



# Information for Solicitors

for commercial property purchase  
within a SIPP

# Information for Solicitors

In connection with commercial property transactions by a member's SIPP.

[To be read in conjunction with EBS's booklet 'SIPP Commercial Property Transactions'].

## Notes for the guidance of the solicitors acting for the trustees of the member's SIPP.

### 1. Property purchase / acquisition of property from another registered pension scheme as a 'transfer in specie' / acquisition of a property as an 'in specie contribution'.

1.1 In order that the position of the Trustees of the Member's SIPP is safeguarded, EBS Pensions Limited ('EBS') requires certain provisions to be included in the various documents which may need to be entered into in connection with a property investment by the SIPP Trustees who will normally consist of the Member and EBS. EBS is the Trustee and Scheme Administrator of both The EBS SIPP and The EBS SAPPP, each of which is a registered pension scheme as defined in Part 4 of Finance Act 2004. Each Member's SIPP is established as a sub-trust within one of these schemes by way of a supplemental deed. Copies of supplemental deeds are available on request.

**NB: In all title documents and legal charges EBS will be represented by EBS Self-Administered Personal Pension Plan Trustees Limited** ('EBS SAPPP Trustees'), which has been specifically appointed as 'Bare Trustee' for EBS under the rules governing The EBS SIPP in order to hold title to SIPP assets. Copies of the trust deed and rules are available on request.

EBS suggests that in Transfer Deeds the Transferee will be described in the following way: 'EBS Self-Administered Personal Pension Plan Trustees Limited and <full name of SIPP Member(s)>', up to a maximum of four parties.

**NB: In no circumstances must EBS Pensions Limited have any legal charge against it.**

1.2 It is not the responsibility of EBS or EBS SAPPP Trustees to underwrite the SIPP Trustees' liabilities. Therefore, EBS has a requirement that all documents (transfers, mortgages, leases, etc.) shall be drawn where possible to limit any liabilities to the value from time to time of the SIPP's interest in the property (and any other SIPP assets secured against a loan). In addition, any obligations and covenants shall be interpreted as obligations and covenants on the part of the Member Trustee (s) only – see part 8 below for suggested wording for a Lease.

Suggested wording for all documents apart from a Lease:

*"Notwithstanding anything elsewhere to the contrary in this <title of document>, the liability of EBS Self-administered Personal Pension Plan Trustees Limited and <name of Member Trustee(s)> shall be limited to the value from time to time of their interest in the property."*

1.3 The Member Trustee (or where it is a joint purchase, the Member Trustees) will appoint you when completing and returning to EBS the appropriate property questionnaire from our SIPP booklet Commercial Property Transactions – Appendix 2 for property purchases and in specie contributions, and Appendix 2A for in specie transfers from another pension scheme.

1.4 **When accepting your appointment in relation to a property purchase, please confirm to us that you are prepared to act for both EBS and EBS SAPPP Trustees, and the Member Trustees, in that regard, by sending us a letter in the form of the attached draft letter 'A'.**

1.5 For joint purchases between two or more Members' SIPPs or with other parties and 'in specie' acquisitions - see parts 3 and 7 of our booklet Commercial Property Transactions and part 4 below.

## 2. Valuation of the Property

The SIPP Trustees must obtain an independent professional surveyor's valuation report which should include a full description of the property, its location and condition and the surveyor's opinion of both the market value of the property and its market rental.

## 3. Report on Title

EBS will require a full 'Report on Title' in relation to the property to be acquired, which should include all relevant searches (e.g. potential chancel repair liability, drainage, restrictive covenants, online environmental risk assessment and asbestos survey where not provided by the SIPP Member). [NB: certain fixtures & fittings must be excluded from the purchase. See part 1 of EBS's booklet Commercial Property Transactions.]

## 4. VAT (see also part 10 of our booklet SIPP Commercial Property Transactions)

Where the property is subject to VAT, it is the understanding of EBS that it will be necessary for the SIPP Trustees to register for VAT purposes and 'opt to tax' the rent to be charged, before completion, in order to be able to reclaim VAT on the purchase price or to qualify for a Transfer of a Going Concern (TOGC).

Along with the Member Trustee(s), you will be responsible for ensuring that any VAT registration and election to waive exemption from VAT required in respect of the property is carried out in a timely and appropriate manner.

EBS would normally expect the Member Trustee(s) and EBS to register for VAT purposes as a partnership.

## 5. Mortgages Raised by the SIPP Trustees

If the Trustees of the Member's SIPP borrow money on the security of the property to finance its purchase, the 'Borrower' will be the SIPP Member and EBS as Trustees of the Member's SIPP but the 'Mortgagor' will be the SIPP Member and EBS SAPP Trustee(s) acting as registered proprietors on behalf of the SIPP Trustees.

Therefore, the Member Trustee and EBS may need to be parties to the loan agreement/facility letter in their capacity as the SIPP Trustees. Whether EBS SAPP Trustee(s) needs to be a party to this document will be a matter for the lender.

Depending on the lender, under the legal charge the parties may include both the Member Trustee and EBS in their capacity as the SIPP Trustees and as the 'Borrower' and EBS SAPP Trustee(s) as the 'Mortgagor'.

The loan documentation **must** limit the liability of the SIPP Trustees and EBS SAPP Trustee(s) to the property secured along the following lines:

*"Notwithstanding anything elsewhere to the contrary in this <Agreement/Legal Charge/Legal Mortgage> the liability of <name of Member Trustee> and EBS Pensions Limited and EBS Self-Administered Personal Pension Plan Trustees Limited, whether as a joint mortgagor, trustee or borrower shall be limited to the extent of the property secured."*

If absolutely necessary, EBS will normally agree to its liability being limited to the extent of the assets from time to time of the Member's SIPP.

## 5. Continued

In addition, EBS would not expect the loan documentation to include anything that would unduly fetter the power of the SIPP Trustees to carry out their duties in accordance with the SIPP's governing trust deed and rules. For example, EBS would not accept a clause which required the SIPP Trustees to obtain the consent of the lender before realising any SIPP assets – other than the property and any other SIPP assets secured against the loan. Nor would EBS accept a clause requiring the SIPP Trustees to produce audited accounts or financial statements for the SIPP. Statutory disclosure regulations only require unaudited financial statements within twelve months after the year end to which they relate.

We would normally expect any reference in the loan documentation to the Trustees as Borrower to be qualified as Borrower with **'limited title guarantee'**.

Please see Parts 3 and 7 of EBS's SIPP booklet Commercial Property Transactions for further details of EBS's requirements regarding borrowing.

**Registration of charges.** Despite the fact that EBS SAPP Trustee is acting solely in its capacity as a Bare Trustee in relation a registered pension scheme and is not charging any of its own property, EBS understands that Companies House requires the charge to be registered, using form MG01 and within the 21 day time limit. In your capacity as the SIPP Trustees' solicitors you will be required to arrange for this registration ensuring that the entry on the register clearly states that the charge relates only to the relevant property and the relevant Member's SIPP. A copy of the completed form MG01 must be returned to us.

Where the Trustees acquire a property, which is already charged, EBS understands that you will need to register the fact that EBS SAPP Trustee has acquired the property, using form MG06. Again this must be done within the 21 day time limit, ensuring that the entry on the register clearly states that the charge relates only to the relevant property and the relevant Member's SIPP. A copy of the completed form MG06 must be returned to EBS.

**Joint property investments.** Please see parts 3 and 7 of EBS's SIPP booklet Commercial Property Transactions for details of EBS's requirements regarding borrowing where one or more SIPP's or one or more SIPP's and one or more other parties join together to invest in commercial property.

EBS requires joint investments to be subject to a Declaration of Trust and Joint-Ownership Deed. To assist you in preparing a suitable document EBS will send you a draft document on which it must be based. However, you will be responsible for ensuring that it is acceptable to the lender and that the final document is appropriate and legally valid.

## 6. Stamp Duty Land Tax (SDLT)

Subject to the value of the property (including VAT where applicable) exceeding the relevant SDLT threshold, SDLT will normally be due on the acquisition price of the property. However, if the property is being acquired as part of an 'in specie transfer' of pension rights from another registered pension scheme, there should be no liability for SDLT. (See relevant page of online SDLT Manual via the following link: <http://www.hmrc.gov.uk/manuals/sdlmanual/SDLTM031800.htm>) Therefore, you must deal with this in the appropriate manner in the Land Transaction Return.

If the acquisition is by way of an 'in specie contribution' then SDLT is likely to be chargeable.

For further details see part 3 of our booklet 'SIPP Commercial Property Transactions'.

## 7. Insurance

The Member Trustee(s) must ensure that the appropriate insurances are in place for the property at the point of exchange of contracts. EBS will require copies of the relevant certificates.

## 8. Development/Refurbishment of Property

All documents relating to the development of property must contain appropriate clauses limiting the liability of the SIPP Trustees as mentioned in 1.2 above. In addition, 'development' should not constitute 'trading' - see part 13 of EBS's SIPP booklet Commercial Property Transactions.

**9. Leasing the Property / Asbestos Regulations**

The Landlord will be the SIPP Member and EBS SAPPP Trustees acting on behalf of the SIPP Trustees. Any liabilities of the Trustees must be limited to the extent of the property concerned, or, if absolutely necessary, to the extent of the assets from time to time of the Member’s SIPP.

The lease should be on a commercial basis – e.g. a full repairing and insuring basis with regular rent reviews and drawn in such a manner that – as far as possible – all liabilities, responsibilities and covenants are placed on the tenant. Where the tenant is the Member’s business the rent to be charged must be the open market rental value determined by an independent professional surveyor.

EBS will in any event require an exclusion of liability for EBS SAPPP Trustees along the following lines:

*“EXCLUSION OF LIABILITY*

*Notwithstanding anything elsewhere to the contrary in this Lease the liability of EBS Self-Administered Personal Pension Plan Trustees Limited is hereby excluded and any references to any obligations or covenants on the part of the Landlord shall be interpreted as being obligations and covenants on the part of <name of Member Trustee(s)>.”*

If possible, the Member Trustee’s liability should also be limited to the value of the property or to the extent of the assets from time to time of the Member’s SIPP.

Whilst a draft lease should be submitted to EBS for agreement, it will be an express condition of any transaction that in addition to complying with all statutory requirements affecting the property, the tenant is to be the designated “dutyholder” for the purposes of the Control of Asbestos at Work Regulations 2012.

**10. Details of EBS Pensions Limited & EBS Self-Administered Personal Pension Plan Trustees Limited**

The registered office address of both EBS and EBS SAPPP Trustees is 5th Floor, 100 Cannon Steet, London, EC4N 6EU.

The registered number of EBS is 998606.

The registered number of EBS SAPPP Trustees is 2853014.

Unless we advise you otherwise, attestation of any deeds by EBS and/or EBS SAPPP Trustees should be in the form:

*Executed as a deed by EBS Pensions Limited or EBS Self-Administered Personal Pension Plan Trustees Limited acting by, a director, in the presence of:*

.....  
*Director*

*Witness Signature:*

*Witness Name (in block capitals):*

*Address:*

*Occupation:*

**11. Transfer Of Purchase Monies**

Please provide details of your client account to which monies should be transferred.

**12. Sale of Property**

When a Member of a SIPP wishes to sell a property owned or partly owned by his/her SIPP, the Member has to complete and return to EBS a questionnaire, which can be found at Appendix 4 of EBS’s booklet ‘SIPP Commercial Property Transactions’.

## **12. Continued**

The Member Trustee (or, in the case of a jointly owned property, the Member Trustees) will appoint you when they complete the questionnaire.

**When accepting your appointment in relation to a property sale, please would you confirm to EBS that you are prepared to act for the Member Trustee(s) and EBS SAPPTL, in that regard, by sending EBS a letter in the form of the attached draft letter 'B'.**

## **13. EBS's Fees**

Please note that EBS charges the Member's SIPP for all property work on a time-cost basis. Therefore, it is important that you please ensure that EBS's requirements are included in any documentation at an early stage.

# Draft Letter 'A'

To be sent by the solicitors appointed to act for the Trustees of the Member's SIPP in relation to a property purchase.

To: EBS Pensions Limited & EBS Self-Administered Personal Pension Plan Trustees Limited  
5th Floor  
100 Cannon Street  
London  
EC4N 6EU

Dear Sirs,

<NAME OF MEMBER'S SIPP> (the 'SIPP')

We write to confirm that we have read and understood your booklets entitled Commercial Property Transactions and Information for Solicitors and shall be acting on behalf of the Member Trustee, and EBS Pensions Limited (EBS) as Trustees of the above SIPP, and EBS Self-Administered Personal Pension Plan Trustees Limited (EBS SAPP Trustee) as Bare Trustee for EBS, in the matter of any property investment (including the raising of any mortgage or loan in connection with and any leasing or renting of the property).

We further confirm that:

- We will provide you with a full 'Report on Title' in relation to the property.
- The terms of any transaction in connection with any property investment by the SIPP Trustees are or shall be drawn (as far as possible) so that no liability attaches to the SIPP Trustees or EBS SAPP Trustee in excess of the value of the property and, where borrowing is involved, any other assets secured against the loan.
- We will ensure the necessary environmental risk assessment reports, asbestos surveys and energy performance certificates are obtained and copies sent to you.
- Unless the title documents relating to the property are required by a lender in respect of an associated mortgage or loan for the Trustees we shall be responsible for the safe custody of such documents on behalf of the Trustees.
- In conjunction with you we will do our best to ensure that any loan documentation does not contain any conditions which would unduly fetter the powers of the SIPP Trustees from operating the SIPP in accordance with the SIPP's governing trust deed and rules.
- Where we are acting for two or more Members' SIPPs and one or more of the Members' SIPPs is/are borrowing to assist with their share of the purchase, we will prepare a suitable draft Declaration of Trust and Joint-Ownership Deed, and negotiate its agreement with the lender(s) where they agree to be a party to that document.
- We will arrange for the registration of any legal charge in respect of EBS SAPP Trustee and we will ensure that the entry on the register clearly states that the charge relates only to the relevant property and the relevant Member's/Members' SIPP(s).
- Where it is necessary, we will ensure that VAT registration/election to waive exemption from VAT by the Member Trustee(s) and EBS SAPP Trustee is carried out in a timely and appropriate manner.
- Before completion, we will provide you with a 'pre-completion' statement to enable the Trustees to transfer to our client account the appropriate amount of money for completion.

- We will deal with the issue of Stamp Duty Land Tax and any associated Land Transaction returns in the appropriate manner.
- We will ensure that in any lease of the property granted by or taken over by the Member Trustee(s) and EBS SAPP Trustee(s), the tenant shall be designated “dutyholder” for the purposes of the Control of Asbestos at Work Regulations 2012.
- Where relevant, we will ensure that all rents (including any associated VAT), rates etc., for which the vendor or tenant is liable up to completion (apportioned as appropriate) are settled by the vendor or tenant.
- On or shortly after completion we will provide you with both a copy of the completion statement and, where applicable, a copy of the VAT invoice from the vendor.
- We will provide you with copies of all relevant documents once they have been completed.
- We acknowledge that our fees will be settled from the SIPP(s) and that neither EBS nor EBS SAPP Trustee(s) shall be personally liable for such fees.

Details of our client account to which funds should be transferred for exchange/completion are as follows:

Bank:

Address:

Sort code:

Account name:

Account number:

Reference:

This letter will apply until it is withdrawn by us in writing.

# Draft Letter 'B'

To be sent by the solicitors appointed to act for the Trustees of the Member's SIPP in relation to a property sale

To: EBS Pensions Limited & EBS Self-Administered Personal Pension Plan Trustees Limited  
5th Floor  
100 Cannon Street  
London  
EC4N 6EU

Dear Sirs,

<NAME OF MEMBER'S SIPP> (the 'SIPP')

We write to confirm that we have read and understood your booklets entitled Commercial Property Transactions and Information for Solicitors and shall be acting on behalf of the Member Trustee(s), and EBS Pensions Limited (EBS) as Trustees of the above SIPP(s), and EBS Self-Administered Personal Pension Plan Trustees Limited (EBS SAPP Trustee(s)) as Bare Trustee for EBS, in the matter of any sale of property.

We further confirm that:

- The terms of any transaction in connection with any property sale by the SIPP Trustees are or shall be drawn (as far as possible) so that no liability attaches to the Trustees or EBS SAPP Trustee(s) in excess of the value of the property.
- Where a mortgage is involved we will obtain the lender's agreement to the sale (where necessary) and we will arrange for the repayment of any outstanding loan/mortgage to the relevant lender/mortgagee.
- Where VAT is involved, we will ensure that the correct amount is charged and paid, and provide you with a copy of the VAT invoice, or where the transaction is a transfer of a going concern we will ensure that no VAT is charged.
- Where relevant, we will ensure that all rents (including any associated VAT), rates etc., for which the tenant is liable up to completion are settled by the tenant.
- We will remit the net proceeds of the sale only to the SIPP Trustees' designated bank account(s) at Bank of Scotland, as advised by EBS Pensions Limited.
- On or shortly after completion we will provide you with a copy of the completion statement.
- We will provide you with copies of all relevant documents once they have been completed.
- We acknowledge that our fees will be settled from the SIPP(s) and that neither EBS nor EBS SAPP Trustee(s) shall be personally liable for such fees.

This letter will apply until it is withdrawn by us in writing.