

# BEFORE YOU TAKE THE KEYS

Beware of the pitfalls when entering into commercial leases

BY LINA CHUA

**L**EASE terms in Singapore tend to be pro-landlord. If you are not renting a large area, your bargaining power may be limited and you should focus on aspects that are important to you. In finding a suitable property, bear in mind that different properties are approved for different uses. If you require office premises, it is not permissible to rent industrial premises for office use.

These days, it is common to find co-working space or serviced offices. Technically, the legal arrangement for use of such spaces is considered a licence rather than a lease as no exclusive possession of the premises is provided to the user.

When you have found premises that you wish to rent, a title search should be conducted on the property to verify the ownership and right of the landlord to lease the property. If the property is held by the landlord under a lease, the lease should be extracted to check whether the head lessor's consent is required for subletting. If the property is subject to mortgage, the landlord should be requested to provide evidence of the bank's consent as mortgages normally contain a restriction against subletting. If the bank's consent is not obtained, and the bank takes possession of the property, the bank would not be bound by a tenancy entered into after the mortgage which the bank has not consented to.

For new buildings where the temporary occupation permit has not been issued, the commencement date of the lease would normally be subject to change. If you do not have any leeway for staying on in your existing premises, consider the risk of delay carefully before entering into such tenancies. On taking possession, have a joint inspection with the landlord to note down defects with photographic record and have both parties acknowledge the state and condition to avoid disputes at the time of return of the premises.

Where the premises are to be occupied by more than one company within the group, decide which entity is to be the tenant. Rent would normally be subject to Goods and Services Tax (GST) so the tenant entity should be GST-registered, if practicable. As most tenancies would contain a restriction against subletting or sharing of premises, the landlord's consent should be obtained upfront for such subletting or sharing of premises within the group.

Besides rent, commercial landlords often charge a service charge for the maintenance of the building. For retail premises, there may also be advertising and promotion contributions. These amounts are subject to change. Landlords often pass some other charges such as utilities charges, and increase in property tax to the tenant. Many

landlords pass their legal cost or administrative charges for preparation of the lease to the tenant. If the tenant requires amendments to the landlord's standard lease format, there may also be additional legal costs for the amendments. Stamp duty on the tenancy is invariably borne by the tenant.

The amount of security deposit to be provided by the tenant would normally be based on the tenant's paid-up capital. Where the tenant's paid-up capital is low, the landlord would usually require a higher security deposit. The security deposit can be paid by cash or where the landlord agrees, by bank guarantee. A benefit of providing the security deposit by bank guarantee is that it is protected against insolvency of the landlord.

Tenants may wish to request the landlord for incentives to enter into the tenancy such as rent-free period for fitting out the premises and, if the landlord would agree, during the lease term. In the event that the tenant breaks the lease, the tenancy agreement would normally provide that the landlord may claw back the rent-free period granted to the tenant.

Landlords may allot a

certain number of car park lots based on area of the premises. Often, these lots are granted on a non-reserved basis at prevailing car park charges. Larger tenants may wish to consider adding favourable clauses which cover naming rights, signage rights, first rights of refusal to purchase or exclusion of competitors in the building.

Read the lease carefully and note your obligations. Normally, renovations would require the landlord's prior written consent. It is common for commercial landlords to reserve a right to terminate the lease in the event of redevelopment or renovation of the building or part of the building. If you are spending large amounts on renovations, you may wish to try to negotiate out the landlord's right to terminate for the initial term so that you may recoup your renovation cost spent.

Where the tenant uses group insurance, the insurance clause of the tenancy agreement should be modified to provide for the landlord to be named as additional insured rather than joint insured. The tenant may only want to provide certificate of insurance, rather than the actual policy to the landlord for confidentiality reasons.

Commercial leases also often provide for exclusion of liability of the landlord and for the tenant to indemnify the landlord in various circumstances. Take your own protective measures and ensure that you have adequate insurance protection.

In the event of non-payment of rent or breach of lease terms by the tenant, the lease would normally provide for a right of re-entry by the landlord. In such an event, the landlord should try to mitigate its loss by seeking another tenant.

If you wish to stay on in the premises after the initial term, you may want to ask for an option to renew. Where rent or terms for renewal lease are to be stipulated by the landlord or agreed between the parties, you may not be able to compel the landlord to grant the renewal lease to you if you do not reach agreement on the renewal terms. For larger tenancies, the landlord may agree to a valuation mechanism for a more objective determination of the rent for the renewal term.

Note your reinstatement obligations on expiry and ensure that you are able to return the premises to the landlord at the expiry of the lease so as to avoid the risk of liability for double rent for delay in return of premises. ■

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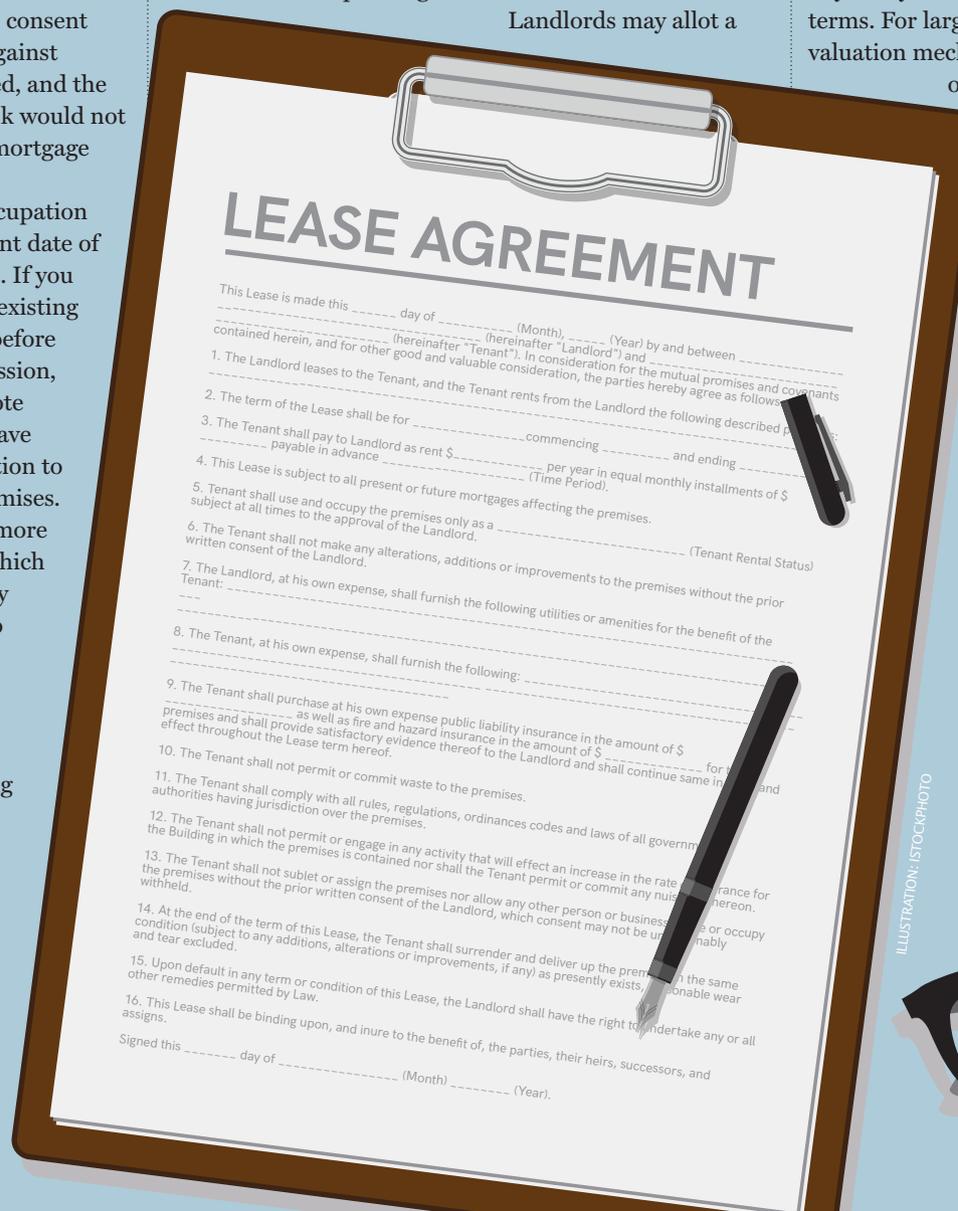


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