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| |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | | |  |  | | --- | --- | | |  | | --- | | April Newsletter  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/20e95aca-5726-466a-9e18-4bbd27b559ba.jpg    ***To lease or not to lease that is the question.  Checklist for business owners before entering a lease*   By Sally Kim**  A lease entitles the tenant to occupy the premises during a specified period and is a legally binding document setting out the rights and obligations of both the tenant and landlord in relation to commercial premises.  Since poor leasing decisions can create often costly and difficult situations, it is important for you to not only be properly advised during the negotiation phase but also in relation to the terms of the lease.  Here are some points that you should take into account prior to thinking about entering into a lease for your business. Please note the following advice is of a general nature and may vary depending on the type of lease (retail or commercial) you propose to enter.   *Suitability of Potential Premises* ✓   Before getting too excited about establishing a new business or expanding a business you already own, you will need to confirm whether the location of the premises is suitable for your business. You may need to consider the following factors:   * Adequate space? * Access? Visibility? * Enough foot traffic? Preferred demographic? * Rental and bond amount? * Any competitors around the area? * Ongoing service requirements?   *Getting legal advice on pre-lease agreement and negotiation* ✓  A pre-lease agreement may, or may not, be binding on the parties depending upon the intention of the parties and the particular wording of the pre-lease agreement.  The pre-lease agreement will usually contain a provision determining how and when the parties are to be legally bound to a lease. Accordingly, the pre-lease agreement may be open to negotiation for both parties and obtaining legal advice from an experienced solicitor is essential as your solicitor will be able to seek amendments to unfavourable terms incorporated in the pre-lease agreement.  A lease is a serious financial commitment pursuant to which you will be required to pay the rent regardless of the success, or growth, of your business. Depending on the lease terms and circumstances, you may also need to sign the lease as a *guarantor* in your personal capacity which means that lessor (landlord) may hold you personally liable for any default on the lease. Therefore, it is essential that you obtain legal advice and raise any queries that you may have about the lease with your solicitor  before signing a lease or an agreement to enter into a lease.   *Fees and Charges* ✓  Leasing premises may incur a range of fees and charges. These include:   * Lease Registration fees payable to Land Property Information NSW * Landlord’s legal fees for amending a retail lease – although the landlord's solicitors cannot require you to pay their legal fees for *preparing* the lease under [section 14 of the*Retail Leases Act 1994 (NSW)*](http://www.austlii.edu.au/au/legis/nsw/consol_act/rla1994135/s14.html), some lessors' solicitors *may* charge additional fees for amending the lease. * Bank fees – If you wish to pay a bond by way of Bank Guarantee, banks may charge fees for administering and preparing this document.   To learn more about your rights and obligations as a lessee, and also as a prospective lessee and if you would like us to review a lease for you, please do not hesitate to contact our property lawyers at Clive Mills & Associates. | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/61754fce-0b46-4bdd-a007-1f96ad1347bb.jpg  ***Can you Delegate your Directors Duties??***  ***“Leaving Your Company in Safe Hands: Appointment of Alternate Directors”***   If you are a director or, alternatively, the sole director of a company, it may be inconvenient and interrupt the day to day business of the company if you need to travel. You may need to travel interstate or overseas for a diverse range of reasons, including family emergencies, business opportunities, or simply to take a holiday.  A company director has a number of duties which they must comply with, and a number of functions which they must fulfil within the company.  So how, then, can you ensure that someone is there to take your place and keep things running smoothly?   One answer may be to appoint an “*alternate director*”.   ***Alternate Directors***   Part 2D.3 of the [*Corporations Act 2001*(Cth)](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/) (“*the Act*”) sets out the rules for appointing company directors.   [Section 201K](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s201k.html) of the Act allows a company director to appoint an alternate director to carry out some or all of that director’s functions.   Note that section 201K is a “*replaceable rule*”. This means that, if your company has its own constitution, section 201K may not apply to your company. In this case, you should read the constitution carefully to determine whether or not you can appoint an alternate director.   The steps to appoint an alternate director pursuant to section 201K of the Act are as follows:   1. the proposed alternate director must *consent*in writing to being appointed;      1. any other directors of the company must agree to the appointment;      1. the appointment must be made *in writing*, and a copy provided to the company; and      1. pursuant to section [205B](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s205b.html) of the Act, a notification must be given to ASIC that the alternate director has been appointed.   Pursuant to section [201K(3)](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s201k.html) of the Act, the alternate director will be able to exercise your powers as director just as effectively as you can.   Pursuant to section [201K(4)](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s201k.html) of the Act, you may then terminate the appointment of the alternate director at any time, by giving the alternate director and the company notice of the termination in writing.   You should, of course, review your company’s founding documentation carefully, and seek legal advice that is specific to your own circumstances before you seek to appoint an alternate director. However, if the circumstances allow for it, you may find it to be an effective means of keeping your company in safe hands. | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/bee66036-13ba-4457-b6c5-a01c75ba25c9.jpg | | | |