

PROPERTY

Online links to further information are shown in underlined text below.

Contents

- 1. Introduction**
- 2. Types of Property**
- 3. The Purchase Process**
- 4. Leases**
- 5. Property Sales**
- 6. Other Issues**

This guide gives an overview of the rules for SIPPs and SSASs investing in property.

1. Introduction

Summary

SIPPs and SSASs are able to invest in a wide range of commercial property, such as offices, shops, industrial units and land. They can borrow funds, of up to 50% of the net asset value of the scheme, to help finance the purchase.

You can choose your own advisers to assist with property transactions, e.g. your solicitor to deal with the conveyancing and your bank for any lending. Our in-house solicitor can arrange the conveyancing and we can quote a fee for this.

Property transactions are a complex area requiring specialist professional advice. These notes should be given to all advisers involved in transactions to help them understand the procedures, and they are encouraged to liaise with us at an early stage. An example of a purchase is set out in [Case Study - Property Purchase](#).

Our [Property Questionnaire](#) should be completed and returned to us before a purchase takes place, so that we can confirm whether it is permissible.

We cannot advise you on the suitability of property as an investment and you should seek independent advice on this.

Connected Parties

There are restrictions relating to dealings with a "connected party" and some of the rules below depend on whether the property involves a connected party. This is broadly defined as:

- a spouse or relative
- the spouse of a relative
- a trustee connected with a settlor
- a close business partner, or the spouse or relative of a close business partner
- one company controlling another, or 2 companies controlled by the same person

Property purchases and sales can take place between pension schemes and connected parties, and properties can be let to connected parties. Written independent professional valuations are needed to confirm that the transactions are taking place at a market value.

Even if there are no connected parties involved, it may be prudent to obtain a valuation, e.g. to confirm the market value of a property being purchased.

2. Types of Property

Acceptable Types of Property

HMRC rules set out the types of property which qualify for tax free rental income and capital gains. Other types of property can be taxed very heavily and we do not permit SIPPs and SSASs to invest in these.

Permitted types of property include:

- offices, shops and industrial units
- hotels and public houses
- care homes and student halls of residence
- agricultural land
- land for commercial development
- commercial and residential property in the same property both let to the same unconnected party (e.g. shop with flat above both let to the person who lives in the flat and runs the shop)
- caretaker accommodation which is occupied by an unconnected party

Unacceptable types of property would include:

- residential property
- holiday property, timeshares, caravans, mobile homes and beach huts
- commercial freeholds where there is a residential leasehold under the freehold.

In most cases it will be clear whether a property is acceptable or not, but there can be some grey areas, e.g. a leisure complex could contain shops which might be acceptable and separate holiday accommodation which would not be. We can confirm whether a particular investment proposal is acceptable.

Prudent Investment

As well as the HMRC rules, there is a general requirement that all property investments should be prudent investments for a pension scheme. Certain types of property may be inadvisable investments for a pension scheme:

- property of a specialist nature which might prove difficult to sell or let out
- property where future returns might be highly volatile – if future returns might be very high, this could breach HMRC limits on the benefits which could be paid out without tax penalties, and it might be better to hold such property outside the pension scheme
- property where there is a risk of contamination or environmental issues
- leaseholds with high rents under the head lease – if the pension scheme's tenant defaults, there could be difficulties paying the head rent or selling the property

Changes to a property

It is possible that a property which is initially acceptable can later become unacceptable and liable to high tax charges. An example would be a pension scheme owning commercial land, then subsequently obtaining planning permission for residential use and building residential units on the land. At the end of this process the scheme will own an unacceptable investment and will face high tax charges.

Situations like this need to be anticipated – in the example above the scheme should sell the land after getting planning permission.

Overseas property

Investment in overseas property is possible, subject to the same rules as above. There are additional issues to consider, such as the method of ownership and the tax laws in the country in question. This is a specialist area, but we can act in conjunction with the right advisers to arrange overseas property investments.

3. The Purchase Process

Procedures before transfer

A completed [Property Questionnaire](#) should be sent to us in the first instance, together with any supporting documents requested. We can then confirm whether the property is acceptable and also that any proposed borrowing from a lender is within acceptable limits.

Legal Advisers

At this stage your various advisers should be in place, such as solicitors, valuers, letting agents etc. The advisers need to be clear that they are acting for the pension scheme, not you or your business. This may mean that, for example, if you are selling a commercial property to your pension scheme, different solicitors may need to act for you as the vendor and the scheme as the purchaser. You should give us details of all the advisers so that we can liaise directly.

Our in-house solicitor can arrange the conveyancing for the scheme and, because we are familiar with all the processes, this is likely to be more efficient and cost-effective than using your own solicitor. We can quote a fixed fee for this service if you are interested. Our in-house solicitor can only act for our trustee company Colston Trustees Limited and not you personally. As a result, the way in which this works is that the property will be legally registered in the name of Colston Trustees Limited and held on trust for the beneficiaries of the scheme. The beneficial ownership of the property remains with you. However, if the other trustees of the scheme wish to be legally registered as co-owners of the property, then this service may not be appropriate and they would need to appoint an external solicitor.

If you wish to borrow money from a commercial bank to fund your property purchase, it is unlikely that our in-house solicitor will be able to act for the mortgage lender (as is usually the case in such transactions). This is because of the restrictions on the role of the in-house solicitor and lenders often have to use law firms from their panel. However, in this scenario, it may be possible for our in-house solicitor to act for the scheme and to work with another solicitor (either someone you choose or one of our contacts) who would act for the lender. As our in-house solicitor is able to offer a very competitive fee, this would still be a cost effective and simple solution for you. Alternatively, you have the option of choosing your own solicitor who can act both for you and for your lender.

Borrowing

All funds will need to be in place before exchange of contracts. If funds are being transferred into the scheme or investments need to be sold, the cash proceeds need to have been received. There must be sufficient funds available to cover the purchase costs plus advisers' fees and all necessary disbursements (stamp duty etc – see our guidance notes on [Property Disbursements](#)) and any VAT payable (see below).

Any proposed borrowing should be confirmed by an offer letter from the lender. This letter must include a clause limiting the liability of our trustee company Colston Trustees Limited to the assets of the pension scheme. This is standard practice and we can supply a suitable wording. The lender may require a separate bank account to be set up to process the loan repayments and this must be put in place, with our trustee company Colston Trustees Limited as one of the parties to the account.

If a market valuation is needed because the vendor is a connected party, this must be received from a qualified valuer and confirmed by us. A valuation obtained by a lender to support their lending may not be suitable in this respect, as the valuer will be acting for the lender, not the pension scheme. If the property is also going to be let to a connected party, the valuer's report should include a valuation of the market rent.

The property will need to be insured. Normally this will be the responsibility of the tenant under the terms of the lease and checks should be made on existing insurance arrangements and any new insurance set up as appropriate.

Throughout this process we will be communicating with you and your advisers to ensure all necessary action is taken.

VAT

If VAT is payable on the purchase price, then the scheme needs to register for VAT in respect of the property, and the VAT can then be claimed back. It must then charge VAT on the rents and make quarterly VAT returns.

We can deal with the VAT registration and the quarterly VAT returns, or alternatively you or your accountant can handle this.

Transfer Process

When all the initial procedures have been completed, it should be possible to transfer the property to the scheme. Transfer documents will be drawn up by the legal advisers. If you wish to use our in-house solicitor, the legal transfer will be into the sole name of Colston Trustees Limited; if you choose your own solicitor the transfer will be into the names of each of the trustees of the scheme, separately named. In either case the legal owners of the property will hold it on trust for the beneficiaries of the scheme, in accordance with the scheme rules. In some cases there will be an exchange of contracts with a deposit and full completion at a later date, in other cases the transfer will be a single transaction.

Funds are drawn from the lender in respect of any borrowing and a legal charge is signed, giving the lender security over the property.

If the vendor is a connected party, the price paid for the property must be the market value as independently valued.

The scheme will need to pay stamp duty at normal rates set by HMRC and other disbursements (see our guidance notes on [Property Disbursements](#)). We will obtain a completion statement from the solicitors confirming all the costs.

Details of the property purchase are registered with the Land Registry.

4. Leases

Procedure for purchases

The letting arrangements will be confirmed when a property is purchased. If there is a lease in place to an existing tenant, this will continue with the trustees of the pension scheme as the new landlord. Checks will be carried out to ensure rents are up to date and rent reviews have been carried out. There will be an apportionment of rent up to the completion date between the vendor and the scheme. A standing order will be put in place for future rents to be paid to the scheme.

If a new lease is required, the scheme's legal advisers will prepare this on a normal full repairing and insuring basis. If the tenant is connected, then the rent will be in accordance with the market value already obtained. A standing order will be put in place for the rent.

Ongoing procedures

You can choose to manage the property personally or to appoint a firm of property managers to deal with this on behalf of the scheme.

Rent reviews must be carried out as they fall due, and the rent amended to the new level. Where the tenant is connected, the new market rent must be independently valued and put into effect at this level. For unconnected tenants, similar procedures apply and there may be a process of negotiation between the scheme and the tenant.

It is essential that all rents are paid in a timely manner and arrears are chased up. This is particularly important where the tenant is connected, as there can be tax penalties on excessive arrears. The scheme can negotiate with tenants to arrive at the best outcome for arrears, but must not allow tenants to give preference to other creditors and must be prepared to use all the powers available to enforce arrears, including evicting the tenant and re-letting the property.

Property insurance needs to be renewed annually and we will require an up-to-date copy of the certificate for our records.

Termination of leases

On the termination of a lease, the scheme must consider the best option for the future. This could include granting a new lease to the existing tenant (on the same or more favourable terms), leasing the property to a new tenant or selling the property on the open market. Where the tenant is a connected party and is to remain in the property, it is essential that a new lease is put in place rather than rolling over the existing tenancy. The market rent should be assessed by an independent valuer as part of this process.

If a lease is surrendered early by mutual consent between the scheme and the tenant, the capital value of the outstanding lease should be paid over to the scheme by the tenant. If the tenant is a connected party, this figure must be independently valued.

5. Property Sales

The procedure is similar to property purchases, but is usually more straightforward. A solicitor will handle the sale process and the scheme will receive the sale proceeds and pay off any borrowings as appropriate. Our in-house solicitor is able to act on the sale of property owned by your SIPP and will provide a quote on request.

If the purchaser is a connected party, the sale price must be independently valued and the sale will take place at this price.

6. Other Issues

Joint ownership

It is possible for the pension scheme to own a property jointly with one or more other parties, which can include connected parties such as the scheme member. A declaration of trust will be prepared, setting out the percentages in which each party owns the property and the right of a party to sell. Normally the other parties would be invited to buy out the selling party's share, failing which the whole property would need to be sold.

Each party can borrow towards the purchase but it is important that they give a legal charge only in respect of their share, to avoid a situation where a pension scheme finds that it has granted security for another party's borrowings.

Each party will receive a percentage share of the rents in proportion to their ownership, and will pay a share of expenses. Arrangements will also need to be made to apportion rents and expenses as they occur. This can lead to complex administration and therefore a workable system needs to be put in place at the outset.

Where there is joint ownership of a property, each owner should consider having their own legal advice.

Property improvements

The scheme can carry out work to develop or improve a property. It is important to distinguish between repairs, which are normally the responsibility of the tenant, and genuine improvements.

The work can be carried out by any suitable contractor, including your business if that is the nature of their work. If the contractor is a connected party, quotations should also be obtained from other contractors to confirm that the cost is a market rate.

If the improvement leads to a higher rent, this should be put in place with a rental valuation and lease amendment as appropriate.

Environmental Issues

When purchasing a property, there will be a number of issues to consider and checks need to be carried out as follows (this list is not exhaustive):

- the solicitor should consider the possibility of contaminated land by making enquiries of the vendor and obtaining a site report or environmental report;
- an Energy Performance Certificate will be required for most properties and should be obtained;
- Confirmation should be obtained that the Control of Asbestos at Work Regulations 2002 are being complied with.

As well as the environmental issues, there may be other legal issues arising in connection with the specific property, which will need to be dealt with on a case to case basis.

In specie payments

Our [In specie Payments](#) notes set out the procedures for these. Property can be transferred as an in specie payment in transfers to and from other pension schemes, contributions and benefit payments.

Taxation

As explained above, unacceptable transactions can be taxed at high levels. The rate of tax can be up to 70% of the amount of the unacceptable transaction and part of this tax may be payable by you personally. Tax charges apply not just to unacceptable purchases but to other rule breaches as well, e.g. excessive levels of borrowing. It is important to ensure that all aspects of property transactions fall within HMRC rules.

The scheme may be taxed as a trading operation if HMRC takes the view that it is acting as a property developer rather than an investor. An example would be buying run-down properties, refurbishing them and then selling for short term profit. Pension schemes should buy property with the intention of letting it out as a long term investment.

Costs

Our SIPP Administration fees for dealing with properties are:

Property purchase	£750
Extra if there is borrowing	£250
Annual cost	£200
Property sale	£500
Registering for VAT	£150
Quarterly VAT returns	£200

Higher costs may apply in exceptional circumstances, e.g. dealing with overseas property, and we will advise you of these in advance. VAT is added to all fees.

In addition you will pay the costs of any other advisers involved and the various disbursements as outlined above.

For more information please contact one of our staff on (0117) 910 7910.

Curtis Banks PLC