

## Setting up shop in the UK – Top tips for international retailers taking leases of stores



Acquiring your first flagship UK store is a huge and exciting step for your brand. It may seem daunting but by planning ahead and seeking advice from trusted professionals, you will be in a strong position to expand into UK retail market at your pace to allow you to focus on growing your brand.

Our key 'shopping list' top ten tips for getting started are:

### 1. Get a Professional Team

Start with a team who will work with you to help manage the process and get these people on board sooner rather than later. The wider team will often be:

- Solicitors. Solicitors, such as us at Cripps, will be your main point of call once the Heads of Terms are agreed and will work closely with the agent to ensure that the agreed terms match what is included in the transactional documents and protect your position. Good solicitors will anticipate problems before they arise and manage the process for you.
- Agents. Agents can help with advising on locations and will negotiate the key deal terms, often before solicitors get involved. They will help you sell your brand to the landlord. The agents are key in preparing the Heads of Terms (HOTs) so it is very important to have a trusted agent on board!
- Accountants/Tax Advisers. Accountants will be able to assist with any VAT or tax related queries which are specific to the UK. They will also be able to advise on compliance and tax structures for your business
- Fit out Team. This will include any designers, architects and contractors who will be involved with your fit



out works to realise your vision. They will be able to advise on any technical requirements including the requirement to obtain planning and other consents.

Cripps would be happy to assist with any recommendations for these roles and would work closely to form “one team” around your brand.

## 2. Incorporate a UK company

To get ahead of things, you should consider incorporating a private limited company in the UK at the earliest opportunity. This entity will then freely take on the obligations in the negotiated documents. As a full service law firm, Cripps' Corporate team would be happy to assist with the incorporation and various ongoing corporate governance services.

If an overseas entity (i.e. a company not incorporated in England and Wales) takes on the obligations, the landlord might require an opinion letter to ensure that if required, the landlord could enforce its obligations against this overseas entity. This alternative incurs extra cost and can cause a delay. Most landlords will in any event require the lease to be taken in the name of a UK company.

## 3. Bank Account and VAT Registration

These two things are not legally difficult but we have seen them slow down and frustrate transactions if not dealt with early enough.

You will need to open up a UK bank account before lease completion to pay the rent and any other payments due on completion of the lease for instance, the rent deposit. This process often takes longer than it should and you should leverage your existing banking relationships in your home country where possible to speed up the process.

You will also need to complete your registration for VAT in order to be able to reclaim VAT on the rent and other payments. Your accountants can assist with this process and you will need a 'UTRN' number from Companies House as a first step.

## 4. Agree heads of terms

It does what it says – they're a breakdown of the key terms agreed such as; the term, the rent (including any rent reviews), the property, the permitted use and any deal specific conditions such as break clauses or turnover reporting obligations. Whilst the Heads of Terms are not legally binding it will be difficult to get landlords to agree to depart from them after they are settled so it is crucial that you understand all of the terms that you are agreeing to.

Unlike the HOTs, the transactional documents will, once dated, be binding. The HOTs will dictate what the transactional documents are and usually these are: Agreement for Lease, Lease, Licence to Alter and a Rent Deposit Deed. Occasionally there will be a side letter which will document specific confidential terms.

## 5. New Lease vs Lease Assignment

Most UK stores are held by the tenant on a lease. These leases can vary in length from 5 to 20 years and often will be granted for 10 years. If a store is vacant or the landlord does a deal with the existing tenant to leave, then you will be offered a new lease and can negotiate the terms with your professionals. Sometimes you will need to take a transfer/assignment of an existing lease from the current tenant. In this case the landlord will need to



consent to the transfer of the lease to you and you will be unlikely to be able to negotiate the lease terms as the lease already exists. For lease assignments it is crucial to understand the terms of the existing lease as you will be bound by those.

## 6. Check Your Security Package

The landlord will want to see that as an incoming tenant you are able to perform all of the obligations contained within the lease and this security can be offered in various forms – the most common being a rent deposit deed. The amount and duration of any rent deposit will be negotiated by the agents and included in the HOTS although usually these are equivalent to 6 months' worth of annual rent.

In addition, or as an alternative to having a rent deposit, a landlord could request a guarantor. A standard guarantee clause will state that if the tenant defaults, the guarantor will step into the tenants shoes and perform any of its obligations. However, these are to be treated with caution – guarantees are usually unlimited and cover all liability under the lease (i.e. payment of rent, repair, reinstatement and third party claims).

## 7. Understand Your Repairing Obligations

Understanding what is included within the demise of the lease is important as this will impact who is responsible for repairing which parts of the store.

UK leases are often full repairing and this places all the responsibility on the tenant to repair the unit – in reality this means that a tenant can be obliged to improve the state of repair of the store and this be an expensive commitment of tens or even hundreds of thousands of pounds. It is therefore very important that you get a survey of the store to reveal the extent of this liability at an early stage.

## 8. Check What You're Paying For

Whilst the rent is usually negotiated in early stages, unpicking which other payments are also due to the landlord can be costly if not considered thoroughly. These can include:

- A service charge. This will be due (usually calculated as a percentage with reference to the floor area) to the landlord periodically in return for the landlord carrying out various services. This list will need to be considered carefully.
- An insurance contribution. The landlord will insure the larger building in return for the tenant paying a sum towards the same. Again, your solicitors will be best placed to advise if the provisions are fair.
- Site specific contributions. Depending on the location, other site specific payments might be due (such as contributing towards Christmas decorations or Wi-Fi services)

## 9. Prepare any fit out work designs

Preparation of fit out plans should be done as far in advance as possible to avoid any disruption as getting the landlords consent, any required buildings regulations or listed building consent can take some time.

Once agreed, these plans will be appended to the licence to alter and ideally completed at the same time as the lease.

## 10. Don't forget about Stamp Duty Land Tax – 'SDLT'

Often when budgeting for the costs of a new lease international retailers will not take into account SDLT which is



a one off tax payable to HMRC on completion of the new lease. Broadly speaking the higher the rent and the longer the term, the higher the SDLT.

By way of example, a 10 year lease at a rent of £250,000 plus VAT per year with no rent free period will attract SDLT of around £23,450. Once the key terms are settled we can run a calculation to estimate the SDLT for your budget.

For more information on anything in this article please contact Summer Gibb or Ed Fowler in our [retail and leisure team](#) who would be delighted to help.



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Associate