

Short-term lettings



► Inside

Decisions, decisions...

Formal leases

Licences to occupy

Tenancy at will

Periodic tenancy

Group company sharing

Which option is best for you?



Introduction

If you are looking for new short-term premises for your business, did you know that there are actually a whole range of legal forms a short-term letting can take?

This Inbrief sets out the different options available for short-term occupation of business premises and considers the advantages and disadvantages associated with each.

Decisions, decisions...

When looking to move into new premises many business owners will, in an ideal world, want a 'belts and braces' style lease, clearly setting out the key provisions such as rent and duration (known as term) and offering a high degree of security.

However, a formal lease may not be the most appropriate option if the premises are only required for a short period. Given the costs associated with drafting and negotiating a full lease, many landlords and indeed tenants may be unwilling to go down this route when cheaper options will suffice.

This note considers the following options:

- Leases
- Licences
- Tenancies at will
- Periodic Tenancies
- Group sharing arrangements

Formal leases

What is a lease?

A lease is the grant of the right to exclusive possession of premises for a specified period.

Advantages of a lease

- It offers security for the tenant as there are only certain circumstances in which a lease can be brought to an end
- It records all of the key terms and provides certainty
- Exclusive possession of the premises is obtained (the landlord generally has limited rights of access)
- Certain leases will provide the tenant with a right to renew at the end of the term (called "security of tenure") under the Landlord and Tenant Act 1954 (LTA 1954)
- Flexibility for both the landlord and the tenant can be introduced by the insertion of a mutual rolling break lease or break options

at regular intervals

Disadvantages of a lease

- A lease (even for a short term) tends to be a long document and it takes time to negotiate terms, meaning higher legal costs
- Obligations may be quite wide-ranging with the inevitable attendant liabilities and costs, as the landlord will pass full responsibility for the premises to the tenant
- Stamp Duty Land Tax (SDLT) may be payable on the lease

Licences to occupy

What is a licence?

A licence grants permission for a licensee to do something on a licensor's property. This permission prevents the act that is permitted from constituting a trespass. A licence is a personal right.

Advantages of a licence

- A licence is generally a short document which can be prepared quickly and cheaply
- Obligations are not generally wide-ranging and liabilities can be significantly less than in a lease
- Often, an all-inclusive fee is payable, meaning that the rent includes a contribution towards insurance and service charge, rather than there being a complicated service charge regime and insurance provisions
- As a licensor is unable to bring a licence to an end for breach of contract, proceedings for possession may not be issued before expiry of the licence
- No SDLT is payable

Disadvantages of a licence

- The licensee does not have the same control over the premises as it would have if it were tenant under a lease, as a licence does not confer exclusive possession
- A licence to occupy falls outside the LTA 1954 and confers no "security of tenure",



so it might not be suitable if these particular premises are really important to an occupier

Tenancies at will

What is a tenancy at will?

A tenancy at will exists where there is occupation that may be terminated by either party at any time. It may come into existence expressly or via implication (e.g. where a tenant stays in possession beyond the contractual end of the lease). It can sometimes be difficult to distinguish a tenancy at will from a licence to occupy. Alternatively, if not drafted carefully, a tenancy at will can turn into a "period tenancy", which can have disastrous consequences for the landlord.

Advantages of a tenancy at will

- A tenancy at will is a short document and can be prepared quickly and cheaply
- A tenant has an exclusive right to occupy premises
- There is no SDLT payable
- A tenant at will can walk away at any time without giving notice

Disadvantages of a tenancy at will

- A tenancy at will falls outside the LTA 1954 and confers no security of tenure
- The landlord may state that the tenancy is at an end and that possession is to be given back immediately at any point. So this is not a good choice if you need certainty!

Periodic tenancies

What is a periodic tenancy?

This is a tenancy with a term by reference to a period of time (e.g. a certain number of weeks, months, quarters or years), so the tenancy continues week to week/month to month, etc. until it is terminated by notice from the landlord or the tenant, expiring at the end of the relevant period. The tenancy may come into existence expressly or via implication where there is a landlord/tenant relationship and rent is paid by reference to a particular period of time.

Advantages of a periodic tenancy

- A short document (which can be prepared quickly and cheaply) may be used or there may be no document at all
- The rolling nature of the arrangement means renewal costs will not be an issue
- Notice served by the landlord must expire at the end of a relevant period, so possession cannot be demanded immediately
- A periodic tenancy cannot be contracted out of the security of tenure provisions of the LTA 1954, so a tenant has a right to call for a new lease at the end of the contractual term (subject to the landlord having grounds to oppose that request, in certain circumstances)

Disadvantages of a periodic tenancy

- The landlord may serve notice to terminate and seek to put a new agreement in place

Group company sharing

What is group sharing?

Some leases permit a tenant to share occupation with a group company. This may be attractive to certain businesses. It is important to check the definition of a "group company" in the lease to ensure that the option applies.

Advantages of group sharing

- An informal arrangement that does not require expensive and lengthy legal documentation
- The landlord's prior consent may not be required (check the lease)

Disadvantages of group sharing

- It may not be possible under the lease – sometimes, landlords are reluctant to permit sharing arrangements because this could dilute their control over the occupation of the premises
- There are likely to be conditions attached by the landlord, for example, ordinarily, the sharing of the property must be conducted in a way that avoids a landlord/

tenant relationship arising so that the group company does not acquire security of tenure under the LTA 1954

- The tenant may be wary of breaching its lease (e.g. by allowing a landlord/tenant relationship to arise, perhaps by the charging of rent, leading to the group company acquiring security of tenure) and facing a damages claim
- No exclusive possession
- Advice should be taken on corporate law/tax implications of group sharing

Informal arrangements

In instances where an informal arrangement is entered into (perhaps by virtue of a letter or even following verbal communication), depending on the circumstances one of the above forms of letting is likely to be implied by law. If rent is being paid at regular intervals, for example once a week, a landlord may have inadvertently created a "periodic tenancy" and given his tenant security of tenure. On this basis, informal arrangements should be avoided.

What's in a name?

It is important to note that, even when a notional label has been attributed to a particular arrangement, if any dispute should arise the substance of the whole agreement will be examined, including the rights, obligations and intentions of the parties in practice, in order to ascertain the legal status of the occupation. It is not uncommon to see, for example, a 'tenancy at will' being deemed a periodic tenancy by the courts.

Which option is best for me?

A commercial lease provides the greatest security for a tenant and indeed a landlord. Many tenants would ideally choose to enter into a short commercial lease or agree a longer commercial lease with break options at regular intervals/on a rolling basis to enable early termination on notice.

If it is not possible to negotiate a lease then a periodic tenancy can be an attractive option, although it is likely that a landlord will want to avoid this because it will not want to grant the tenant an on-going right to renew.

Although it does not grant exclusive possession, a licence provides contractual certainty and requires notice to be given by a landlord in order to take back premises, unlike a tenancy at will.

The various options and risks can seem daunting, but even if property is not your company's main focus, it is important to get the deal right. The consequences for your business of making the wrong decision could prove very costly, so please do not hesitate to contact us if you have any questions or concerns.

**For further information
on this subject please contact:**

Rachel Francis-Lang

Partner

T + 44 (0) 20 7074 8183

rachel.francis-lang@lewissilkin.com