



Investing in UK Real Estate?

Acquisition terms

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In the UK the process and terms on which commercial property is bought and sold is relatively standardised. This section explains the usual terms that apply to a sale and purchase of a commercial property asset. If the property is to be acquired by the purchase of the corporate vehicle that currently owns the property, different terms would apply.

For the purposes of this note we assume that the transaction is the purchase of a commercial property that is already let to tenants.

Agreeing terms and binding contracts

In the UK (excluding Scotland) the seller and buyer are not legally bound to sell or buy property until a written contract has been signed and exchanged by both parties. The parties will usually, through their agents, agree the commercial terms and set those out in a heads of terms or term sheet. The seller's solicitor will then prepare the sale contract and provide the due diligence information about the property to the buyer's solicitor.

A sale contract for a commercial property is usually unconditional so the buyer is bound to complete usually 2-4 weeks after exchange. All due diligence and all finance arrangements will, therefore, have to be in place before exchange. It is rare for contracts to be conditional upon the buyer arranging finance.

After agreeing the heads of terms, if either party wish to pull-out of the transaction they can do so, usually without any penalty or compensation payable to the other party. Each party normally bears their own costs for the transaction.

The seller's solicitors are bound by professional conduct rules which prohibit the solicitor from dealing with more than one buyer without each of those buyers being informed. It is these conduct rules which the UK real estate market relies upon to ensure exclusivity applies but they only apply from the point at which solicitors are instructed which usually only occurs after the commercial terms are agreed. Occasionally parties will enter into a formal exclusivity or lock-out agreement to ensure negotiations remain exclusive until formal contracts are exchanged.

Substantially different arrangements apply to auctions sales and transactions involving property in Scotland.

The contract documents

Some contract terms have been standardised in a nationally recognised document called the Standard Commercial Property Conditions ("SCPC"). These are almost universally used by solicitors in the UK and they are considered to be unbiased towards either party. In addition the seller's solicitor will draft the written agreement that contains additional terms and terms that slightly adjust the SCPC arrangements. You can expect the sale contract to be between 10 and 40 pages long.

The sale contract will include all of the commercial terms and the technical legal requirements to bind the parties. On completion the parties will also enter into a transfer document which effects the legal transfer of the property interest. There may also be other subsidiary documents, such as assignments of building contracts, depending on the circumstances.

Typical contract terms

The following is a summary of typical sale contract terms:

- **Completion** - it is common practice to have approximately 20 working days between exchange and completion but the parties can exchange and complete simultaneously. Equally, a period of several months or even years could be agreed if required. The completion monies are usually sent by the buyer to his solicitor in the morning of completion. They will transfer completion monies to the seller's solicitors and completion is usually required to occur before 2pm on the scheduled date. This gives the seller's solicitors time to transmit the completion monies to the seller's lender and/or the seller within UK banking hours on the day of completion.
- **Deposit** - where there is a period between exchange and completion the buyer normally pays a deposit of 10% of the price on exchange. Large pension funds and some other institutions often avoid paying any deposit. It is generally accepted that a deposit of greater than 10% is not enforceable. A buyer may pay a deposit of more than 10% but if he does the seller may not be able to keep more than 10% of the price if the

buyer later fails to complete. The buyer can be liable to pay damages for the seller's additional losses if the buyer fails to complete.

The deposit is usually held by the seller's solicitors in their client account pending completion. Interest accrues to the seller but this point may be negotiated. If the buyer fails to complete the seller can keep the deposit and terminate the contract.

- **Price** - the actual amount payable on completion will, of course, be the agreed price (being an amount fixed at exchange) but adjusted by (a) apportioned rents received by the seller in advance referable to the period after completion - normally this will reduce the amount payable; and (b) possibly valued added tax ("VAT") although for commercial property investments this is often not payable at completion. Stamp Duty Land Tax ("SDLT") is payable by the buyer to the tax authority within 30 days after completion.

Occupational rents are usually apportioned on a daily rate basis (whether the rents are paid quarterly or monthly) up to the scheduled date for completion. If completion is delayed by the buyer the seller can choose to keep the income and, generally, charge interest on the outstanding purchase price until the actual day of completion.

If there are arrears of occupational rents remaining at completion the contract will require that arrears are not apportioned unless and until the arrears are actually paid by the tenant after completion. If the arrears are substantial bespoke arrangements can be agreed.

- **Conditions precedent and due diligence** - it is common practice for the buyer to undertake all due diligence before exchanging contracts. The main risk for a buyer is that he will have to cover the whole cost of that due diligence usually without any legally binding agreement for a seller to sell or otherwise refund the cost.

There are usually no conditions precedent to completion so the buyer should have the results of all due diligence reports (legal reports, surveys etc.) and all funding arrangements committed prior to exchange. It is likely, therefore, for exchange of contracts to be several weeks after agreeing heads of terms. The principle of "buyer-beware" (aka caveat emptor) applies. It is very

rare for the seller to give any warranties as to the quality of the property and although the seller may make representations that are relied upon by the buyer during the due diligence process it is also rare for a buyer to claim against a seller if there are problems with the property discovered after completion. If the buyer becomes aware of new information between exchange and completion it has six working days within which to raise the issue with the seller so the buyer must act quickly.

If the seller has debt secured against the property this is usually discharged at completion and the buyer acquires the property free of financial incumbrances.

- **Managing the property between exchange and completion** - the seller remains in direct control of the property and will have to deal with the tenants until completion. The contract will require the seller to deal with the property and the tenants appropriately and often the seller will require the consent of the buyer before undertaking anything that could affect the property. Examples include the following:

- **Insurance:** the seller will usually continue to insure the property. It can be advisable for a buyer to insure from exchange because the contract will pass the risk of damage occurring to the property to the buyer. The buyer will be required to complete the purchase even if the property is substantially damaged between exchange and completion.

- **Outstanding rent reviews:** under the occupational leases there can be a rent review that takes effect prior to the completion date but has not been finalised. The seller can continue dealing with that rent review up to completion after which the buyer will take control. Any uplift in the rent whether agreed before or after completion of the sale will be apportioned between the seller and the buyer. There are, therefore, arrangements in the sale contract to regulate the conduct of the seller and buyer in relation to rent reviews.

- **Confidentiality.** For a straightforward acquisition it is rare for the parties to agree to keep the terms of the sale confidential. In any event, following registration of transfer of the property after completion at the Land Registry (also referred to as "HMLR"), the price paid will be noted on the

title and made available to the public. The details of the legal owner are also a matter of public record.

- **Assignment of the contract.** The buyer cannot assign the benefit of the sale contract - the buyer will have to complete the transaction.

Glossary

“**Exchange**” a process, conducted by the solicitors, of “exchanging contracts” meaning the moment at which both parties are legally bound. This happens after the parties sign the contracts themselves.

“**HMLR/Land Registry**” the government body that maintains a register of most land interests in the UK. HMLR provides a state guarantee of title and if there are errors on the official register compensation is payable by HMLR in certain circumstances.

Next steps

For more information on acquisition terms or how we can help you navigate the issues, please contact:

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