

# SSAS

## Property administration and risk warning notice

### Overview of property administration

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You have informed us that you wish to purchase a property within your Scheme. We will give you all the help we can but you also have a responsibility to help us to ensure that everything is in place in good time for the transaction to be successfully completed. Property is the most complex transaction for a scheme to undertake. This form of investment imposes onerous responsibilities upon the Trustees. We therefore have to insist upon certain requirements, which you must understand before proceeding.

#### 1. Legal Ownership

In order to protect themselves the Trustees need to be completely satisfied as to the legal title to the property.

TM Trustees Limited (TMT) will ordinarily be a **joint legal owner** of the property along with the member trustees (which they hold on behalf of the pension arrangement). However this will be dependent upon the property being purchased passing an Environmental Screening Report (see below).

**TMT reserves the right to opt against becoming a joint legal owner of the property, and alternatively insist upon a restriction clause being inserted into the title documentation preventing the sale of the Property without TMT's prior consent.** Where this is the case, we will not insist upon an Environmental Screening Report being carried out, however the member trustees should ensure they are fully aware of any potential liabilities that may fall upon them in respect of any land purchased that may be deemed by the local authority to fall under the definition of contaminated land (see below).

#### 2. Environmental Screening Report

The Environmental Protection Act 1990 was amended in 1995 to place a statutory duty on local authorities to inspect all land in their areas in the search for problem sites that come within the statutory definition of contaminated land.

**Whilst any clean up is the responsibility of the polluter, the ultimate liability may reside with the owner or pension fund trustees. Accordingly, in order to protect the interests of our SSAS clients, we will arrange an initial environmental screening report for all new property purchases.**

**We will not proceed with the property purchase until we receive a satisfactory screening report with confirmation of insurability.**

Please arrange for the attached Environmental Screening Report form to be completed and returned to us, along with the relevant payment as detailed at the foot of the form.

### 3. Insurance Cover

It is vital to ensure that the building is **always** insured therefore whilst the lease will be on a full repairing and insuring basis, any un-let property must be insured by you.

Neither TMT nor Talbot and Muir are in any way responsible for arranging insurance or renewing existing cover, but working in conjunction with Jelf Insurance Brokers we are able to offer a policy via a panel of insurers, specifically for Talbot and Muir clients. If you wish to take up this option, we will pass your details to Jelf who will contact you direct regarding the cover. We do not insist clients use our policy and if you prefer you can make your own arrangements but if so, it is imperative that TMT are provided with copies of the relevant insurance documents once cover is in place, as well as confirmation on an annual basis that cover has been renewed. In any event, **cover must be in place at exchange of purchase**. At all times it is your responsibility to ensure that the property insurance policy remains in force.

### 4. Solicitors

The Trustees are free to choose who will represent them legally. TMT can recommend a solicitor who is experienced in this class of property purchase to represent the Trustees in the transaction if required. **All legal costs associated with the transaction are payable in addition to fees levied by Talbot and Muir Limited (which will be as per our published Fees and Services Schedule).**

If the Lease is being granted to your business, you will appreciate a solicitor cannot act on behalf of the pension fund and the member. This is because there is a potential conflict of interest between the members as Trustees and as occupants of the property, and as a member you may wish to consult separately with a solicitor concerning the provisions of the lease.

If a mortgage is required and the lender instructs its own Solicitors you will be responsible for their fees and your Solicitors may also charge for dealing with them.

### 5. High Value Transaction

Where a transaction, for whatever reason, becomes exceptionally complex or involves more than one legal title we reserve the right to increase our charges, detailed in the Fees and Services Schedule.

### 6. Aborted Transaction

The Solicitors will keep you fully informed of the progress of the transaction and you will be free to ask for advice or information at any time. If the transaction is aborted, there will be a fee payable to them (plus any disbursements), which will normally depend on the time that has been taken in dealing with the matter. This applies even if the transaction has to be aborted because our legal requirements cannot be met. We reserve the right to charge our property transaction fee in such circumstances.

### 7. Survey/Valuation

Where the property is being purchased from a "connected party" a Surveyor, who is a member of the Royal Institute of Chartered Surveyors (or an equivalent body), must inspect the property. We require a basic assessment of the condition of the property, a recommendation as to whether a full structural survey is required, the market value, rebuilding valuation for insurance purposes and where the tenant is also to be a connected party, recommended current market rent which we are obliged by HMRC to charge. For these purposes the valuer will need to know how long you want the Lease to be for and whether there will be any break clauses (allowing you to terminate the Lease before the end of the term). **The report must be addressed to ourselves but must be arranged by you.** The rent payable by a connected tenant must be re-valued, at the expense of your Scheme, at each rent review date to meet HMRC requirements.

## 8. Fees

The Legal and Surveyor's fees together with all disbursements are the Trustees responsibility. **We also make a charge as set out in our published Fees and Services schedule.** This is in addition to the legal and other charges and disbursements incurred on the purchase of the property. In exceptional circumstances we reserve the right to increase our charges e.g. if property is being developed and to charge where work outside the scope of our normal responsibilities has to be undertaken. This will be notified to you before work is commenced.

## 9. Commercial Property

The property **must** be commercial property (i.e. offices, shops, factories, etc) at the point of purchase and **not** residential property. However, it is possible to apply for residential property status on a commercial property asset. Any development work pertaining to such a change in status can be undertaken whilst the property is an asset of the scheme but must cease before the property is deemed habitable as a dwelling. It is therefore imperative that any planned development or re-classification of property owned by your pension scheme is immediately notified to ourselves in order that any potential tax liabilities can be calculated and advised of. Once a property is classed as residential, it is treated by HM Revenue and Customs (HMRC) as Taxable Property within the SSAS, and will be subject to punitive tax charges. In these circumstances, any tax charges levied by HMRC will be deducted in their entirety from the SSAS. Development land and agricultural land are normally acceptable. Hotels and guest houses are not normally acceptable to us because of the difficulty of determining the residential element, nor are properties that may cause special problems both in terms of management and legal liability e.g. landfill sites and sites, which may have been subject to contamination in the past.

Amenity land and any land or property adjacent to land or property owned by you or any person connected to you is an allowable purchase, however we do require the valuer to confirm these are physically and practically separate and that there is no marriage value. It should be noted that HMRC may investigate any amenity rights (for example, fishing or hunting) or any other leisure or recreational activities on the land, to ensure scheme members or connected persons could not directly benefit from these activities following the acquisition of the land by the SSAS without paying the appropriate market rate for the activity.

If development takes place within the Scheme itself this counts as a separate transaction for our fee purposes. We must ensure that our liability to the developer is limited to the assets of your fund **and** that a Project Manager (a qualified surveyor or architect) is appointed to protect our interests. Please remember this is an onerous responsibility for us and we reserve the right to refuse to permit it in certain circumstances. The purchase of property at auction causes particular problems. Please refer to us **before** the auction.

## 10. Freehold

The property should normally be freehold **not leasehold** unless the Lease is a long one at a **nominal ground rent** with no onerous covenants. Very often, because we are Trustees, our requirements as to the legal title etc. may be more demanding than if you were purchasing the land yourself. For example, we have to be careful where there are high service charges or onerous maintenance obligations for which we could be personally liable and may require certain indemnities from you.

## 11. Lease

A formal Lease must be entered into if there is not an existing Lease, which is being assigned. The Solicitors will prepare a Lease, which will be supplied to the prospective tenant or his legal advisor as appropriate and will reflect the terms negotiated. The Lease will be a normal commercial one and must be at the full market rent where the property is being leased to a tenant who is a connected party. You cannot decide to pay a reduced rent, e.g. just to cover the mortgage payments. For tenants who are connected to the Trustees we are

required by HMRC to ensure all rent is collected. If the Lease requires the landlord to undertake certain covenants TMT may not be in a position to undertake or fulfil those and may require an indemnity from the tenant/lessee.

Where the property is let to you it is essential that you ensure the rent is paid to us a few days before the mortgage payment is due (if applicable). We cannot be responsible for any late payment or interest charges if rent is not received in good time.

## 12. Property Management

Please be aware that we are not responsible for the collection of unpaid rent or for keeping the Member Trustees informed of rental arrears. You should refer to your copy of the statement you receive periodically from the Scheme's bankers to ensure that all rent that is due is being paid in a timely manner by the tenant. If you do not currently receive a copy of the bank statement issued by the Scheme's bankers please inform us immediately and we will liaise with the bank on your behalf in an attempt to have this position rectified.

## 13. Financial arrangements

You should ensure that you have arranged the necessary finance to enable the property to be purchased **before** the Solicitors are instructed. Please supply a copy of the offer, **which should be addressed to the Trustees**, when returning the Property Questionnaire if you are obtaining a mortgage. If this is not possible please ask the lender to let us have it as quickly as possible. Contracts cannot be exchanged until we have received the mortgage offer or have sufficient monies in place to cover the purchase price. This may cause difficulties if an early exchange is required which is sometimes the case, particularly in Scotland. **Please note we insist on the offer letter containing a clause limiting our liability to the value of your fund.** Some lenders will not accept this. If not, the borrowing cannot proceed. Some insist on onerous conditions, which are unacceptable to us, e.g. a floating charge over our assets or an assignment of the rent. Again, in those cases an alternative source of finance must be obtained. Some appoint their own Solicitors, which you will have to pay for.

Please note that problems may arise if the rent is not sufficient to cover the mortgage payments. For example, you may not be able to justify making further contributions to your Scheme to cover the shortfall. **All mortgage payments both capital and interest must come from the fund and must not be paid direct to the lender.**

It should be noted that the aggregate amount of borrowing a fund can undertake **cannot** exceed 50% of the net asset value of the fund, minus any existing borrowing, immediately before the borrowing is undertaken.

## 14. VAT

It is normally possible to arrange to opt for VAT where appropriate (e.g. purchase of a new property where the purchase price is subject to VAT or where major renovations are proposed). **Advice should be obtained from a qualified VAT specialist before registering.** Please bear in mind that neither TM Trustees Limited nor Talbot and Muir are qualified VAT specialists, and as such will not complete registrations or returns on behalf of the Trustees. We therefore recommend that the VAT application and quarterly returns are dealt with by such a specialist. We do not accept responsibility for any fines or charges imposed by HMRC as a result of erroneous information provided by external sources. These will be the sole responsibility of the Member Trustees of the SSAS. Please remember it takes a few weeks to reclaim VAT. Where it has been paid on the purchase price or the invoiced rent before the rent itself is paid you must ensure you have adequate funds within the SSAS to cover any temporary shortfall. A successful VAT registration does not imply that any subsequent reclaim of input tax will be successful and, as mentioned above, advice should be sought from a qualified VAT specialist before registering.

## 15. Energy Performance Certificates

From 1<sup>st</sup> October 2008 an EPC will be required when all commercial buildings that are constructed, sold or rented out. Renting out also includes an assignment of lease and sub-lettings. Responsibility for the production of an EPC rest with the owner who must make the certificate available to any prospective buyer or tenant at the earliest opportunity.

**This list may not be exhaustive, as we have found from experience that individual properties may occasionally have particular problems that only become apparent after the legal work has commenced. We cannot be responsible for any additional costs incurred as a result.**

If you have any queries, please do not hesitate to contact us.

## Property Purchase Risk Warning Notice

This warning notice draws your attention to the risks and costs associated with the property purchase through a pension fund. It must be signed by the Member Trustees before Talbot and Muir proceed with a proposed property purchase.

1. There is a greater risk associated with property investments as they are not readily realizable.

The Trustees may have difficulty in selling the property at a reasonable price.

In some circumstances it may be difficult to sell the property due to market conditions.

Accordingly, careful consideration should be given as to whether such investments are suitable for the Trustees in the light of each member's personal circumstances and the financial resources available to each of them.

2. At the outset of any proposed property purchase the Trustees will incur legal and professional charges, irrespective of whether the proposed purchase is completed.
3. Talbot and Muir and TM Trustees Limited can provide no assurance that any proposed property purchase will be acceptable under your SSAS. As all documentation must be prepared and checked by a solicitor, completion can only take place once they have confirmed to us that everything is in order.

## Client Undertaking

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1. I/We have received the Talbot and Muir Administration and Risk Warning Notice for property purchase through our SSAS and confirm we understand the requirements therein and the risk warning notice above.
2. I/We undertake to settle legal and professional fees incurred by or on behalf of Talbot and Muir in respect of any proposed property purchase, irrespective of whether such property purchase is completed.

Member name:

Signed:

Member name:

Signed:

Member name:

Signed:

Member name:

Signed:

Date:

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Talbot and Muir is the trading name for Talbot and Muir Limited (company number 02869547), registered in England, registered address 22 Clarendon Street, Nottingham, NG1 5HQ. A list of directors is available upon request.

SSAS Proprisk02 Aug 18