

Acquiring commercial property in the Channel Islands: a brief comparison with England

Insights - 18/01/2019

Freehold property in Jersey has its origins in French law. In 1602, Sir Walter Raleigh as Governor of the Island decreed that all contracts relating to land passed before the Royal Court should be recorded in the rolls of the Public Registry. Guernsey's conveyancing system whilst similar in certain regards to that of Jersey has its roots in its feudal past. Based upon these ancient origins, Ogier has established a modern commercial property law practice. Here is a brief synopsis of the main differences between Jersey, Guernsey and English Law in relation to property transactions.

	Jersey System	Guernsey System (excl. Sark and Alderney)	English System
Contract and Transfer	Conveyances are passed before the Royal Court only on Friday afternoons. It is the norm for transactions to proceed directly to completion with no prior "exchange" stage. Charges secured over immovable property in	It is normal to sign Conditions of Sale (either conditionally or unconditionally) prior to completion. Completion must take place before the Royal Court on a Tuesday or Thursday morning only. If a lender requires a charge over the property then consent is usually given to that charge on the same day that the purchase	Parties can exchange contracts for the sale and purchase of property at any time, for

	Jersey can only be registered on a Friday afternoon. Shares in a property holding company can be purchased on any day of the week and security can be taken over those shares at any time.	completes. Shares in a property holding company can be purchased on any day of the week, but where the purchaser is borrowing to finance the acquisition it may be necessary to complete on a Tuesday or Thursday.	simultaneous or later completion.
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Leases

	<p>Leases for a period in excess of nine years are also passed before the Royal Court on Friday afternoons and are an immovable property interest.</p> <p>Leases for 9 years or less are a personal right (movable property).</p> <p>Leases are in English and are in a substantially similar form to institutional English leases.</p>	<p>Leases in Guernsey will be familiar to those used to commercial leases in England. There is no obligation to do so, but longer leases in Guernsey will often be registered.</p> <p>Leases create a personal right in favour of the tenant rather than an interest in land (a lease is not realty), thus it is uncommon to see freehold equivalent leases in Guernsey.</p>	<p>Leases of any length (whether a 7 year registrable term or not) can be completed when the parties choose.</p>
	A tenant of commercial		In principle, all tenants that have occupied the premises

Security of Tenure

premises has no security of tenure and no right to remain in premises after the term has expired, albeit a court order must be obtained to force an over-staying tenant to leave the property. Where a tenant remains in occupation and the landlord accepts rent a new lease is implied, to be on substantially the same terms as the previous one, save for the term and any guarantee provisions.

As in Jersey, a tenant of commercial premises has no security of tenure after the term has expired, but a Court order must be obtained to evict an over-staying tenant. If the tenant remains in occupation and the landlord accepts rent, a new lease is implied. The terms of the new lease are likely to be similar to the expired lease, save for the term and any guarantee provisions.

for the purpose of their business for at least 12 months have a statutory right to renew the lease (on terms to be agreed by the parties or determined by the court) under Part II of the Landlord and Tenant Act, 1954 of, unless this right is specifically excluded before the grant of the lease (or if there is an agreement for lease, before entering into the agreement for lease).

Attendance

Parties must attend before the Royal Court for completion of a conveyance or contract lease (either in person or by attorney).

Parties must attend before the Royal Court for completion of a conveyance (either in person or by attorney).

The parties solicitors are able to exchange contracts for a later sale at any time, day or night, over the telephone in accordance with a Law Society formulae or another

protocol
agreed by the
parties.

Land Registry

There is a Public Registry in Jersey, but it is a registry of deeds and not title. There is no guarantee of title provided by the government in respect of a property transaction and title is based upon the claims set out in the documents recorded at the Public Registry. Hence there are no "deeds" to hold.

Again, there is no Land Registry as such in Guernsey (title to land is not registered and there is no guarantee of title provided by the States of Guernsey). Instead, the property documents (known in England as title deeds) are registered and held at the Greffe.

Her Majesty's Land Registry guarantees the title to registered property.

Consents

Purchasers of immovable property must hold a valid registration card (or consent if a company) pursuant to the Control of Housing and Work (Jersey) Law 2012. Tenants must similarly have a card or consent if there is any residential element to the

None, other than consents of superior landlords in the case of leasehold transactions.

The consent of any party having the benefit of a restriction on the title to the property (and/or a charge over it) may be required, in addition to the consents of

property e.g. a flat above offices.
Superior landlord (and any lender) consent may be required for an assignment/a sub-lease.

any superior landlords in the case of leasehold transactions

Specific Performance

Under Jersey Law it is only possible to get specific performance to grant a lease up to a period of nine years with the remedy for the balance being damages - York Street Pharmacy v Rault 1974 JJ65. Specific performance can be obtained in respect of an agreement to acquire shares, but not freehold property.

Specific performance is not a remedy known to Guernsey law (except in limited circumstances in the case of housing schemes).

Specific performance of an agreement for sale or lease can be ordered by the court in order to complete a sale and purchase or to grant a lease of any term length.

The terms of an assignment are as stated in the lease. Most require the prior consent of the Landlord. There is no equivalent of s.19 of the

Presumption that a tenant may assign a lease without

Assignment

Landlord and
Tenant Act 1927.

It is the norm for Jersey landlords simply to require an assignee to be of equivalent financial standing to the assignor or provide suitable accounts and references and /or a guarantor. The position is unclear on the continuing liability of the original tenant following an assignment. The usual practical solution is that the assignor requires release from the Landlord and the assignee takes on liabilities from the completion date. There is therefore no obligation on a Jersey assignor to enter into an Authorised Guarantee Agreement (an "AGA") guaranteeing the incoming

As with Jersey, except that the original tenant (and any other assignor tenants) remains liable unless specifically released.

the consent of the Landlord unless the lease expressly provides otherwise. Section 19 of the Landlord and Tenant Act 1927 implies an obligation on a Landlord not to unreasonably withhold consent where required. The Landlord and Tenant (Covenants) Act 1995 provides that under all leases granted after January 1996 an assignor is released from the tenant's covenants at the time of assignment. In practice landlords may reserve the right to request an AGA from the assignor and a guarantee of that AGA from any guarantor of the assignor.

assignee's
performance of
the tenant's
obligations
under the lease.

Stamp Duty on Purchase

Stamp duty is payable on an accumulative scale.

Different rates apply for residential properties/sites for residential development.

Duty on conveyancing transaction in Guernsey is called Document Duty.

Accumulative scale as follows:

2.5% on up to £250,000

3.50% on the next £150,000

4% on the next £350,000

4.25% on the next £250,000

4.5% on the next £1m
5.5% on the remaining amount.

Some conveyances are exempt from duty, including family transactions and intra-group transfers.

Stamp Duty Land Tax rate on a non accumulative Scale.

Certain reliefs and exemptions may apply (eg intra group transfers and acquisition by charities).

Duty is calculated on new contract leases and on the assignment

Stamp Duty Land Tax applies in respect of both, the purchase price of the lease (known as premium) (including any VAT) and the rent paid over the life of the

Stamp Duty on Leases

of such a lease by multiplying the annual rent by the length of term (subject to maximum multiplier of 21) with any premium added in.

None.

lease (Net Present Value = NPV) (including any VAT). SDLT on the premium (if any): same rates as freehold transfers (above) SDLT on the NPV on a non accumulative Scale. Certain reliefs and exemptions may apply.

Stamp Duty on Loan

0.5% of the amount of the loan plus £80 registration fee. There are reliefs on loans for purchases of main homes worth up to £500,000.

None.

None.

Stamp Duty on Share Transfers

None unless the Articles of Association attach a right to occupy residential accommodation to the share and then Land Transfer Tax equivalent to Stamp Duty set

Where the sale of the shares has a similar effect to the transfer of an interest in real property duty is payable at the same rates as if the property were being conveyed. There are some transactions that are exempt, including family transactions and where the

0.5% is payable.

out above is payable.

principle use of the property is for the business of the company being sold.

Termination/Forfeiture

As stated above, Jersey leases terminate automatically at the expiry of the lease or if earlier by agreement between the parties. Most leases will reserve rights to a Landlord to cancel the lease in specific circumstances but taking account of the fact that one must apply to the Royal Court for an Order to cancel any contract lease. Forfeiture is not technically a Jersey concept so there is no right to forfeit a lease by peaceable re-entry. There is no Jersey equivalent to the Law of Property Act 1925 so landlords are

As in Jersey, Guernsey leases terminate automatically at the expiry of the lease or if earlier by agreement between the parties. Most leases will reserve rights to a landlord to terminate the lease in specific circumstances (eg breach of the tenant's covenants/insolvency of the tenant). To obtain vacant possession a landlord must commence eviction proceedings. The Court may grant a stay of eviction, the

A tenant's statutory right to a new lease at the expiry of a lease for business purposes will depend on whether the same is contracted out of the provisions of the Landlord and Tenant Act, 1954 before the lease was granted or agreed to be granted. A lease will usually contain an express clause permitting forfeiture (re-entry) in certain specified circumstances. A Landlord may be able to forfeit a lease either by peaceably re-entering the property or

	<p>not required to serve tenants with a Section 146 notice (which applies where a tenant is in breach of covenant other than to pay rent) or any Jersey equivalent of such a notice specifying their breach, as a condition precedent to exercising their right to cancel the lease. If both parties consent then a contract of cancellation is entered into on agreed terms.</p>	<p>length of which will depend on all the circumstances of the case.</p> <p>A maximum stay of eviction of 6 months can be granted in the case of a mere occupier (as opposed to a tenant).</p>	<p>bringing forfeiture proceedings. If the Landlord is alleging that a tenant is in breach of covenant (other than payment of rent) it must first serve a notice requiring the tenant to remedy the breach and or compensate the landlord pursuant to s.146 Law of Property Act, 1925.</p> <p>A tenant may apply to the courts for relief from forfeiture.</p>
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There is no Value Added Tax ("VAT") in Jersey but there may be Goods and Service Tax ("GST"). GST is generally payable on the rent due under a commercial lease.

The purchase of shares does not presently attract GST

VAT at the standard rate of 20% may be payable on the land value, lease premium and/or rent in respect of any freehold or leasehold acquisition (where the disponee has

Sale Tax

(save as set out above if the shares relate to specific apartments). The acquisition of a business can attract 5% GST but this can be mitigated if it is a sale of a going concern. Tax advice should be sought on the structuring of any commercial deal.

None.

elected to waive the exemption (ie opted to tax)). The disposal of real estate by way of a transfer of a business as a going concern may be outside the scope of VAT (ie VAT would not apply).

Other Taxes

No Capital Gains Tax ("CGT"). Property income is taxed at 20%. Deductions and relief can be claimed for normal outgoings and capital allowances may be claimed for plant and machinery.

No Capital Gains Tax ("CGT"). Property income is taxed at 20%. Guernsey property rental income is taxable net of certain statutory deductions for repairs and actual deduction of other expenses, dependent on the use and lease terms of the property. "Tax on Real Property" is payable annually and is calculated on the footprint of the building and a multiplier to take account of the number of floors. The rate of tax depends

Capital Gains Tax may apply to a property transaction. Property income is taxed in accordance with standard income tax rates.

	on the use of the property, with financial and legal services paying the highest rate of tax.	
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