the corporate occupier, its commercial real estate agent (or 'tenant representative') and its lawyer work closely with each other as a team ensuring that all aspects of the project are covered off.

It is recommended that the corporate occupier instructs its lawyer to review its existing lease in the context of the proposed relocation before commercial Heads of Terms are exchanged between the parties for the pre-let agreement. On review of the existing lease the corporate occupier's lawyer will be able to identify issues that will impact on the arrangements under the

proposed pre-let agreement and which should be catered for under the commercial Heads of Terms.

It is also worth noting that the form of lease for the new premises will be annexed to the pre-let agreement. Consequently, issues such as rent review, dilapidations, outgoing, use, insurance, building mechanics, after hours air conditioning, floor coverings, redecoration, signage and naming rights, car parking, alienation, roof top licences for IT equipment and plant, consents, exclusivity, confidentiality and legal costs are often best documented upfront in the commercial Heads of Terms.

By incorporating these issues into detailed commercial Heads of Terms potential disputes and unnecessary delays during the legal negotiation process can be limited significantly.

The information and expressions of opinion contained in this guide are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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