

SSAS Information Booklet

Property Investment

About property investments

Property investment within a SSAS is complex. This booklet aims to help you to understand the processes involved. However, it is only a general guide. For more information, please refer to your financial adviser or other property professional, who will be able to advise you on all of the options available to you and identify which ones best suit your needs.

If you wish to purchase a property within your SSAS then you must complete and return our Property Investment Form to us. Please ensure that the Form is completed in full, as the information requested is key to enable us to fully consider the viability of the purchase. Any failure to provide the information requested may delay the progress of the transaction. Should any additional information come to light, please let us know immediately.

About this booklet

This booklet is based on our understanding of current legislation and HM Revenue & Customs (HMRC) practice and every care has been taken to ensure it is correct. It is issued by D A Phillips & Co Ltd for use by our SSAS clients and no responsibility to any third party is accepted if the information in this booklet is used for any other purpose. The legislation and HMRC practice may change in the future.

This is an important document. You should keep it safe for future reference.

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INTRODUCTION

The basics

The key points of property investment in your SSAS are as follows:

- Your SSAS can invest in freehold or leasehold commercial property, such as offices, shops, industrial units and land. It can generally not invest in residential property, however, special rules apply to commercial properties with a residential element. In this guide, when we refer to commercial property, we are also referring to land.
- Your SSAS can acquire property from you or someone connected with you (a “connected party”), provided the purchase price is the open market value of the property set by a chartered surveyor.
- Your SSAS can borrow funds, up to 50% of the net asset value of the scheme (less any existing borrowing), to help finance the purchase.
- Your SSAS can purchase property jointly with other pension schemes, your business or with you personally.
- Your SSAS can develop the property that it holds.
- Your SSAS can register for VAT where the property is (or is to be) subject to VAT. This allows the SSAS to reclaim the VAT paid on the purchase and/or development of the property.
- Your SSAS can lease the property to an unconnected third party as well as to your business or some other connected party. If the lease is to a connected party the rent must be the open market rent set by a chartered surveyor and the other lease terms must be standard.
- We are not property managers. You have two options for managing your SSAS property on an ongoing basis. You can either manage it yourself (with support from us) or you can employ a professional property manager.

More details about each of these points can be found in this guide.

First Steps

SSASs can invest in a wide range of commercial property provided they fit within HMRC rules and legislation. The first step is to read this guide carefully and to complete, sign and return the accompanying Property Purchase Form to us so we can assess the viability of the proposed purchase in terms of pension rules and HMRC guidance.

These notes should be given to all advisers involved in the transaction to help them understand our role.

Purchasing a property can be a complex transaction and it is essential that you obtain appropriate advice regarding the purchase.

We are not conveyancers or VAT experts and you should take advice from an expert in such matters. It is not our responsibility to advise on whether the proposed investment and any ancillary terms (such as borrowing and lease terms) are good, but to confirm whether they will breach any pension legislation or HMRC Guidance.

You can choose your own advisers to assist with the transaction such as your solicitor for conveyancing or your own bank for borrowing. If you do not have specific solicitors or lenders in mind we can provide you with contact details for those that have experience of SSAS property transactional work. In any event we can provide your solicitor with details of our requirements. The solicitor can act for you and us in this matter (if D A Phillips & Co Ltd are co-trustees), separate representation is not required. You must check that the contents of any instructions that we send your solicitor are correct.

All legal fees and expenses will be paid from your pension fund.

If there are any changes to the information provided during the transaction please notify us immediately. Failure to provide any required information may delay the transaction.

You (and D A Phillips & Co Ltd if they are co-trustee of your SSAS) are governed by trust law, which requires all trustees to act at all times in the best interests of the trust and to act prudently and conscientiously. We reserve the right to refuse consent to purchase any property at our absolute discretion and in particular if there are any issues with the title of the property, any unduly onerous covenants or other liabilities attached to the property, significant risk of environmental contamination, where we anticipate that there will be significant resale difficulties or where we believe there is a risk the property is or could become seen as residential by HMRC.

Timescale

We will work to any reasonable timescales but it is your responsibility to ensure you drive the process.

As many aspects of the purchase are out of our hands we cannot guarantee any timescale for completion. Please do not commit us to a date of exchange or completion without our agreement.

Contracts cannot be exchanged until all requirements set out in this guide have been met and the SSAS has sufficient funds to complete.

Ownership

The property must be registered in the names of all the Trustees of your scheme. You are a trustee along with all other members, and D A Phillips & Co Ltd is normally the independent trustee. As a result the property will usually be registered in joint names of you and D A Phillips & Co Ltd.

If for any reason it is necessary to hold the property in the sole name of D A Phillips & Co Ltd, it will hold the property on trust for all Trustees of your scheme.

If we will be one of the legal owners of the property, our requirements in relation to matters that affect our liability at law, such as environmental or health and safety issues, must be fully satisfied in order for us to consent to the purchase. Our requirements may change from time to time. If a legal owner our liability under any contract including the purchase contract and any mortgage document, must be specifically limited to the value of your pension fund.

THE PROPERTY

HMRC imposes restrictions on the types of property that can be purchased. The basic rule is that the property must not be residential. Residential property purchases may result in tax charges being applied to your scheme and the scheme administrator and as such it is referred to as taxable property. We will not purchase any taxable property through your scheme.

Your SSAS **can** purchase:

- Freehold/Leasehold commercial land and buildings like offices, shops, factories. Please bear in mind that for a leasehold property, a shorter lease term may impact the resale value and your ability to borrow funds for the purchase. A leasehold with a term of less than 50 years is classed as a wasting asset and may give rise to tax issues.

If there is residential property in the same building as the property to be purchased (such as for example a residential flat above a retail unit), you must let us know as this may prevent your scheme from purchasing the freehold. It may however be possible for you personally to buy the freehold and your scheme to buy a long leasehold interest in the property. There is a narrow exemption for job related residential property, where the residential element of the property is occupied by an unconnected party as a condition of their employment.

- land for development.
- agricultural land.
- Hotels, care homes, halls of residence, subject to certain restrictions.

Your SSAS **cannot** purchase:

- residential property like houses, flats, holiday homes or holiday lets
- any land that is wholly or partly the garden or grounds of a residential property
- a business
- moveable property like furniture, fittings, machinery or business goodwill. Your SSAS can only buy the land and fabric of the building.
- ground rents – which are a type of long leasehold – held in relation to residential property
- Overseas property

THE SELLER

Who can the property be purchased from?

Property can be purchased from any person, including a member, close relative or partner connected with any of the members. If the transaction is with a member or 'connected party', then the purchase price must be the market value set by an independent valuation by an independent surveyor by way of a Red Book Valuation. The valuation must be dated within 6 months of the date that the property is purchased. Since a pension scheme cannot purchase a business, the valuation should be based on the value of the land and any applicable buildings, not based on a property as a fully equipped and operational trading entity i.e. the valuation must not take into account goodwill or trading assets. The valuation should also include a reinstatement value for insurance purposes and a rental valuation.

Connected parties

Connected parties are broadly speaking members, their families, close relatives and their spouses, partners and any company associated with a member or their family. A full definition of connected parties is given in sections 993-995 of the Income Tax Act 2007 and sections 1122 and 1123 of the Corporation Tax Act 2010..

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In addition to purchasing a property (either from a connected party or on the open market), you can also transfer a property currently held by another pension scheme of which you are a member to your SSAS. If you do this then all of our usual requirements as set out in this guide will apply.

If there is a mortgage over the property, a new mortgage may have to be issued noting the change of ownership.

ENVIRONMENTAL RISK

Environmental Risk

Environmental Risk means contamination or other environmental damage which incurs financial liability. If there was a serious problem such as pollution that has to be addressed and the cost could not be covered by your pension fund, then by law the trustees could be held legally responsible for the costs of remedying this.

We therefore need an Environmental Risk Report to be completed to be sure there are no potential issues at the time of purchase.

Please confirm, in your Property Purchase Form, that we can instruct a firm to prepare an environmental search at a cost to your pension scheme. The search fees vary depending on the size of the property. We usually recommend that this is undertaken as soon as possible.

In order to obtain the report we need a plan (preferably a Land Registry or OS plan) showing the extent of the property clearly marked and you should provide this when providing your completed Property Purchase Form.

Certain properties may be found to be at high risk of contamination as a result of past or present land uses. If the environmental search shows any potential areas of concern, then further investigations will be needed at a cost to your pension fund.

If the property is found to be at risk of contamination we may exercise our right to refuse to consent to the purchase. We will not enter into any contract that requires us to give any environmental indemnity to a seller or any environmental acknowledgments.

REGULATORY COMPLIANCE

Asbestos & Health and Safety Legislation

There are regulations which create a legal duty for landlords to identify and manage asbestos at all commercial properties. This generally requires an Asbestos Survey to be prepared by a qualified person. If asbestos is identified at the property, a risk assessment and management plan must be undertaken.

Non-compliance with the regulations may affect saleability of the property and we may therefore insist that an asbestos survey be carried out where this is not supplied by the seller.

Responsibility for complying with the Regulations generally falls on the person who has clear responsibility for the maintenance or repair of the property under a tenancy agreement or contract. If this is not specified or the property is vacant then the duty often falls on the owner of the property.

There are also regulations that create a duty to carry out a fire risk assessment on all commercial premises. Responsibility for complying with the order generally falls on anyone who has control of a building. For example, an employer will be responsible for those parts of premises they have any control over. Managing agents may be responsible for common parts of a premises or common fire safety equipment such as fire warning systems or sprinklers. It may be that a number of people have some responsibility.

In cases where responsibility for compliance rests on the owner, the Trustees will become liable to discharge the requirements of the Regulations. The pension scheme trustees would be liable to meet the costs of any required action and any penalties for non-compliance if the Pension Fund was insufficient to meet them.

Failure to comply with the Regulations is a criminal offence and will also usually invalidate the buildings insurance. If the property will be vacant in whole or part at the point of purchase or if there are common areas that do not fall within the areas leased we will need to have a fire risk assessment and an asbestos survey available at the point of exchange. There are some circumstances in which an asbestos survey is not required and your solicitor can advise on this. If the fire risk assessment and asbestos survey are not forthcoming from the seller, you must arrange for these to be carried out and the cost can be met by the pension scheme.

Energy Performance Certificates

We require a copy of the seller's current Energy Performance Certificate (EPC) for any buildings on the property and you should provide this when providing your completed Property Purchase Form. An EPC should be provided by law when a building is sold or let, unless the building is exempt. If the EPC for the property has a rating of F or G we would not normally accept the property as a suitable investment.

FUNDING THE PURCHASE

It is essential before the purchase can proceed that you ensure you have arranged the necessary finance to enable the purchase to be completed (including any short term arrangements required to cover any recoverable VAT payable on the purchase price if applicable). Contracts cannot be exchanged until sufficient funds are in place.

BORROWING

If you require borrowing in order to purchase the property you cannot exchange contracts until we have accepted the mortgage offer.

Who can you borrow from?

Your SSAS can borrow from any individual (including yourself), company or financial institution. The borrowing must be on commercial terms if borrowing from a connected party, otherwise tax charges will apply. We will contact your lender to provide them with details of our requirements. The loan offer must be addressed to the Trustees of your SSAS (including D A Phillips & Co Ltd if applicable). If you have already received a loan offer please provide us with a copy.

How much can you borrow?

The maximum amount that your pension scheme is permitted to borrow is 50% of the net value of the assets of the scheme. This must also take into account any existing borrowing. Any additional borrowing needed to cover VAT on the purchase price is also included in this 50% limit.

We will assess your pension fund value when checking the viability of the transaction at the outset to confirm whether the borrowing falls within the limit. We will not take any responsibility for changes in fund value after that point. If the fund value changes between the date of our assessment and the date on which the loan is actually drawn down, which results in you borrowing more than 50% of the net asset value of your pension fund, there will be tax implications for you.

Some important points

Contracts cannot be exchanged until we have accepted the mortgage offer and/or have sufficient funds in your plan to cover the purchase price and all expenses connected with the transaction. This includes mortgage arrangement fees, legal fees and disbursements, stamp duty land tax, our fees and any other disbursements.

The mortgage offer and legal charge must limit liability to the value of your fund.

All mortgage repayments, both capital and interest, must come from the fund and must not be paid by you direct to the lender. We shall arrange for these payments to be set up following completion. It is your responsibility to ensure that adequate funds are available in your pension fund to cover the mortgage repayments should there be any delays in receiving rent or any period when the property will not be occupied.

We cannot take out Life Assurance on your or anyone else's life to cover the borrowing as this is prohibited by HMRC.

VAT AND PROPERTY

If the property is opted to tax and VAT is payable, it is possible for us to register the pension scheme for VAT and opt the property to tax where appropriate, to reclaim the VAT charged on the purchase price or on renovations or development works.

You must seek professional advice from someone expert in matters of VAT as to whether it is appropriate to opt to tax.

We will only make arrangements to register for VAT and/or opt the property to tax on your instructions to do so.

It can take several weeks or even months to reclaim VAT where this has been paid on the purchase. You must ensure you have adequate funds within the scheme to cover any temporary shortfall.

What if it is a Transfer of a Going Concern (TOGC)?

You must seek professional advice from a specialist expert in the matters of VAT as to whether or not the purchase qualifies as a TOGC.

If the property is subject to VAT but there is already an ongoing tenancy in place, then it may be possible to avoid payment of VAT on the purchase price as the purchase can be treated as TOGC. We will notify HMRC of this at the time that we register for VAT and opt to tax.

It is possible in some circumstances that HMRC may overrule the concession after completion. Should this happen then VAT will become payable to the seller on production of a valid VAT invoice and can be recovered on the next VAT return.

JOINT PROPERTY PURCHASE

A property can be purchased jointly by several SSASs and/or SIPPs, as well as with you, your company or a third party. This is known as a joint property arrangement. It is not necessary to have an existing business partnership for this to be effected.

What will the split be and how is that dealt with?

You must confirm from the outset what each party/SSAS's share in the property will be. This must reflect the amount of funds each party contributes to the gross purchase price.

It is not possible to make a gift of part of one SSAS's fund to accept a disproportionate share of the mortgage liability in order to increase their share in the property.

It is possible for one SSAS's fund to buy part or all of another's share of the property at a later date provided this is on commercial terms confirmed by a Red Book Valuation.

How will the property be held?

We will require the parties to enter into a trust agreement (a Joint Property Holding Agreement) to establish that the property is held on trust. The agreement will set out the proportions of the property owned by each member and will cover eventualities such as death, retirement or sale of any member's share. Re-valuations would be needed in any of these circumstances.

Joint bank account

A separate bank account will be opened for the property which will receive rent, pay the mortgage and hold any surplus funds until we are instructed by the Trustees to distribute the funds to each scheme. Any distribution will be proportionate to each party's share. Sufficient funds must remain in the joint account to cover outgoings and liabilities between rent payments.

Death or withdrawal of a member

If one party wishes to withdraw their share they have to offer their share to the other members in the first instance. Alternatively, a new party could purchase the existing party's share, subject to the consent of all the other party's.

Other joint purchases

It is also possible for a property to be purchased jointly by SASSs and SIPPs or with another party (such as the member personally or their company). A Joint Property Holding Agreement must be signed in any joint purchase.

Where a property is to be purchased jointly with a company, we are required by Anti Money Laundering Regulations to establish who the directors and individuals controlling over 25% of the voting rights of the company are and to verify the identity of any individuals controlling over 25% of the voting rights. Please confirm this in the Property Investment Form and provide the relevant information.

INSURANCE

The property must be adequately insured at all times. We can offer block policy insurance cover and due to the number of properties covered this often results in savings to our members. Please complete the attached form so that we can obtain a quote under our block policy.

The premium will be payable from your pension fund, but will usually be recoverable from your tenant.

PROPERTY DEVELOPMENT

If you intend to develop the property, please provide us with full details so that we can discuss it.

Residential development cannot be carried out by a pension scheme and the property must be sold before development is commenced.

Sufficient money to cover the costs of development must be available in your pension fund. Until these monies are in place we cannot enter into a contract for development. You may borrow funds from a commercial lender, a connected party, or a third party for the purposes of development. Please refer to the Borrowing section for details of the rules that relate to borrowing.

Development should add capital and rental value to the property. The increased rent must be assessed by an independent surveyor and applied immediately upon completion of the development.

Fit out works can be paid for by you personally. If you are looking for your pension scheme to pay for some or all of the fit out works, then you should send us a list of the proposed works to consider if they are suitable for the scheme to pay for.

The property must be legally classed as commercial at the point of purchase. It is not possible to purchase a residential property (even if it is derelict) with the intention of developing it to commercial.

LEASES

Your SSAS can acquire a property that has an existing lease in place, or it can grant a new lease when the property is acquired. It is essential that a formal letting arrangement (drafted by a solicitor) is put in place whenever a property is occupied.

The tenant

The property can be let to an independent third party. It can also be let to any connected party including the member, the member's business partnership, or a company connected with the member. If the tenant is connected the transaction must be on standard commercial terms for the full market rent, which must be set by an independent surveyor by way of a Red Book Valuation. Should rent not be paid on commercial terms under a lease to a connected person, then tax charges may be levied on you. There must be a formal lease in place documenting the letting arrangements.

Rental amount

Unless there is an existing lease in place that the property will remain subject to, a formal lease must be drawn up by your solicitors and will normally be completed simultaneously with completion of the purchase. The lease must be on normal commercial terms which are acceptable to us. The rent should be at the market rent.

Connected Party Tenant

If your business or company or other connected party is the tenant, you cannot decide to pay a reduced rent. The rent must be the full market rent determined by an independent surveyor by way of a Red Book Valuation. Rent reviews may be required, dependent on the term of the lease. Rental valuations will also be required at rent review dates to ensure the rent remains at market rate.

Rent payments

Rent must be paid in to the pension fund. Following completion we can invoice the tenant for rent and make arrangements for the rent to be paid into the pension fund's bank account on the due dates under the lease by way of standing order. It is important that rent is paid into the pension fund on the due date before any mortgage payments are due. We cannot be held responsible for any late payments, interest charges or bank charges if rent is not received in good time or for matters outside our control. You may choose to appoint a property management company to manage the property and invoice the tenant for the rent.

Trustees are required by HMRC to ensure that all rent is collected and any covenants in the lease are enforced. We may if necessary take legal action to recover any rent owed under the terms of the lease or to enforce any covenants being breached.

PROPERTY MANAGEMENT

We must stress that we are not Managing Agents. It is your responsibility as the trustee to ensure that the property is managed appropriately. Where there is a Lease (or other letting arrangement) in place or a new Lease is granted, it is important that you adhere to the terms set out in any Lease. We will write to you from time to time regarding these and you must correspond with us in the future regarding these matters. If you do not wish to take on this responsibility and self-manage, then it will be necessary for you to appoint Managing Agents. If you wish to instruct Managing Agents please provide us with their details and we can make contact with them regarding such matters going forward. Please be aware that if you fail to adequately manage the property we reserve the right to appoint Managing Agents and their costs will be borne by your SSAS.

Rent Arrears

If the rent due fails to be paid and arrears accrue and it is an unconnected tenant, it is your responsibility to consider with us what action should be taken. It may be you wish to instruct solicitors to take action against a tenant who fails to pay rent. In the case of a connected tenant where D A Phillips & Co Ltd are co-trustee, we would have to consider instructing solicitors to take action to recover the rent due and advise on the appropriate course of action to ensure the best interests of the trust are being met. The cost of any legal action must be met by your pension scheme. We will refer the matter to you before taking such steps but, if trustees of your scheme, we are required to protect the interests of the trust.

Insurance

It is essential that insurance cover remains adequate so insurers must be informed of any change in material details including any change of tenant, any change in the value of the property, loss of rent cover required or building works. If you insure the property yourself you must provide us with an insurance certificate at the point of purchase and annually following renewal. If your property is covered by our block policy we will update them and provide a copy of the new certificate of insurance.

We would encourage you to consider taking out insurance under our block policy. Due to the number of properties covered, terms are generally very competitive and so insuring under it usually results in significant savings for our clients.

What are your responsibilities?

In summary we set out below your/your managing agents duties. It is necessary to:

- 1 Ensure the terms of all Leases are adhered to. This includes, but is not limited to, dealing with any Rent Review or Break clauses.
- 2 Ensure that rent is paid up to date.
- 3 Instruct a property manager to deal with the management of the property on your behalf, if you haven't already done so, or alternatively, ensure that you understand all requirements of property management and are happy to remain responsible for the management of the property yourself.
- 4 Make sure that the property is fully insured. If you insure the property yourself then you must provide us with a copy of an up to date insurance certificate and send this to us each time it is renewed or changed. You must make sure that the insurance is adequate and you must understand the requirements of the terms of the insurance whether or not the property is vacant. If your property is insured under our block policy, then we will hold the certificate but will provide you with a copy for your records annually on renewal. You must make sure that the requirements of the insurance terms are met both when the property is occupied and if it is vacant for any period. Where the property is insured through the block policy arranged by us, you are responsible for informing us of any changes to the property that may impact on the insurance cover.
- 5 Provide tenants with contact details for yourself or your managing agent, should there be any problems with the property. In particular you must deal with tenant enquiries, such as leaks or damage to the property. You should provide tenants with contact details for the insurance company where necessary if you arrange the insurance and keep us notified.
- 6 Instruct a solicitor to act on behalf of the scheme for any legal property matters including, but not limited to, preparation of any Leases or consents granted under a Lease.
- 7 Make arrangements for both the property and market rent to be valued when required. We will let you know when valuations are required.
- 8 Keep us informed of all changes to the property such as, but not limited to, any change in use, change in tenant or level of rent, and changes that might affect the insurance like building works at the property, or any change in the circumstances such a party becoming connected or ceasing to be connected.
- 9 Make sure that any costs incurred in respect of solicitors fees, valuations or managing agents fees are met by your SSAS unless it is acceptable for another party, such as the tenant, to pay these.
- 10 Correspond with us regarding all matters affecting the property and enquiries, such as, but not limited to, the need for valuations, Rent Reviews, Lease Renewals, dilapidations and any other matters affecting the property.

Please be aware that we will not be liable for your failure to adhere to any of the above. In particular we will not be liable for any charges/losses/expenditure of any nature associated with your failure to correspond with us regarding these matters or your failure to deal with Rent Reviews, Lease Renewals, dilapidations and any other matters affecting the property.

We agree to take on limited obligations regarding the property including:

- 1 Making or continuing arrangements for the collection of rent and service charges, if applicable. This includes issuing rental invoices, and allocating and recording rents received. If you have a managing agent they will usually deal with this. If the property is jointly owned we will arrange invoicing and collection of rent for the whole rent due and apportion the rent between the appropriate owners and we will deal with any VAT element.
- 2 Arranging or continuing to arrange the insurance, if you opt to insure under our block policy.
- 3 We will remind you when Lease End or Rent Reviews are due under the terms of any existing Lease. We will also notify you, requesting your instructions, if we are contacted by a tenant (or any other third party) regarding any matter affecting the property.

The work we carry out in respect of our above obligations is covered by our standard annual property charges. We reserve the right to charge additional fees if we are required to undertake work beyond our usual administrative tasks but will notify you of any additional charges before they are incurred.

Please keep us informed of your current contact details so that we know your preferred form of communication.

FEES

You must bear in mind all of the costs involved in purchasing a property including, but not limited to, Stamp Duty Land Tax, legal fees and expenses, search fees, surveyor's fees, our fees and mortgage arrangements fees.

You should ensure there are sufficient funds in the scheme to cover these costs.

Please refer to our SSAS administration agreement. This document shows the fees that we would expect to make in normal circumstances. If the particular circumstances of the transaction are likely to require a significantly greater amount of time than normal from us, or if unforeseen circumstances require us to undertake more work than usual on the transaction, we reserve the right to renegotiate the charges with you. We may reduce the fees at our discretion where a transaction is aborted.

SALE

In the future, you may wish to sell the property. Please let us know as soon as possible if this is the case. We will issue you with our Property Sale Form which asks for basic information about the transaction such as the buyer, solicitor, and sale price.

Where the property is to be sold to a connected party then the sale price must be set by an independent surveyor by way of a Red Book Valuation.

Our property sale fees as set out in our fee schedule will apply as well as fees for other professionals.

CONCLUSION

The information in this booklet is a summary of our understanding of our requirements under current legislation and is not exhaustive and no responsibility or liability is accepted for any inaccuracies or omissions. For further details do not hesitate to contact us on 01580 762555 or at the address below.

We hope that you found this booklet useful. We would appreciate any feedback on it and on any other aspect of our service that you feel could be improved.

If you have any further questions then please do not hesitate to contact us.

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September 2017