

SSAS

Guidance notes for solicitors

You have been asked to advise in relation to either an existing property, or a property purchase, by the trustees of a Small Self-Administered Scheme (SSAS). We have prepared some guidance notes to assist you in carrying out your work whilst ensuring that any advice you provide to us will enable us to meet the requirements of HM Revenue & Customs (HMRC).

Please note that by accepting an appointment to act for the trustees of the SSAS, you are acting for all of the trustees, including AJ Bell Trustees Limited. We do not appoint separate legal advisers and whilst we request that all commercial negotiations are carried out directly with the member trustees, you must notify us immediately of any issues that you believe we should be aware of, including if you become aware of any potential conflict of interest.

We understand that there is an inherent conflict of interest where the same firm has been appointed to act for both sides in a property transfer or letting transaction. If your firm has been appointed to act for the vendor or buyer (where the SSAS is purchasing or selling a property) or for the tenant or landlord (where the SSAS is granting a lease or purchasing a long leasehold interest in a property respectively) as well as the SSAS trustees, we will require separate fee earners to act for each side. As the individual acting for the trustees, you will need to advise us (and your firm will need to advise the other party) on how the conflict will be managed. You must also confirm that you are satisfied that those arrangements comply with the solicitor's code of conduct.

For the purpose of these Guidance Notes the term 'property' also includes land.

You should correspond directly with the trustees of the SSAS, or their appointed agent, although copies of all relevant correspondence and draft documentation should be sent to us.

1. Background

The SSAS is a small self-administered pension scheme registered by HMRC under Chapter 2 of Part 4 of the Finance Act 2004. The members of the scheme and AJ Bell Trustees Limited are the trustees of the scheme.

You will be advising the trustees of the SSAS. You should be formally appointed in writing by the trustees before

providing them with any legal advice. For all purposes, the trustees will be your client and any advice should be addressed as such.

Any invoices in relation to your fees and any disbursements should be charged to the trustees of the SSAS unless you are specifically advised otherwise.

You will be responsible for agreeing your fees with the member trustees.

2. Scheme documentation

A copy of the Trust Deed and Rules will be available from the member trustees or alternatively we can provide copies upon request.

3. Property purchase

Types of acceptable property

It is very unlikely that you will have been appointed without us considering the suitability of the property first. You should, however, be aware of our requirements as failure to adhere to these may jeopardise the registered pension scheme status of the SSAS and/or lead to tax charges being imposed on the member(s) and/or the scheme.

The SSAS can only purchase commercial property and this normally excludes all forms of property with any residential element. Special rules apply for mixed commercial and residential properties. The property can be freehold or leasehold, but leasehold properties must have a minimum unexpired term of 50 years.

If the trustees are purchasing a residential property for conversion to offices, or some other commercial purpose, then the change of use must be confirmed before the property is purchased and any physical conversion works must be complete so that the property is no longer suitable for use as a dwelling. It must be possible to demonstrate that the previous use of the property prior to acquisition by the SSAS was commercial.

Property owned by the member(s), or any connected parties, or adjacent to such properties, will require special consideration as will land with attaching sporting

rights. Development land and agricultural land are both acceptable investments although residential developments are not allowed.

Properties with any history of, or potential for, contamination problems are unlikely to be acceptable.

We will only allow property to be purchased at auction where all our requirements have been met prior to the auction taking place. Alternatively, the member trustees or Principal Employer to the SSAS can pay the deposit and exchange contracts in their own name, and the SSAS can then complete the purchase at a later date, assuming the property is acceptable and all our requirements have been met. However, the member trustees should be aware that if, for any reason, the property is not acceptable for the SSAS and the purchase does not complete, then they would lose their deposit and could be liable for other costs incurred by the vendor for which AJ Bell Trustees Limited or AJ Bell Business Solutions Limited will accept no liability.

If there is any indication from your investigations that the property under consideration may not be acceptable within the above parameters, then we will expect you to inform us immediately.

4. Part IIA of the Environmental Protection Act 1990

Important issues arise as a result of Part IIA of the Environmental Protection Act 1990. Furthermore, these issues affect the member trustee(s) and AJ Bell Trustees Limited in different ways. As a professional adviser to the trustees, a condition of your appointment is that you represent and have a duty of care to all trustees. If you believe that a conflict of interest may result, then please inform us immediately.

AJ Bell Trustees Limited and the member trustee(s) will be legal owner(s) of the property. The professional trustee will have no beneficial interest in the property.

Clearly any environmental issues will affect the trustees to the extent that:

- the value of the property is affected, thus affecting the subsequent benefits available to beneficiaries of the pension fund; and
- any environmental liability exceeds the value of the pension fund.

You are required, unless all trustees agree to the contrary in writing, to consider whether contamination is an issue in relation to the proposed purchase of land and/or buildings by the pension scheme.

If you identify any risks of contamination in your pre-contract enquiries then please write to both AJ Bell and the member trustee(s) setting out your findings and advice as it relates to the relevant parties.

5. Legal title

If you are advising in relation to a property purchase then the legal title of the property should be vested in the joint names of each of the trustees of the SSAS

Where there are more than four trustees, you should ensure that AJ Bell Trustees Limited is one of the four trustees named on the Land Registry transfer document.

Joint property purchase

Joint property purchases will be considered on a case-by-case basis.

In the event of a joint purchase, a separate option agreement must be executed which sets out the following:

- percentage holding in the property of the trustees; and
- notice of sale requirements.

The notice of sale requirements should specify that, in the event of the trustees of this SSAS wishing to sell part or all of their share in the property, for example to pay benefits, then the other joint owners will either purchase the relevant share off the trustees at the appropriate percentage of market value, or alternatively the entire property will be sold.

Limitation of liability

All legal documentation should include a clause limiting the liability of the trustees to the value of the assets less the liabilities (other than the liability to pay benefits) of the SSAS.

The following wording is acceptable to us:

“Notwithstanding anything to the contrary herein appearing it is hereby expressly agreed and declared by the parties hereto that each and every liability undertaken hereunder shall be subject to the proviso that AJ Bell Trustees Limited and [names of trustees] shall not incur any liability in respect thereof whether jointly or severally save to the extent that such liability shall not exceed in amount the value of the assets less the liabilities (other than the liability to pay benefits) of the [name of SSAS] from time to time in their hands in their capacity as trustees for such pension fund.”

Documentation

AJ Bell Trustees Limited will require to be a party to the Land Registry transfer document and we will require a certified copy of the completed document. We will also require a copy of the completion statement and a certified copy of any current leases for our records. If the title deeds are not to be lodged with a commercial lender, then you should contact us to determine where the original documents will be held.

6. Energy Performance Certificate

We will expect you to ensure that the Energy Performance Certificate, where relevant, is provided by the vendor.

We will not accept property in England or Wales with an energy rating of F or G unless an exemption applies to the building.

If the property is in Scotland and has a floor area of more than 1,000 square metres we will require a copy of the Action Plan for the improvement of the building's carbon and energy performance, unless the property already meets energy standards equivalent to those introduced by the 2002 building regulations, or unless it has already been improved via a Green Deal.

Where a property is exempt from any of the requirements relating to energy performance we will require you to provide written confirmation and details of the reason(s) for the exemption.

You must ensure that the members are aware of their duties concerning the provision of Energy Performance Certificates to potential and actual tenants.

7. Lease

Please note it is a requirement that the trustees must enter into a lease with all tenants.

We must complete identity and verification checks on all tenants. For proposed tenants these must be completed before the lease is executed. For existing tenants, the purchase cannot be completed until the checks are finalised.

If you have been instructed to prepare a lease on behalf of the trustees then we will require a summary of the contents of the lease. This should normally include the information set out on the attached form entitled 'Property Summary' and any other information you feel that the trustees, as your clients, should be aware of. Completion of this summary is a condition of your appointment.

If you have not been instructed to prepare a lease, but as the trustees' legal adviser you believe that a lease should be prepared, then you must contact us immediately.

Any lease you prepare on behalf of the trustees will normally be a full repairing and insuring lease. There should be no onerous covenants on the trustees and only limited title guarantee should be given. The initial rent should be in accordance with an independent valuation prepared by a chartered surveyor if the tenant is an employer participating in the scheme, a member or any person connected with a participating employer or a member (as defined in s839 ICTA 1988). You can take instructions from the member trustee(s) as to the contents

of the lease including the term, break clauses, frequency of rental payments, etc but please bear in mind that if the tenant is connected to the member, all aspects of the lease must be on commercial, arm's-length terms. If there are any issues that you are concerned about in this respect, please advise us immediately.

We normally require that the role of the dutyholder under Control of Asbestos at Work Regulations 2006 (CAWR 2006) is passed to the tenant. If the trustees are to be the dutyholder then please contact us to discuss our requirements.

Documentation

AJ Bell Trustees Limited will require to be a party to the executed lease and we will require two certified copies. You should contact us to determine where the original documents will be held.

8. Security

It is acceptable for the lender to take a charge over the property, and any other assets within the SSAS, as security for the loan. The liability of AJ Bell Trustees Limited must be limited to the value of the assets of the SSAS from time to time and a connected person or company must not provide a guarantee in relation to the loan. The liability of the trustees in relation to the loan must therefore be limited to the value of the assets of the SSAS from time to time.

The following wording is acceptable to us:

"Notwithstanding anything to the contrary herein appearing it is hereby expressly agreed and declared by the parties hereto that each and every liability undertaken by the Borrowers hereunder shall be subject to the proviso that AJ Bell Trustees Limited and [names of trustees] shall not incur any liability in respect thereof whether jointly or severally save to the extent that such liability shall not exceed in amount the value of the assets less the liabilities (other than the liability to pay benefits) of the [name of SSAS] from time to time in their hands in their capacity as trustees for such pension scheme."

It should also be noted that it is not possible for the trustees to assign rental income to the lender.

9. Release of funds

No funds should be paid directly to any of the members. You should confirm with ourselves to whom any payments should be forwarded.

10. Requirements

Many of the above conditions are imposed on us by HMRC and if you are unable to confirm that these requirements have been met, then the property purchase cannot proceed.

11. Further information

For further information, please contact

AJ Bell Business Solutions Limited
4 Exchange Quay
Salford Quays
Manchester
M5 3EE

Telephone number: 0345 25 05 610

SSAS

Property summary

As a condition of you advising the trustees in connection with the purchase of a property or the preparation of a new lease we will require this Property Summary to be completed, signed and returned as soon as the conveyance has been completed or the lease has been executed.

A draft of this Property Summary sheet should accompany any draft documentation/leases that you forward to us with the information completed as far as is possible.

A fully completed and signed Property Summary sheet must be forwarded to us within 30 days of completion of your work along with a copy or original documentation as may be agreed.

1. Information required for property purchase

Scheme name

AJ Bell reference (if known)

Address of property

Postcode

Description of the property (e.g. office, industrial)

Is the title registered?

 Yes

 No

Freehold or leasehold?

 Freehold

 Leasehold

If leasehold, please provide:

Outstanding term of lease

Ground rent payable

Date(s) ground rent due

Name and address of current lessor

Postcode

Please provide copies of all leases in relation to the property.

Age of property (approx.)

Is the property subject to VAT?

 Yes No

Purchase price of property

 including/excluding VAT (delete as applicable)

Proposed completion date

Is there any residential element within the property?

 Yes No

If 'Yes', please provide details, including who is to occupy the residential element and their relationship to the member.

Is the vendor connected with the member?

 Yes No

If 'Yes', please provide details of the relationship/connection

Are you aware of any disputes in relation to the title or boundaries of the property?

If 'Yes', please provide details under separate cover.

Environmental

Are you aware of any contamination or environmental issues?

 Yes No

If 'Yes', please provide details under separate cover.

Has an Energy Performance Certificate been provided by the vendor?

 Yes No N/A

What is the current use of the property?

What are the known previous uses?

Details of existing tenant (if applicable)

Name

Rent payable and frequency of payments

Expiry date of lease

Date(s) of any break clauses

Is the property multi-tenanted?

 Yes No

If 'Yes', please provide details of each tenancy on a separate sheet.

Is there a management company already appointed?

 Yes No

Who is the dutyholder under the Control of Asbestos Regulations?

 Landlord Tenant

Provide details of any service charges

Documentation required for property purchase: please provide a copy of the completion statement, Land Registry transfer document and any current leases in relation to the property.

2. Information required for new leases

Name of tenant

Address

Postcode

Telephone number

Initial rent payable and frequency of payments

Proposed term of lease (please also specify details of any break clauses)

Is the tenant VAT registered?

 Yes No

Is the tenant connected with the member(s)?

 Yes No

If 'Yes', (a) nature of the relationship/connection; and

(b) has the initial rent been independently assessed by a chartered surveyor?

Are there any onerous covenants imposed on the trustees by the lease of which we should be aware?

 Yes No

Does the tenant need the trustees' permission to sub-let the property?

 Yes No

Who is the dutyholder under the Control of Asbestos Regulations?

Landlord

Tenant

Has an Energy Performance Certificate been provided to the tenant?

Yes

No

Is the lease a full repairing and insuring lease?

Yes

No

If 'No', please provide a summary of the trustees' and the tenant's responsibilities.

What is the period of grace for payment of rent?

What rate of interest is charged on overdue rent?

Documentation required for new lease:

Please provide a copy of the lease.

3. Declaration

I hereby confirm that I have read, understood and followed (unless otherwise advised) the instructions contained in the guidance notes for solicitors and that the above information is correct to the best of my knowledge and belief.

Signature

Date

Name

Name of firm/company

Additional notes