



Investment
Property Forum

'Readiness for Sale'

A guide for streamlining commercial property transactions

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'Readiness for Sale'

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1. Introduction

- 1.1 In 1995 a working party was set up on streamlining real estate transactions. The purpose of the working party was to consider the existing procedures for the acquisition and disposal of real estate and to recommend improvements that would speed up the sale and purchase disposal process.
- 1.2 A study carried out by City University on behalf of the Investment Property Forum (IPF) in 1996 showed that 75% of respondents (including senior pension fund advisors and administrators) regarded liquidity as an important issue. "Property was regarded as illiquid due to its indivisibility, perceived difficulties in buying and selling when required, and the time taken to complete transactions".
- 1.3 It was hoped that the implementation of the working party's recommendations would increase the liquidity of real property (and therefore its attractiveness as an asset class). The consultation led to the publication of 'Readiness for Sale' – the Code of Practice for Streamlining Commercial Property Transactions in September 1996 (the First Edition), pulling together feedback from trade and professional bodies and investing institutions, property companies and firms of property professionals.
- 1.4 The First Edition was intended to be a step towards eliminating the factors which tend to bedevil and delay property transactions: inadequate or unavailable management information; missing title deeds; unanticipated title defects and adverse rights; material physical deficiencies in the property of which the seller was unaware and so on.
- 1.5 16 years on, real estate in the UK continues to represent approximately 7%-8% of the total investment market (by value). Liquidity remains an issue exacerbated by the cost and time involved in undertaking real estate transactions.
- 1.6 While transactions can sometimes be accelerated in a strong market, they take much longer in a difficult trading environment. Whilst it is outside the scope of this Guide to consider the impact of the current economic climate on real estate transactions, it is clear that ensuring a property is 'ready for sale' is even more crucial in challenging economic times as prices are often renegotiated and funders become increasingly selective on assets and their sponsors.
- 1.7 The most effective way of streamlining real estate transactions (and therefore minimising delays and potential abortive transactions and wasted costs and expenses), is for the intending seller and its advisors to have familiarised themselves thoroughly with the property and its title before putting it on the market. Sellers should also consider their financing arrangements (e.g. any debt, early repayment sums and swap break costs which might influence their decision to sell). In this way the seller can formulate its negotiating strategy from a position of knowledge, and can offer the prospective buyer a full package of legal documentation and management information from the outset. The 'readiness for sale' method is capable of leading to material improvements in transaction times and transaction costs, and incidentally to benefits in the form of better management information. It also avoids nasty surprises for either party in the course of the buyer's investigations, and thus eliminates or minimises the scope for renegotiation of the agreed price.
- 1.8 The First Edition acknowledged that the possible management time and cost implications of keeping properties ready for sale make it unrealistic to suppose that all property owners would be willing to maintain all their properties in such a state all the time. However, it is recommended that property documents and information should always be brought to a state of readiness for sale in the following cases:
 - 1.8.1 where the property has been newly developed;
 - 1.8.2 immediately following any acquisition, where the property has been investigated during the course of the acquisition; and
 - 1.8.3 as soon as it becomes apparent that a disposal of the property is in contemplation, even if the exact timescale for the proposed disposal is uncertain.
- 1.9 The management time and cost implications are even more pertinent in the current climate with resources and returns within the real estate sector under pressure. Fortunately advances in technology have helped to ease the burden of this and once a property has been acquired or brought to a state of readiness for sale, it is easier to maintain it in that state. The use of data sites can make a

significant difference in the effort to streamline real estate transactions (see paragraph 2.2.1 below). There has been a shift away from sellers endeavouring to prepare a property for sale in the heat of the deal and a recognition that readiness for sale may actually be adopted as an ownership strategy. The earlier it is started, the less onerous and expensive it is likely to be.

- 1.10** In considering readiness for sale, the impact of forced sales cannot be ignored. A distressed asset may not have been brought into or kept in a state of readiness for sale and any bank enforcing its security or insolvency practitioner will not have access to the necessary information to achieve this. Consequently, a buyer in these circumstances must accept that it will need to assess this risk and be more diligent in carrying out its own investigations which may be reflected in the price/terms agreed.
- 1.11** The final point to note following publication of the First Edition is the increase in indirect property investment for larger value transactions. The purchase of interests in vehicles or structures (often called ‘corporate wrappers’) now accounts for one third of the investments (by value) held by real estate institutional investors. Such structures often enable investments to be made in underlying real estate assets at a lower initial cost through tax efficient structuring. These transactions invariably take longer than direct real estate deals. Wherever possible it is helpful to address certain key terms at the outset (e.g. the covenant strength of the company providing any warranties).
- 1.12** We have included key steps flowcharts in Appendix 1 for asset and corporate transactions.
- 1.13** In producing the second edition of Readiness for Sale (the Second Edition), we have retained much of the excellent work of the First Edition which remains equally applicable today. We have not sought to make changes for the sake of change.

2. Collection and preparation of information and documentation

- 2.1** Before putting any property on the market, the seller should consider the list of materials and information set out in Appendix 2, with a view to making them available for presentation to a prospective buyer (insofar as relevant to the transaction in question). Appendix 3 contains a checklist, which sellers may find useful when co-ordinating the relevant materials and information – this is available in spreadsheet format from the IPF website. Sellers should also ensure that any of their own internal procedures or banking requirements are in hand.
- 2.2** The following particular points are worth bearing in mind in preparing this information:

2.2.1 Data sites

- (a) Probably the biggest advance in real estate transactions since the publication of the First Edition is the use of electronic data sites (also known as dealrooms). There are numerous benefits of having all relevant documentation on one site, both in terms of maintaining a property ready for sale and streamlining transactions.
- (b) It is not unusual now for investors to store all their deeds on an electronic data site even where a sale is not anticipated. Once such a site is set up (or inherited from a previous owner), it should be kept up-to-date as a matter of course (e.g. any new lease uploaded upon grant). Keeping the property documentation up-to-date should not be an onerous task.
- (c) Time and costs are saved by giving parties access to electronic information. This is particularly useful where a property is in the early stages of marketing and multiple parties are carrying out due diligence in anticipation of making a bid. When data sites first became popular, there were instances of buyers’ lawyers refusing to acknowledge receipt of a sales package until a hard copy was delivered. This tends no longer to be the case, with most sellers, buyers and their lawyers and agents accepting this new way of conducting transactions. This approach should be adopted across the sector.
- (d) It is also useful when there is more than one firm of lawyers involved on either side, e.g. a portfolio including English and Scottish properties or a pan European portfolio. The data site allows the central co-ordination of information rather than papers being sent out by different parties (this is very beneficial when milestones are being calculated from receipt of papers or – as it is often called now – from access to the data site).
- (e) The data site should be accessible not just by the buyer’s lawyers but by the buyer itself and its other advisors and consultants. The seller can tailor access to what certain parties need to review. The level of activity on a data site can also be monitored to give the seller a flavour of how the transaction is proceeding.
- (f) Data sites are not without their own pitfalls and their benefit does depend on how user friendly they are and the quality of information on them. The most advanced sites are now quick and easy to navigate with extensive functionality. It is also important that all information on the data site is legible. Plans become even more important. Often insufficient thought is given to the fact that colours or markings on plans will be lost in scanning. This can lead to unnecessary confusion, enquiries and delay. In extreme cases (particularly where there are old plans), the seller’s lawyer should consider supplying a hard copy of plans cross-referenced with the data site numbering at the outset of the transaction.

- (g) The data site should have a logical structure, with an accurate index/schedule and it must be clear when new documentation has been added (most modern data sites automatically alert users when additional information is uploaded).
- (h) Caution should be given to over-loading the data site or updating it late in the due diligence process. It should not be used as a way of 'burying bad news'.
- 2.2.2 Property structure**
- Many properties now have complicated structures based on tax, offshore planning or leasehold arrangements. Where appropriate, a structure chart should be made available to the buyer and the seller should consider the tax implications of a particular structure for different classes of buyer.
- 2.2.3 Property inspection**
- (a) The seller should where possible arrange an informal inspection of the property at an early stage (including its lawyers, sales/leasing agent and managing agent). If that inspection reveals any matters of concern, it will be in the seller's interest to investigate the position further.
- (b) It is also prudent for the seller to arrange a further informal inspection of the property shortly before issuing any sales particulars or other information concerning the property to ensure that any new unauthorised occupation of the property, physical damage or other circumstances which could give rise to problems or liability are identified in good time.
- 2.2.4 Title defects/'warts list'**
- The seller should prepare a 'warts list' and evaluate information disclosed on its acquisition of the property. In conjunction with its advisors, the seller can then formulate a strategy for dealing with any potential issues. In many cases, it may be prudent to bring any significant points to the buyer's attention at an early stage. However, it will be for the seller and its advisors to agree what approach to take on a case by case basis. The seller will gain credibility by dealing with issues early on, rather than reacting when they are uncovered by the buyer in the course of its investigation, which tends to result in more discussion, delay and often price renegotiations.
- 2.2.5 Replies to CPSEs and supporting documentation**
- (a) The introduction of Commercial Property Standard Enquiries (CPSEs) has made the initial provision of information more uniform. In addition there should be annexed a summary of supporting information disclosed with replies to CPSEs, e.g. energy performance certificates (EPCs), asbestos records, employment contracts, value added tax (VAT) information, etc (see Appendix 2).
- (b) Instances still occur of CPSEs not being answered fully or correctly (particularly with regard to certain areas such as planning and environmental condition as mentioned below). This causes unnecessary delay as buyers are forced to push back to obtain full disclosure.
- (c) When further enquiries need to be raised, the seller's and buyer's lawyers should agree a procedure for this to ensure proper co-ordination and efficiency of effort. Having an agreed format, clear points of contact and an accurate record of what is outstanding, helps keep transactions on track.
- (d) Replies to any enquiries should be vetted by someone who has inspected the property. Wherever possible the lawyers for both the seller and the buyer should inspect the property as this assists with a better understanding of the property, avoids unnecessary questions being asked and generally leads to faster transaction times.
- 2.2.6 Survey/reports**
- (a) The seller should give careful consideration to which surveys and reports it supplies to the buyer and on what basis. Although (under the principle of buyer beware or 'caveat emptor'), the seller is not obliged to volunteer adverse information (and invariably a buyer will procure its own structural survey), it must, when electing to respond, give truthful answers to any questions on the subject which the buyer may raise.
- (b) CPSEs request disclosure of all environmental reports (although many sellers will tell buyers to rely on their own inspection). If there is any possibility that the land may be contaminated, the buyer will normally expressly ask for environmental information and it would be prudent for the seller to arrange for an up-to-date environmental audit to be carried out on its own behalf before marketing the property. If the audit reveals environmental problems, further investigations may be needed.
- (c) Consultants who carry out any surveys and audits will address their report to the person by whom they are commissioned and will not automatically owe a duty of care to a prospective buyer. Any buyer (and funder if relevant) will require such reports to be readdressed to them or letters of reliance procured. The seller should ensure that the terms of any consultant's appointment provides for this and there may be an additional cost for doing so. Who bears this cost will depend on the circumstances, although the general expectation is that it will be the seller.
- 2.2.7 Recently constructed property/development**
- Appendix 2, paragraph 4.3 provides guidance on what should be disclosed where construction works have been carried out in the last 12 years (including major alterations/refurbishments or major engineering works).

The documentation should make clear what reliance package is being offered to the buyer. This will normally depend on the number of assignments of any particular contracts/warranties under the original contract or appointment, the solvency of any consultants and the ability of the seller to procure any assignment. In some cases, the seller may not be able to offer an absolute contractual obligation to do so and may consider offering a 'reasonable endeavours' obligation. What can be offered should be set out in the initial draft of the sale and purchase agreement.

2.2.8 Planning history

- (a) Appendix 2 also lists the planning information which CPSEs anticipate being disclosed. Notwithstanding this, it is not unusual for buyers to be told to rely on their own investigations. There is a certain amount of information that the buyer can obtain from its own enquiries of the local authority but it is essential the seller gives full details of satisfaction of planning conditions and section 106 obligations. Where satisfactory evidence is not available, consider a strategy as early as possible, including the availability of indemnity insurance. However, careful thought needs to be given because as with all types of indemnity insurance, cover may be jeopardised if an approach is made to the beneficiary.
- (b) Additional consideration should be given to planning conditions requiring environmental remediation works. A full paper trail will be required, from original reports and evidence of remediation through to local authority sign-off.
- (c) The Mayoral Community Infrastructure Levy (CIL) has been in force in London since 1 April 2012. The Community Infrastructure Levy Regulations 2010 permit local planning authorities to introduce their own CIL charging schedules. The buyer should check whether a charging schedule is in force that covers the location of the property.

2.2.9 Management information

A full and complete due diligence package should include the management information referred to in Appendix 2.

2.2.10 Tax

- (a) The seller should provide details on whether the transaction will be subject to VAT with specific regard as to whether or not the property is opted to tax and the relevant documentation referred to in Appendix 2 or whether the transfer of the property is intended to be a transfer of a going concern (TOGC).
- (b) Before agreeing heads of terms, the seller should assess the value of any capital allowances and agree the treatment of these with the buyer. Depending on the property and the nature of the buyer this may offer added value. The list of qualifying capital allowance expenditure

items increased in April 2008. Sellers and buyers can sometimes be eligible to claim different levels of capital allowances (depending on when the claims were made). Full advice should be sought from a reputable capital allowances consultant.

- (c) Consideration should also be given to the level of stamp duty land tax (SDLT) that will be paid by the buyer.
- (d) Thought should be given to any capital gains tax that may be payable by the seller.
- (e) If the property is being sold in a corporate wrapper, then a full understanding of the embedded tax liability in that wrapper needs to be established by the seller prior to marketing (or at least prior to agreeing heads of terms).

2.2.11 Investors

- (a) Ensure all money laundering requirements are dealt with early on and the logistics of dealing with foreign entities are established at the heads of terms stage.
- (b) Agree if opinion letters are required for offshore sellers or buyers and agree the form of opinion letter before exchange of contracts.

2.2.12 Identification requirements

Evidence required to satisfy the Land Registry (e.g. verification of attorneys/unrepresented parties) which the buyer may need/request should be collated.

3. Negotiation and heads of terms

- 3.1** The First Edition differentiated between short heads of terms leaving the detailed negotiations to follow later and the production of more detailed heads. Whichever approach is taken, key business points and potential issues should be dealt with at the heads of terms stage as that assists in getting to a binding commitment more quickly and reduces time on further negotiation, delay and potential re-trading of the price.
- 3.2** Appendix 4 sets out a list of possible topics to be dealt with in the heads of terms relating to investment transactions sold on an asset basis. The list is detailed but not exhaustive. It is intended to be adapted for each transaction but does offer guidance on the types of issues to be considered at the outset in the heads of terms.
- 3.3** Appendix 5 sets out the types of additional information that might usefully be dealt with in the heads of terms on a sale through a corporate wrapper.

4. Documentation

Sellers and buyers should encourage their lawyers to produce clear and readily comprehensible documentation, expressed in plain English where possible without the loss of legal certainty.

Appendix 1

Key steps flowchart for asset acquisition

SELLER

Instruct advisors

Review property information and devise strategy to deal with any issues

Any restrictions/ limitations on ability to sell: third party consents, banking issues (ensure early consultation)

Procure Energy Performance Certificate

Consider carrying out searches: whilst traditionally carried out by the buyer, the provision of searches allows the seller greater control when setting the time limit for exchange of contracts. Searches may take 3 to 8 weeks depending on the location and nature of the property

Make available pre-contract legal package/access to data site

Negotiate contract

Seller now committed to the deal

Seller continues to manage (in accordance with contract)

Preparation of completion statement

Prepare requisitions on title

Discharge mortgage

BUYER

Instruct advisors

Consider sources of finance and time line to secure funding: debt/equity

Investigate title

Carry out surveys, prepare reports

Negotiate contract

Pay deposit

Buyer now committed to the deal

Pre-completion searches

Finalise mechanics for drawdown / transfer of completion monies

Pay completion monies

Buyer assumes responsibility

SDLT

Land Registry application

Collation of deeds – data site



Key steps flowchart for corporate acquisition

SELLER

Instruct advisors
Review property information and devise strategy to deal with any issues

Any restrictions/ limitations on ability to sell: third party consents, banking issues, regulatory approvals (ensure early consultation)

Procure Energy Performance Certificate

Consider carrying out searches: whilst traditionally carried out by the buyer, the provision of searches allows the seller greater control when setting the time limit for exchange of contracts. Searches may take 3 to 8 weeks depending on the location and nature of the property

Make available due diligence disclosure documents/access to data site

Negotiate contract including warranties and limitations and associated disclosure letter

Seller now committed to the deal

Restrictions on conduct of business between exchange and completion

Make any pre-completion disclosures

Pre-completion distribution to avoid paying cash for cash

Reconciliation of company accounts

Repay existing debt and discharge security

Hold meetings to approve completion and effect change of control

Resignation of directors etc, if relevant

Delivery of all original corporate records

Companies House filings

Final reconciliations

HEADS OF TERMS

PRE-CONTRACT

EXCHANGE CONTRACTS

PRE-COMPLETION

COMPLETION (CLOSING)

POST-COMPLETION

BUYER

Instruct advisors
Consider sources of finance and time line to secure funding: debt/equity
Consider acquisition structure

Due diligence enquiries
Prepare due diligence report
Negotiate draft contract including warranties, limitations and disclosures

Pay deposit

Buyer now committed to the deal

Pre-completion searches
Review any pre-completion disclosures
Arrange monies for completion (including third party debt)

Shares/units/partnership interest transferred
Buyer assumes responsibility
Appointment of new directors, change of registered office etc.

Stamp duty if applicable
Registration at Companies House of corporate changes
Final reconciliations

Appendix 2

Documents to be provided for the complete commercial property information package with regard to title/CPSEs.

Confidential financial information which is not of relevance to the buyer may be deleted from the copy documents included in the package.

1. Title

1.1 Registered title

- 1.1.1 Official copies of the registered title and title plan.
- 1.1.2 Copies of all documents referred to in the registers (other than mortgages which are to be discharged on completion).

1.2 Unregistered title

- 1.2.1 A full 'epitome' (summary) of the title deeds, with copies of all relevant deeds.¹
- 1.2.2 Any necessary statutory declarations as to boundaries, defective title, missing deeds, etc.

1.3 Rights adversely affecting or benefiting the property

- 1.3.1 Copy documents, plans and consents under any of the following:
 - (a) covenants;
 - (b) agreements;
 - (c) easements;
 - (d) restrictions; and
 - (e) any other rights.
- 1.3.2 Those that are registered should be contained in the title papers mentioned at paragraph 1.1 above. However, many are unregistered or informally arranged and these also have to be disclosed by supplying evidence as to entitlement with a plan showing the area affected.

1.4 Title policies

Copies of any policy documentation for title indemnity insurance benefiting the property. This should include:

- 1.4.1 the proposal form; and
- 1.4.2 any correspondence or documentation relating to any claims made or instances of insurance being refused.

2. Leases

2.1 Seller's leasehold and other occupational interests

- 2.1.1 Copies of all leases, authorised guarantee agreements, licences, concession agreements, franchise agreements and other documents conferring occupational interests on either the seller or any third party including official copies and title plans of any registered leases.²
- 2.1.2 Details of any informal (undocumented) interests under which the seller or any third party occupies property.

- 2.1.3 Copies of any break notices and other notices served or received by the seller either as a tenant or a landlord in respect of any third party occupational interests.
- 2.1.4 Copies of any rent deposit guarantee or other security given by the seller as a tenant to a landlord or to the seller as a landlord in respect of the obligations of any person having an occupational interest.

2.2 Rent review

- 2.2.1 Copies of all completed rent review memoranda and of all rent review notices served or received.
- 2.2.2 Sufficient details of any current rent reviews.
- 2.2.3 Details of any area measurements agreed or determined for the purpose of any previous rent reviews of any third party occupational interests.
- 2.2.4 Copies of all determinations by a third party to settle any review.
- 2.2.5 Copies of all turnover rent accounts and calculations.

2.3 Licences

- 2.3.1 Copies of all licences for:
 - (a) assignment;
 - (b) underletting;
 - (c) alterations, including all relevant drawings and specifications;
 - (d) change of use; and
 - (e) any other consents and variations.

2.4 Management information

- 2.4.1 Full details of current rents and licence fees, including details of any special or temporary concessions negotiated with occupiers.
- 2.4.2 Copy service charge accounts for the last three accounting years, and, if possible, draft or working accounts for the current service charge year. RICS has produced an information paper on the administration of service charge, in accordance with industry best practice, through and beyond the date of sale.³
- 2.4.3 Schedule of rent and service charge arrears and, if possible, details of tenants' payment record over the last four rent quarters.
- 2.4.4 Details of insurance premiums paid and premium recovery from tenants (if not shown in the service charge accounts).
- 2.4.5 Details of any outstanding insurance claims relating to the reinstatement of damage or destruction caused by insured risks, and/or relating to loss of rent.
- 2.4.6 Details of current breaches of covenant by tenants.

¹ All plans referred to in documents must be complete and correctly coloured.

² (i) In relation to every relevant lease, indicate whether or not it qualifies as a 'new tenancy' for the purposes of the Landlord and Tenant (Covenants) Act 1995 (relating to privity of contract).

(ii) If any lease is dated on or after 1 January 1996 but does not constitute a 'new tenancy', provide details of the agreement or court order pursuant to which the tenancy was granted.

(iii) Ensure that copies are provided of any agreements for lease containing obligations which will be binding on the buyer of the investment by virtue of section 3 of the Landlord and Tenant (Covenants) Act 1995.

³ 'Commercial property service charge handover procedures', RICS information paper, 1st edition, published by RICS March 2011.

- 2.4.7 Copies of all management and maintenance contracts.
- 2.4.8 Details of any repair or refurbishment work being undertaken or proposed.
- 2.4.9 Details of any proposed capital improvements to the properties.
- 2.4.10 Details of any employees of the seller or the managing agents whose contracts of employment will be transferred to the buyer under the TUPE Regulations⁴, with their periods of employment, salaries and pension arrangements.

3. Searches

- 3.1 Replies to local searches and enquiries (issued ideally not more than one month before the date on which they are provided to the prospective buyer). Searches more than three months old are unlikely to be acceptable to a buyer or its funder.
- 3.2 Appropriately recent replies to all other relevant searches and enquiries of official bodies, utility companies, etc.

4. Further information required

There are several types of CPSE, however replies to CPSE 1 should be provided for almost all commercial property transactions, e.g. sale of freehold interests, assignments and grants of leasehold interest etc. The remaining categories are for the most part supplemental and replies to each should be given for the following transactions:

- (a) CPSE 2: when the commercial property in question is subject to tenancies;
- (b) CPSE 3: for commercial property on the grant of a new lease; and
- (c) CPSE 4: for commercial leasehold property on the assignment of a lease.

These replies should incorporate sufficient details to satisfy the buyer's lawyer's need for relevant information and the following additional copy documentation should be provided under CPSE 1 (where relevant).

4.1 Boundaries and party walls

- 4.1.1 Agreements for the maintenance of any boundary feature, e.g. walls, fences, ditches, hedges etc.
- 4.1.2 Plans showing any parts of the property situated beneath or above adjoining premises and copies of any relevant licences, e.g. over-sailing licences.
- 4.1.3 Copies of any notices, counter-notices, awards and agreements in relation to party structures under the Party Wall Act 1996 or otherwise.

4.2 Access

Any access orders either granted for a third party to go onto the property or for the seller to access neighbouring land.

4.3 Design and construction

- 4.3.1 A copy of the building contract, with its bills of quantities (if applicable), specifications, drawings and appendices.
- 4.3.2 Copies of the contracts (and sub-contracts) of appointment of the architects, structural engineers, mechanical and electrical engineers and other professionals with design responsibilities or direct liability to the employer.
- 4.3.3 Up-to-date copies (and any drafts) of all bonds, guarantees, warranties and insurance policies (including applications for insurance) that are subsisting to support the obligations of the persons mentioned in paragraphs 4.3.1 and 4.3.2 that are to be assigned to the buyer or enforced for its benefit.
- 4.3.4 Details of contractors and professional team professional indemnity insurance.
- 4.3.5 Copies of certificates of practical completion, certificates of making good of defects and final certificates under the building contract.
- 4.3.6 Details of any disputes or arbitrations in relation to such design and construction.
- 4.3.7 Relevant extracts from the health and safety files maintained under the CDM Regulations.⁵

4.4 Plant and machinery and fixtures

- 4.4.1 Service and/or maintenance contracts, agreements, guarantees, warranties, insurance, bond etc. relating to any plant, machinery, fixtures and loose equipment.
- 4.4.2 The most recent maintenance manuals and reports for all such plant, equipment etc.

4.5 Contents

Lists of all items at the property that are:

- 4.5.1 attached to the property but will be removed prior to completion;
- 4.5.2 not attached to the property but will remain post-completion and copies of any subsisting certificate, guarantees and warranties relating to them; and
- 4.5.3 attached to the property but will remain post-completion and belong to any third party other than an occupational tenant, e.g. meters.

4.6 Utilities

- 4.6.1 All supply contracts for the property and other relevant documents.

⁴ The Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE Regulations').

⁵ Guidance on the Construction (Design and Management) Regulations 2007 ('CDM Regulations') and the information to be contained in the file and the details which should be made available to buyers and tenants is set out in 'Managing Health and Safety in Construction' the approved Code of Practice published by the Health and Safety Commission.

4.6.2 Any information regarding the Carbon Reduction Commitment Energy Efficiency Scheme.

4.7 Fire safety

Any agreements that authorise any emergency escape routes over any land other than the property or a public highway.

4.8 Planning and building regulations

4.8.1 Copies of the following consents:

- (a) relevant planning permission;
- (b) approval of reserved matters;
- (c) building regulations approval;
- (d) building regulations completion certificate;
- (e) self-certification;
- (f) listed building consent and a copy of the listing particulars;
- (g) conservation area consent;
- (h) tree preservation orders; and
- (i) display of advertisements consent.

4.8.2 Copies of any refusals and appeals in relation to the above and applications leading to the permissions/refusals, with relevant drawings, should also be included.

4.8.3 Copies of the following certificates:

- (a) established use certificate;
- (b) certificate of lawfulness of existing use or development; and
- (c) certificate of lawfulness of proposed use or development.

4.8.4 Any existing or proposed section 106 agreements.

4.8.5 Letters or notices under any planning legislation which have been given or received in relation to the property.

4.8.6 Any other relevant planning information including pending applications (with plans).

4.9 Statutory agreements, requirements and infrastructure

4.9.1 Any agreements relating to the property, its services and off-site works entered into with any highway, public authority or utilities provider.

4.9.2 Plans and drawings identifying such infrastructure, services and other matters mentioned at paragraph 4.9.1 above.

4.9.3 Any consultants' reports on the infrastructure and services to and within the property including all electrical, telephone and gas systems (if available).

4.9.4 Details of any stopping up, deviation or other change in the highway adjacent to the property or any road systems leading to or in the vicinity of the property.

4.9.5 Any other licences or consents required to authorise any activities currently carried out at the property, including any required under local legislation (e.g. London Building Act 1930).

4.9.6 A valid EPC (required to be commissioned/produced before marketing).⁶

4.10 Physical condition and environmental issues

4.10.1 The most recent asbestos survey or assessment.

4.10.2 A written plan to manage the asbestos.

4.10.3 Any measured and/or structural surveys.

4.10.4 All environmental reports prepared in relation to the property.

4.10.5 Any air conditioning inspection reports.

4.10.6 Notices, licences and authorisations given in relation to the property under environmental law by a competent environmental authority and any details of applications pending.

4.10.7 Consents, agreements and correspondence in relation to how activities are currently carried out at the property, including storage of materials, water abstraction, discharges, emissions and management of waste.

4.10.8 Insurance policies specific for contamination or other environmental problems affecting the property.

4.10.9 Notices, correspondence, legal proceedings or disputes regarding perceived environmental problems affecting the property.

4.11 Occupiers and employees

Any current contracts of employment, service agreements and (if applicable) service occupancy agreements for employees engaged in respect of the building.

4.12 Insurance

Any existing building insurance documentation that will remain in place post-completion or is to be relied upon by the buyer until completion, including the proposal form, schedule of insurance cover and relevant details of the insurance not covered by the schedule.

4.13 Rates and other outgoings

4.13.1 Correspondence in relation to rating assessments and any current or proposed rating appeals or revaluations.

4.13.2 Details of any other outgoings or assessments payable by the owner or occupier of the property.

⁶ Investors must prepare for the energy efficiency regulations issued pursuant to the Energy Act 2011 which come into force in 2018. These restrict the letting of properties which do not reach a minimum energy efficiency standard (intended to be set at EPC rating E).

4.14 Capital allowances⁷

- 4.14.1 Copies of any election notices and details of any allowances claimed by the seller.
- 4.14.2 Any supporting evidence such as tax computations and/or capital allowances reports.

4.15 VAT

- 4.15.1 A copy of any option to tax and the notice of the option given to HM Revenue & Customs (HMRC).
- 4.15.2 Details of the seller's VAT registration number and group (if applicable).
- 4.15.3 Details as to whether or not the transfer of the property is intended to be treated as a TOGC.

4.16 Other notices, licences, consents etc.

All other relevant permits, licences, consents, approvals, certificates, applications, registrations and declarations in respect of the property (including any intellectual property and domain names) not covered above and details of any refusals and appeals.

4.17 Stamp duty land tax (SDLT)

- 4.17.1 If the property is held under a lease, a copy of each land transaction return and the certificate issued by HMRC certifying that the transaction was notified to them.
- 4.17.2 Any self-certification certificate.
- 4.17.3 If any payment of SDLT was deferred, a copy of the original land transaction return and the certificate issued by HMRC certifying that the transaction was notified to them.

4.18 Same additional information that may be required on selling interests in corporate wrappers

- 4.18.1 Constitutional documents
 - (a) Company searches on the seller and the target company.
 - (b) Constitutional documents of the target company, i.e. articles of association.
 - (c) Statutory registers and minute books of the target company.
- 4.18.2 Finance documents/information to be supplied
 - (a) Copies of the target company's audited accounts and group accounts for the last five financial years.
 - (b) Copies of the target company's latest unaudited management accounts.
 - (c) Details of the finance arrangements relating to the target company.

- (d) Copies of all financing agreements, facilities, security documents, debentures, bank accounts, bank mandates and the latest bank account statement.
 - (e) Copies of all guarantees or indemnities given in respect of the target company by third persons (including other members of the seller's group) or by the target company, including intra-group arrangements.
- 4.18.3 Corporate and commercial agreements
- (a) Copies of any joint venture arrangements or share or asset purchase agreements to which the target company is party.
 - (b) Copies of any agreements or arrangements which are material to the business, outside the ordinary course of the business, of an unusual nature, for a fixed-term in excess of a specified period (e.g. six months), likely to result in a loss to the target company, involve payment by reference to currency fluctuations, or otherwise involve large levels of expenditure of money or effort on the target company's behalf.
 - (c) Copies of all standard terms and conditions of sale or purchase used by the target company.
 - (d) Copies of all agreements in connection with the target company's business which cannot be terminated on short notice without payment of compensation.
 - (e) Copies of any contracts or arrangements currently in operation which are liable to termination or alteration on a change of control of the target company, or where the consent of third parties is otherwise required on a change of control.
 - (f) Copies of all hire purchase, rental, leasing or similar agreements entered into by the target company or to which it is subject.
 - (g) Copies of guarantees (including product guarantees), agreements of surety or current indemnities given by the target company.
 - (h) Copies of all licences, agency and distribution agreements and material supply agreements.
 - (i) Details of any trading or service provision arrangements between the target company and the seller or a member of the target's group, and any arrangements with persons directly or indirectly connected with the target company.
- 4.18.4 Business assets (excluding real property)
- (a) Details of any plant, machinery and equipment that is owned, leased or subject to hire purchase.
 - (b) Details of all fixed and current assets in the target company.

⁷ From 1 April 2012, a capital allowances election is generally required to pass capital allowances to a purchaser. This includes, if the seller has not claimed capital allowances, providing the buyer with a copy of any election entered into by the previous owner. Sellers should ensure they retain and have available copies of any such elections.

- (c) Details of any recent valuations of assets.
- (d) Details of present stock-in-trade.

4.18.5 Employees

- (a) Details of all employees and consultants working in the target company, including the terms of employment and wage agreements and recent pay awards.
- (b) Details of anyone who is working for the target company but is not employed or engaged by it, and anyone who is employed or engaged by the target company but works for another organisation.
- (c) Copies of service agreements of management and details of remuneration, salaries, notice periods and restrictive covenants.
- (d) Details of any employees who have received or given notice to terminate their employment with the target company.
- (e) Details of any existing and potential claims, e.g. for breach of contract, unfair dismissal, discrimination or equal pay.
- (f) Details of any TUPE transfers that may have affected anyone employed by the target company.
- (g) Details of any employee share scheme arrangements.
- (h) Details of relevant pension scheme(s) (including trust deeds, rules, handbook and names of trustees).

4.18.6 Intellectual property

- (a) Details of intellectual property rights (IPR) owned by the target company and used in the target company's business which are registered, or for which applications for registration have been made.
- (b) Details of all domain names used in connection with the target company's business.
- (c) Details of any challenges or disputes relating to IPR owned or used in the target company, including any challenges to the validity, subsistence or ownership of such rights.
- (d) Details of any suspected or alleged infringement of third party rights by the target company.

- (e) Details of any copyright to any of the software that is used by the target company. This will be particularly relevant if software has been specifically developed for the target company. Who wrote it? Were they employees or consultants? What were the terms of their employment or consultancy contract?

4.18.7 Litigation

- (a) Details of any existing and threatened arbitration or litigation, or similar proceedings or disputes relating to the target company or its assets, together with details of sums involved.
- (b) Details of any judgments affecting the target company or its assets.

4.18.8 Insurance

Details of all insurance arrangements (such as property, professional indemnity, directors' and officers' policy, product liability and product recall), the basis of insurance and the claims history from all relevant jurisdictions.

4.18.9 Anti-corruption policies

Copies of anti-corruption policies of the target company/group.

4.18.10 Tax

- (a) Copies of the last agreed tax computations relating to the target company and details of the status of tax returns and computations for later periods, including confirmation that all tax due has been paid on time.
- (b) Copies of correspondence in relation to outstanding enquiries by HMRC or other fiscal authority in relation to the tax affairs of the target company.
- (c) Copies of any dispensation or other special arrangements agreed with, or concessions made by, HMRC or other fiscal authority in relation to taxation.
- (d) Details of the VAT registration of the target company.
- (e) Copies of any report on tax or related matters prepared in relation to the target company during the last three years.

Appendix 3

Readiness for sale checklist

NOTE: This checklist is available in spreadsheet format to download from the IPF website, www.ipf.org.uk

Tick

Applicable	Available	Complete	
			1. Marketing material
			1.1 Brochure or particulars
			1.2 Site plan
			1.3 Floor plans (and independent measured areas)
			1.4 Verified tenancy schedule
			2. Legal title and searches
			2.1 Land Registry official copies and plans
			2.2 Relevant title documents
			2.3 Headlease
			2.4 Tenancy documents
			2.5 Missing documents
			2.6 Third party consents
			2.7 Defective title insurance policies
			2.8 Searches
			2.9 Replies to Commercial Property Standard Enquiries (CPSEs)
			2.10 Any consents/authorities needed for transaction
			3. Management information
			3.1 Managing agents' contact details
			3.2 Copies of most recent rent and service charge demands
			3.3 Payment history and confirmation of status where consistent late payment
			3.4 Arrears schedule and confirmation of status of all arrears
			3.5 Service charge:
			3.5.1 Current year's budget
			3.5.2 Current year's apportionment (showing percentage and areas)
			3.5.3 Full details of caps and fixed service charge, RPI uplift calculations
			3.5.4 Last 3 years' service charge accounts
			3.5.5 'Reserve Fund' statement – and confirmation if it is allocated
			3.5.6 Expenditure to date
			3.5.7 Service charge collected to date
			3.5.8 Details of major service charge expenditure in the last 3 years and any anticipated expenditure
			3.6 Insurance certificates
			3.7 Last insurance valuation
			3.8 Insurance claims history and details of any outstanding claims
			3.9 Details of any disputes
			3.10 Ongoing management transactions
			3.11 Schedule of maintenance/service contracts (including notice periods)
			3.12 Details of employees where TUPE applies
			4. Design and construction
			4.1 Building contract and all appendices/specifications
			4.2 Consultant details and professional appointments
			4.3 Warranties/guarantees/bonds

Tick

Applicable

Available

Complete

- 4.4 Status of contractor/consultants
- 4.5 Details of consultants' professional indemnity insurance
- 4.6 Practical completion/making good defects certificates
- 4.7 Health and safety file
- 4.8 Operation and maintenance manuals
- 4.9 Snagging outstanding
- 4.10 Payments (retention) outstanding

5. Utilities

- 5.1 Supply contracts
- 5.2 Tariff arrangements
- 5.3 Carbon Reduction Commitment Energy Efficiency Scheme

6. Planning/statutory agreements/infrastructure

- 6.1 Copies of:
 - 6.1.1 planning applications
 - 6.1.2 planning permissions
 - 6.1.3 approval of reserved matters/conditions
 - 6.1.4 satisfaction of planning conditions
- 6.2 Confirmation of established use and certificate where relevant
- 6.3 Any planning agreements (section 106/highways/infrastructure)

7. Physical condition/environmental

- 7.1 Asbestos survey/assessment
- 7.2 Measured/structural/mechanical and electrical surveys
- 7.3 Environmental report
- 7.4 Environmental licences/notices
- 7.5 Energy Performance Certificate

8. Rates/outgoings

- 8.1 Rating assessments
- 8.2 Any correspondence/appeals

9. Tax/financial

- 9.1 Any capital allowance elections
- 9.2 Details of allowances claimed
- 9.3 VAT registration details
- 9.4 Copy of option to tax and acknowledgement
- 9.5 Confirmation of anticipated TOGC treatment
- 9.6 Copies of stamp duty land tax certificates
- 9.7 Any security and arrangements for discharge

10. Corporate transactions

- 10.1 Constitutional documents
- 10.2 Company accounts
- 10.3 Any corporate or commercial agreements
- 10.4 Business assets/intellectual property
- 10.5 Details of any litigation
- 10.6 Tax computations and returns

Appendix 4

Possible topics for inclusion in heads of terms (Asset transaction)

1. Names and addresses of the seller and buyer.
2. Names and addresses of any guarantors.
3. Details of the property, with plan if necessary.
4. The price (including brief details of any mechanism for price adjustment).
5. The amount of the deposit to be paid. (It will normally be assumed that the deposit is to be paid to the seller's lawyer as stakeholders; if the deposit is to be held by the lawyer as agent, this should be stated).
6. Outline of the buyer's financing arrangements (where applicable). Consider whether the price should be expressed as a monetary amount only or whether a net initial yield is also shown. This may provide clarity if the net revenues are likely to change during the due diligence process.
7. If the interest being sold is leasehold, brief details of the lease (date, term, current rent, rent review dates and any options to break or renew).
8. If the property is sold subject to leases or other occupancies, similar brief details of those. Reference could be made to the marketing particulars or a copy of the latest tenancy schedule appended to the heads of terms.
9. Responsibility for obtaining landlords' or other necessary consents, and the anticipated timescales.
10. Whether or not the sale is subject to VAT.
11. Agreed timetable for the buyer's survey(s) (if not already done) and (if applicable) environmental investigations (if not already carried out before heads of terms) (bearing in mind that 6-8 weeks should be allowed where intrusive investigations are necessary) and decision as to which party is to bear the costs of environmental investigations.
12. Agreement as to any remedial or alteration works to be carried out by or at the cost of either party.
13. The proposed timetable for the disposal. (In a simple case, it may be sufficient to detail the proposed date for exchange of contracts and the proposed date for completion. In a more complex case, it may be advisable to include a more detailed timetable for board approvals, survey reports, environmental investigations, the delivery of draft documents, dealing with enquiries, principal meetings to resolve issues, etc).
14. Availability of capital allowances, and any commitment on behalf of the seller to provide relevant information to assist the buyer with future claims.
15. Continuation or termination of contracts with managing agents, staff, and suppliers of services (cleaning, security, waste disposal, etc), and (where applicable) responsibility for any termination costs.
16. Basis of apportionment of rents (whether annual or quarterly) and whether the seller or buyer to receive rent for the day of completion.
17. Basis of apportionment of turnover rents, service charges, and other items which may not be capable of final quantification at the time of actual completion.
18. Basis of dealing with arrears (which party bears the arrears initially, and on what basis subsequent recovery is to be dealt with).
19. Rights of the buyer to control management decisions between exchange and completion.
20. Where applicable, details of contracts relating to the design and construction of the property (or any major alterations or refurbishment), with a statement as to whether the benefit is to be assigned to the buyer or whether direct warranties are to be provided. Responsibilities and timetable for the provision of assignments/warranties.
21. Details of building defects insurance, if relevant.
22. Means of establishing title (indicate whether the seller is to deduce title or if seller is to provide warranties or certificate of title).
23. Any special terms or conditions agreed in relation to the particular transaction.
24. Exclusivity, if applicable, with details of the period, terms and any payment required.
25. Confidentiality (NB: since the parties will wish the confidentiality and exclusivity provisions to take effect immediately, they should be expressly stated to be not 'subject to contract', unlike the rest of the heads of terms).
26. Any agreement as to the payment of one party's costs by the other party.
27. Confirmation of the position regarding the parties' board approval (obtained or to be obtained).
28. Details of the parties' respective investment agents.
29. Details of the parties' respective lawyers.
30. Acknowledgement that the heads of terms are subject to contract.

Appendix 5

Possible additional topics for inclusion in heads of terms (Corporate transaction)

1. Details of how the sale will be structured (including name of entity to be purchased, jurisdiction in which target is registered and details of the number of shares/units/interests to be sold/acquired).
2. Details of any price apportionment/adjustment to reflect an indirect (rather than direct) sale.
3. Details of warranties to be provided by the seller and on what basis (i.e. standard and reasonable taking into account structure and jurisdiction; whether to be provided at exchange and/or at completion; total cap on liability etc).

Notes



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