

**COMMERCIAL PROPERTY REPORT
AUGUST 2004
DIFFERENCES IN PRACTICE BETWEEN FRANCE AND ENGLAND**

The Legislation

In England and Wales the Landlord and Tenant Act 1954 as amended by the Law of Property Act 1969 and changes made through the Regulatory Reform Order 2003 is the principal legislation which defines the rights and obligations of Landlords and tenants of business premises. This legislation provides commercial lessees with a degree of security tenure; it sets out the basis for determining the open market rental value on lease renewals and the basis of compensation if landlords seek possession for their own use, occupation or development on lease expiry.

Privity of Contract

In England and Wales the original parties to lease can remain liable to each other for fulfilment of the terms of the lease throughout the term of the contract – regardless of any subsequent assignment of the lease – where the lease was granted prior to 1st January 1996. This is known as the concept of privity of contract which does not apply in the same way to leases granted after 1st January 1996.

By virtue of the Landlord and Tenant Act 1988 landlords cannot unreasonably delay or withhold consent to applications for either assignment or sub letting of commercial premises.

Repairs

The usual obligation requiring a lessee to keep in good and substantial repair a commercial property effectively requires a lessee to put and keep such premises in repair – this can extend to include inherent defects (i.e. defects in design or construction). It should be appreciated that much will depend on the precise wording of the lease – but depending on that wording the obligation can even extend to require a lessee to rebuild and renew a property.

Service Charges

Until relatively recently lessees could only secure a rebate in respect of service charges (where a landlord had made an incorrect charge) for the year in which the challenge to the service charge was actually made – and not for the previous years. Now, following the decision in *Kleinwort Benson v Lincoln City Council* lessees are able to pursue such claims under contract for up to 12 years.

Rent and Rates

Rents on either rent review or lease renewal are generally based on open market value and outside of a limited number of shopping centres, turnover rents are not in favour in the UK. Unlike France, indexation of units is also not general practice.

On review rents are usually upwards only – dependent upon the lease provisions we may see reform in this arena shortly. On lease renewal the rent is geared to the open market value which can in certain instances lead to a reduction in the rent payable. The levels of rent proposed by landlords are capable of challenge and reduction by negotiation or alternatively reference to other parties. In the case of rent reviews these disputes are normally settled either by reference to an arbitrator or an independent expert; in the case of lease renewals such disputes can be settled by reference to the Courts or formal arbitration proceedings.

Business Rates

These are a charge on commercial property assessed by the Valuation Office and levied by the local authority. The rateable value is based on the rental value to a hypothetical tenant assuming a tenancy year to year which are currently on values as at 31st March 1998. Rateable Values are capable of appeal to a local Valuation Community Charge Tribunal and beyond this to the Lands Tribunal. Rateable Values are due to be reassessed shortly with effect from 31st March 2005, being based on rental values as at 31st March 2003.

In essence the principle difference is that whilst much of much property law in France is dealt with through the Civil Code, the provisions relating to leases in England and Wales are largely determined between the parties involved in any one transaction during the currency of a lease. The impact of Statute is therefore of particular relevance on expiry of the lease agreement when consideration is being given to renewal.

For further particulars on the above or other commercial property related matters contact: -

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Please note this information should not be applied to any particular set of facts without seeking legal, accounting and a surveyor's advice.

