

**Acquiring Real Estate in the UK:  
A brief overview**



## Acquiring real estate in the UK: the process

The prospective purchaser and seller will appoint separate agents to provide valuation advice and to negotiate terms and conditions of sale leading to the preparation of heads of terms or similar memorandum of understanding. Such heads of terms are not usually contractually binding.

Legal due diligence comprises title investigation, searches at various public authorities and enquiries addressed to the seller. UK real estate is generally registered at the Land Registry; occasionally title may be unregistered where an event triggering registration of title has not occurred. This does not mean that the seller's title to the asset is defective but simply that the due diligence is conducted in a slightly different way.

A seller has only a limited duty of disclosure and for a stand-alone real estate transaction will not generally provide warranties or indemnities. It is essential that the due diligence covers all issues of concern to the buyer. Title insurance may be used to supplement elements of due diligence but is rarely considered an appropriate replacement for it. Certificates of title may be offered by a seller but their use is generally limited to portfolio sales or to facilitate funding.

Legal due diligence will be supplemented by physical surveys of both the fabric of the building and services together with such environmental assessments as may be appropriate for the asset in question.

It is worth noting that a completely different legal regime applies to properties in Scotland.

## Acquiring real estate in the UK: leases

Lease terms in the UK are largely unregulated by legislation and there is no standard form of lease.

### Rent

Rents are usually paid quarterly in advance and (where the lease term is longer than 5 years) are often subject to upwards only rent review at regular intervals. A common method of rent review is to increase the rent to the same level which could be obtained in the market at the relevant review date. Alternative bases of valuation are available; for instance it is possible that rent increases can be linked to the rate of inflation as measured by a recognised index.

### Lease Length

The term of a new lease in the UK is ordinarily in the range of 5 to 15 years although older leases can be much longer. The contractual term may be subject to

rights for the tenant or landlord to determine the lease early.

There is a statutory framework which gives business tenants a right to renew their lease on substantially the same terms as their existing lease at the then market rent. This can only be defeated by a landlord on narrow statutory grounds but can be excluded from the outset of the lease by agreement between the parties in accordance with a statutory procedure.

### **Disposal of the lease**

Rarely a lease will completely prohibit disposal; more usually it will provide that disposals require the landlord's prior written consent. Where the landlord's consent is required, legislation imposes duties upon the landlord not to withhold consent unreasonably and to respond to applications within a reasonable time. Creating subsidiary leases is similarly controlled so that a landlord's building is not carved into a series of minor interests and to ensure that the terms of sub leases in relation to user, alienation, rent review and alterations preserve the investment value of the building.

### **Fully Repairing and Insuring (FRI)**

An FRI lease seeks to pass the majority of the costs associated with the property, particularly those required to keep the property in good repair and the costs of insurance, on to the occupational tenant.

A tenant's repairing covenant can be qualified (for example by reference to a record of the condition at the start of a lease) which means that the tenant has limited obligations to repair at the end of the lease.

### **Environmental Liability**

The basic statutory rule is that the costs of remedying environmental contamination are passed to the polluter, but if the polluter cannot be found then other parties with an interest in the contaminated land may be required to pay the costs of remediation. Only in exceptional circumstances would this devolve to a commercial tenant. This basic position can be adjusted by contractual provisions. Although "green leases" have not yet become widespread in the UK, some leases seek to share the burden of environmental duties and liabilities with tenants.

### **New Buildings**

For the first years of a building's life it is possible that design or construction defects will arise which can be extremely costly to remedy. A tenant which is responsible for repairs will wish to ensure that it has the benefit of any warranties given by the design or construction team. Construction warranties are typically subject to a limitation period of 6-12 years and provide that no claim can be brought

against the warrantor once that period has expired.

## Acquiring real estate in the UK: tax overview

### Stamp Duty Land Tax (SDLT)

In common with other jurisdictions, the UK imposes a transfer tax, SDLT, on the disposal of real estate, but, unlike some other jurisdictions, the tax is levied on the purchaser and is not normally reallocated for commercial reasons, in part or in whole, to the seller.

SDLT was introduced on 1 December 2003 to tax the acquisition of UK real estate and replaced the existing tax, stamp duty. It is generally payable at a rate of 4% on the purchase of freehold property or the assignment of existing leases. In respect of the grant of new leases, it is also payable at the rate of 4% on any non-rent based element of the consideration, but is payable, in addition, at a rate of approximately 1% on the net present value of the rent payable under the lease. From April 2011, the 4% rate has increased to 5% for the acquisition of residential property for a price which exceeds £1 million.

### VAT

VAT, the pan-European turnover/sales tax, can apply to UK real estate

transactions. The standard rate of VAT in the UK is 20%.

UK commercial real estate transactions are generally exempt from VAT (unless the property being sold is new or less than 3 years old), but the seller may choose to exercise an "option to tax", which will result in the transaction being liable to VAT. One reason a seller may do this is so as to enable it to recover, from the UK tax authority, VAT it has incurred on costs related to the disposal of the premises, such as legal and property agent fees.

### Annual Wealth Tax

Unlike some other European jurisdictions, the UK does not impose any form of annual wealth tax on owners of UK real estate.



## Further information

The information contained in this document is brought to you by the Real Estate team at Bristows. It is intended for general guidance only.

If you would like further information or advice on any other Real Estate issues, please do not hesitate to contact:

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