



# Information for Solicitors

for commercial property transactions  
by the SSAS Trustees

# Information for Solicitors

You should also refer to EBS Pensions Limited's (EBS's) notes 'Commercial Property Transactions – A Guide for Trustees'.

## Notes for the guidance of the solicitors acting for the trustees of a small self-administered scheme (SSAS)

1. Wherever possible the documents in relation to a property investment by the Trustees of a SSAS must be drawn so as to limit any liabilities of the Trustees to the value of the property or, if necessary, the extent of the assets from time to time of the SSAS.
2. Under the Pensions Act 1995, the Trustees are required to appoint, in a prescribed manner, anyone providing them with legal advice. See the attached draft letter 'A'.
3. When accepting your appointment, please confirm to the SSAS Trustees that you are prepared to act for them, in that regard, by sending them a letter in the form of the attached draft letter (B) for a purchase and the attached draft letter 'C' for a sale.
4. **Valuation of the property**  
It is a matter for the SSAS Trustees whether they obtain a professional opinion of the market value of the property. However, if the purchase or sale is from or to a connected person<sup>1</sup> it is imperative that the Trustees must obtain an independent professional valuation which should be dated within 6 months of the transaction. This is to evidence that the transaction was at market value should HM Revenue and Customs (HMRC) decide to carry out an audit of the Scheme and its investments.<sup>2</sup>
5. **Property purchase / acquisition of property from another registered pension scheme as a 'transfer in specie'**  
In all documents relating to the purchase of a property the SSAS Trustees must be described as '[ full name of each Trustee and private address ] acting in their current capacity as the trustees of [ full name of SSAS ]' with a limitation clause as mentioned in point 1 above.

For 'in specie' acquisitions of property see part 3 of 'SSAS Commercial Property Transactions – A Guide for Trustees' and point 8 below.

6. **VAT<sup>3</sup>**  
Where the purchase price of the property is subject to VAT, we understand that the Trustees must register for VAT purposes and 'opt to tax' the rent to be charged, before completion, in order to be able to reclaim the VAT or to qualify for a Transfer of a Going Concern (TOGC).

You will be expected to assist the Trustees, where necessary, in 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.

HMRC has advised EBS that SSAS Trustees should register as a partnership for VAT purposes.

<sup>1</sup> See part 3 of 'SSAS Commercial Property Transactions – A Guide for Trustees'

<sup>2</sup> See part 6 of 'SSAS Commercial Property Transactions – A Guide for Trustees'

<sup>3</sup> See also part 10 of 'SSAS Commercial Property Transactions – A Guide for Trustees'

## 7. Mortgages raised by the SSAS Trustees

If the Trustees borrow money on the security of the property to finance its purchase, the facility letter and the legal charge or loan documentation must limit the liability of the Trustees to the property secured or, if this is not acceptable, to the extent of the assets from time to time of the SSAS along the following lines:

*'Provided that (notwithstanding anything elsewhere to the contrary in this Deed/Legal Charge etc.) the liability of the SSAS Trustees, whether as a joint mortgagor, trustee or borrower shall not be personal but shall be limited to the extent of the property secured.'*

Furthermore, we would normally expect any reference in the legal charge or loan documentation to the Trustees as Borrower to be qualified as Borrower with 'limited title guarantee.'

## 8. 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 acquired as part of an 'in specie transfer' of pension rights from another registered pension scheme, there is not normally any liability for SDLT.<sup>4</sup> Therefore, you should deal with this in the appropriate manner in the Land Transaction Return.

## 9. Insurance

The Trustees should ensure that the appropriate insurance is in place for the property from the date of exchange of contracts.

## 10. Development of property

All documents relating to the development of the property should contain appropriate clauses limiting the liability of the SSAS Trustees as mentioned in point 1 above. In addition, the Trustees should be satisfied that any development does not constitute 'trading.'<sup>6</sup> The Trustees also need to be satisfied the proposed development costs will provide an investment return or income.

## 11. Leasing the property / Asbestos regulations

As the Landlord, the SSAS Trustees must be described as '[full name of each Trustee and private address] acting in their current capacity as trustees of [name of SSAS].'

The lease should be on appropriate commercial terms as confirmed by an independent professional surveyor (e.g. full repairing and insuring basis with regular rent reviews) and drawn in such a manner that all liabilities, responsibilities and covenants are placed on the tenant, as far as possible. **Where the tenant is the sponsoring employer of the SSAS, a connected company, a SSAS member or a person connected with a SSAS member, the rent to be charged should be the open market rental value determined by an independent professional surveyor whose advice should not be more than 6 months old.**

In the lease the tenant should be the designated 'dutyholder' for the purposes of the Control of Asbestos Regulations 2012.

<sup>4</sup> See relevant page of online SDLT manual via the following link: <http://www.hmrc.gov.uk/manuals/sdlmanual/SDLTM04010.htm>

<sup>5</sup> See part 3 of 'SSAS Commercial Property Transactions – A Guide for Trustees.'

<sup>6</sup> See part 13 of 'SSAS Commercial Property Transactions – A Guide for Trustees.'

# Draft Letter 'A'

To be sent by the SSAS trustees to the appointed solicitor.

To: [name of solicitors]

Date:

Dear Sirs,

## Notice of appointment to provide property conveyancing and related legal services to the [Name of SSAS] ('the scheme')

In accordance with Section 47 of the Pensions Act 1995 and The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (the 'Regulations') and any subsequent amending legislation, we hereby give you written notice of your appointment to provide property conveyancing and related services to the Scheme.

Your appointment by us under the Regulations is to take effect from [date]. You will take instruction from and report to the Trustees' nominee as shown below or such other Trustee who fulfils this role in the case of absence or illness.

We should be grateful if you would write to acknowledge receipt of this notice of appointment within one month and confirm that you will declare in writing any conflict of interest affecting your appointment as soon as you become aware of it.

Yours faithfully,

Signed for an on behalf of the Trustees of the Scheme

.....  
[ name ]  
Trustee

.....  
[ name ]  
Trustee

.....  
[ name ]  
Trustee

.....  
[ name ]  
Trustee

.....  
[ name ]  
Trustee

.....  
[ name ]  
Trustee

Trustees' Nominee.....

# Draft Letter 'B'

To be sent by the solicitors appointed to act for the Trustees of the SSAS in relation to a property purchase.

To: The Trustees of the [name of SSAS]

Dear Sirs,

[Name of SSAS] (The 'scheme')

We have received your letter of appointment dated [date]. We can now confirm that we have read the notes from EBS Pensions Limited entitled 'SSAS Commercial Property Transactions – A Guide for Trustees' and 'Information for Solicitors' and shall be acting on your behalf 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:

- The terms of any transaction in connection with any property investment by the SSAS Trustees are or shall be drawn (as far as possible) so that no liability attaches to the Trustees in excess of the value of the property, or, if necessary, the extent of the assets from time to time of the SSAS and that the liability is not personal.
- Unless the title documents relating to the property are to be held by the Trustees or 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.
- Where it is necessary, we will ensure that VAT registration/election to waive exemption from VAT by the Trustees 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 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 Trustees, the tenant shall be designated 'dutyholder' for the purposes of the Control of Asbestos Regulations 2012.
- Where relevant, we will ensure that all rents (including any associated VAT) and rates etc. for which the seller or tenant is liable up to completion (apportioned as appropriate) are settled by the seller 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 seller.
- We will provide you with copies of all relevant documents once they have been completed.
- We acknowledge that unless settled by the sponsoring employer of the Scheme, our fees will be settled from the SSAS.

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.

Yours faithfully,

[Name]

[Firm]

# Draft Letter 'C'

To be sent by the solicitors appointed to act for the Trustees of the SSAS in relation to a property sale.

To: The Trustees of the [name of SSAS]  
[Address]

Dear Sirs,

[Name of SSAS] (The 'scheme')

We write to confirm that we have read the notes from EBS Pensions Limited entitled 'Commercial Property Transactions - A Guide for Trustees' and 'Information for Solicitors' and shall be acting on your behalf 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 Scheme Trustees are or shall be drawn (as far as possible) so that no liability attaches to the Trustees following completion.
- 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) and 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 Scheme Trustees' designated bank account, as advised by the Trustees.
- 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 Scheme

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

Yours faithfully,

[Name]  
[Firm]