

Buying Commercial Property in Jersey



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Introduction

This briefing note is intended as an overview of some of the legal issues which should be considered when buying a commercial property in Jersey. More detailed guidance or advice on specific subjects is available on request.

The Process

In Jersey, leases fall into two categories: the “Contract Lease” and the “Paper Lease”.

There are two main ways in which commercial properties can be bought in Jersey, whether they are offices, warehousing, retail outlets or other commercial premises:

(1) Freehold: The Seller conveys the freehold of the property to the Buyer by means of a conveyance which can only be passed before the Royal Court at a Friday afternoon court sitting. The conveyance is then registered in the Public Registry of Jersey and is open to public inspection. Attendance at the Royal Court is necessary either by the parties or their lawyer (or any other person who is authorised under a Power of Attorney to pass a conveyance).

(2) Share Transfer: The Buyer acquires shares in a property holding company which owns the commercial property and, upon the change of ownership of the shares, the Buyer becomes a shareholder and the owner of the property, via the company. Shares in a property holding company can be purchased any day of the week and attendance at the Royal Court is not necessary.

Role of the Seller’s lawyers

The Seller’s lawyers will usually prepare the conveyance (also known as a Contract or Agreement of Sale, whether freehold or share transfer) for review by the Buyer’s lawyers and will address any queries raised by the Buyer’s lawyers.

The Seller’s lawyers will also liaise with the Seller’s mortgage lender (if applicable) to ensure all mortgages and secured charges are settled from the sale monies and that the lender’s charges are cancelled on completion.

Role of the Buyer’s lawyers

The Buyer’s lawyers will conduct all legal enquiries/ searches to ensure all available information is obtained in connection with the Property which may impact the Buyer’s decision to proceed with the purchase. The following specific checks will be made:

- Searches: In addition to checking title (see below) enquiries are made with the Minister for Planning and the Environment, the Department for Infrastructure, the relevant Parish, Jersey Electricity, Jersey Water, Jersey Gas and any other relevant utility and public bodies (such as the Chief Fire Officer or the Health and Social Services Department).
- Title: Although there is a Public Registry in Jersey, title to Jersey real property is not guaranteed or registered. Title checks will therefore need to be undertaken to ensure that the Seller or the property holding company (in the case of a share transfer) is the owner of the property being sold. Checks are also undertaken to ensure that no one else has any rights or claims over the property.

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- **Site Visit:** Once title checks have been conducted and responses received from the enquiry/search letters, a site visit will be carried out by the Buyer's lawyers. The main purpose of this site visit is to check boundaries and to ensure that the property does not encroach upon neighbouring properties and to ensure that there have been no breaches in any of the clauses in the title. All of the information uncovered in this visit will be reflected in the conveyance and the Buyer will be made aware of any issues that may affect their purchase.
- **Leases:** If the property being bought has tenants in occupation, the terms of their leases will be reviewed by the Buyer's lawyers, as well as any licences for works and other documents relevant to that occupation. Relevant checks are also carried out to ensure the tenants are not in breach of their terms of occupation.
- **Planning:** The permitted use of the Premises under Planning Laws will need to be checked and, if necessary an application made to change the permitted use. In addition, should the Buyer wish to conduct any works on the property being purchased, Planning and Building Bye-Law consents may also be required. It is prudent to consider these matter in advance of buying a commercial property. If the Buyer wishes to set up a new business in Jersey, there are stringent controls in place and specialist advice should be sought prior to acquiring the property if it is being bought for this purpose. The Buyer's lawyer can assist in any application to obtain Planning change of use or Planning and Building Bye-Law consent, working with any appointed architect.
- **Other legal due diligence:** If the property being acquired has had any major refurbishment carried out on it, the Buyer's lawyers should check the building contracts and planning permits and other documents relevant to the refurbishment to ensure the benefit of these can be passed on to the Buyer.

Qualification to Buy/Consents

An individual Buyer of freehold property is required to demonstrate their legal entitlement to buy commercial property in Jersey by producing a valid and up-to-date Registration Card, showing they hold the relevant housing qualifications.

In order to avoid delay it is important that the Buyer applies for a Registration card as soon as reasonably possible through the Social Security Office or the Population Office (if they do not already hold one).

For freehold purchases in Jersey by a company, it is necessary to obtain the prior consent of the Housing Minister of the States of Jersey. The Housing Minister usually issues consent to a company purchasing commercial property on the basis that, should any residential accommodation exist or be created at those premises, such accommodation must be occupied by persons approved by the Housing Minister.

If the property includes agricultural land, consent will also be required from the Planning and Environmental Department of the States of Jersey. This consent usually requires the agricultural land to be leased to a bona fide agriculturalist.

Survey

Whilst a site visit involves an inspection of a property's boundaries, a site visit conducted by the Buyer's lawyers will not include a survey of the property. A lender usually requires a survey or a valuation before agreeing to a mortgage.

A conveyance contains what is referred to as a "vices caches" clause, which states that the Buyer is acquiring the property in the state in which it is found on the date of the contract or sale (with all apparent or hidden defects). The prospective Buyer is therefore advised to have a full survey of the property undertaken prior to purchase, as if any problems do arise with regards to its structure after the sale, it is unlikely that the Buyer would have any means of recourse against the previous owner.

Insurance If the Buyer is buying a freehold property, it is advisable to insure the property from 2:30pm on the day that the conveyance is passed at the Royal Court (even if there is a delay in taking occupation of the property). There is usually an obligation on the Buyer to do this in any event, if the Buyer is borrowing funds to make the purchase.

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Depending on the circumstances of the purchase, an individual Buyer may also wish to consider taking out life, critical illness or disability insurance cover.

Stamp Duty and Tax

Stamp Duty is payable by the Buyer on a freehold purchase and on any registered mortgage. The stamp duty is calculated by reference to a court-fixed sliding scale based upon the value of the property. There is no stamp duty payable on share transfers relating to commercial property. Goods and Services Tax (GST) is payable in certain circumstances on freehold commercial property purchases at the prevailing rate, which is currently 5% of the transaction value. It is not payable on share transfers.

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the contact details below.

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