



**Simplifying
Entrepreneurs'
Lives**

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Securing co-working space

Key considerations for start-ups looking to secure co-working space

Securing office space

So you've been through the initial start-up phase, put in the hours and the emotional investment, and have now found yourself in a position of needing somewhere to house your fledgling operation. We recognise this can be a crucial time in the life of a start-up: delay the process or go too small, and risk inhibiting the business' potential for growth; move too quickly or go too big, and risk a financial commitment that could become a real burden and restrict your ability to move quickly or invest in future growth.

The world of commercial leases - and property law more broadly - can be a minefield for the un-initiated, fraught with pitfalls and the potential for huge financial and legal exposure. So where to start?

Co-working spaces

One option many of our clients look to are co-working spaces offered by entities such as WeWork, Spaces, The Office Group, Work Space and a broad range of other providers. Co-working spaces can be an excellent starting point for start-ups, complete with high-end facilities, meeting rooms and shared communal areas of a specification that smaller businesses would likely be unable to afford if fitting out their own dedicated leased offices.

However, although co-working spaces tend to market themselves as very flexible, start-up friendly options, the 'standard' terms they impose on occupiers often tell a different story. This is made worse by the reality that most prospective occupiers do not take legal advice before signing the relevant agreement, either to save money or because they assume the relevant terms are non-negotiable.

Back in April 2020, at the start of the pandemic, we were inundated with enquiries from clients who had entered into licences to use co-working spaces, without first taking legal advice. Given lockdown restrictions – and the occupiers' consequent inability to use the office space they were paying for – these clients were desperately seeking legal advice on how to deal with the co-working space providers. Many providers were continuing to charge full rents and service charges for offices that could not be used, whilst some even increased their service charges to pass on the cost of enhanced cleaning and the implementation of other COVID-secure measures.

With this in mind, below we have set out our top tips to remember when considering taking space at a co-working space.

Take legal advice

- We recommend that you take legal advice. Not just because we are lawyers, but because we have seen our early stage clients come unstuck too many times as a result of obligations that they didn't understand (or know existed) when entering into co-working licences.
- This can often lead to disputes, which can take up significant time and energy for all involved, an outcome which could largely have been avoided had one of our property team had a quick read through before the terms of occupation were agreed.

Consider whether you need greater legal protections

- Co-working spaces are normally occupied under licences rather than leases, meaning that certain legal protections afforded to business tenants do not apply (for example, the rights of security of tenure and, more recently, the protections of the forfeiture suspension under the Coronavirus Act 2020).

Check the duration and any break rights

- It is important to consider carefully how you anticipate the company will grow and operate, and the likely timeframe for which you would like to occupy the property.
- Many mistakenly believe that this is unnecessary at the outset due to the perceived flexibility of co-working spaces. However, the terms will likely impose a minimum length of occupation (and this can be much longer than you potentially envisaged), and this can be difficult and costly (or even impossible) to amend once the agreement has been signed.

Consider whether you can be forced to move

- A key feature of a lease (rather than a licence) is the right to exclusive occupation. Co-working licence agreements often contain very widely drafted rights for the licensor (i.e. the operator of the co-working space) to move occupiers to different spaces within the building or even to another building not necessarily even nearby.
- We have seen examples of occupiers being forced to move to very different spaces that do not meet their requirements, with no ability to terminate their licence or seek recourse. Whilst it is always a key facet of a licence that the occupier can be moved, we can help draft and negotiate more occupier-friendly wording to redress the balance of power between the licensor and the occupier to ensure that any space to which the occupier is relocated suits their needs.

Right to suspend all services

- Often the licensor has very broad rights to suspend certain services (e.g. reception, concierge, coffee bars etc.); services that may well have been the main reason you chose to take the space in the first place.
- In addition, occupiers will often find that they have unwittingly signed up to accept certain services only from the licensor's preferred service providers (for example, IT services and broadband), even if the rates offered aren't competitive. Licensors may even reserve the right to unilaterally increase the value of services provided (for example, by introducing enhanced cleaning services in light of COVID-19) and the corresponding rates of service charge.

Carefully check when the agreement terminates (and how to terminate)

- Licences often include wording that automatically commits the occupier to further licence terms if they do not correctly terminate their licence at the end of the initial term.
- Occupier clients are often caught out by this, with many incorrectly believing that the term will automatically expire on the date stated in the original agreement. This can mean that they miss out on their opportunity to terminate their licence, and therefore remain contractually bound to continue paying the relevant fees.
- Moreover, many agreements dictate that the licence fee automatically increases following the initial term, meaning clients are stuck paying a *higher* price for office space that they no longer want.

Late payment fees

- Licences often include harsh late payment fees and even obligations to pay the licence fee for the entire term even if the licensor brings the licence to an end early. This can be a particularly harsh penalty if the provider has stated in the terms that the occupier will be deemed to have brought the licence to an early end if, for example, the occupier fails to pay on time or breaches the terms.

All of this is certainly not meant to put occupiers off from considering co-working spaces. We simply wanted to highlight some of the pitfalls that can catch occupiers out. Co-working spaces can be a really great option when the terms are fair and align with your business' needs and objectives; indeed, Ignition started in a WeWork office and it served us very well.

Moreover, the unfortunate reality is that even if you take steps to protect your business before entering into a licence for a co-working space, circumstances can rapidly change as we have all learnt. However, the potential impact of unanticipated circumstances is likely to be mitigated if you have properly understood and considered your options at the outset and limited the opportunity for co-working space providers to impose and enforce unfavourable terms.

There is a lot to think about, but successfully navigating through this - with a little help from us along the way - will offer peace of mind and (hopefully) better commercial terms, allowing your business to move into its new premises and onto the next exciting phase of the start-up journey!

To discuss any of the issues outlined above, please contact Helen Lucas (Helen@ignition.law).

This short guide has been prepared for directors and owners of private limited companies for information purposes only, in particular to provide a summary of the key considerations to bear in mind when looking to secure co-working space. This guide does not constitute legal advice and should not be relied upon. For specific queries and any further information, please contact Ignition Law for advice relating to your particular circumstances.