

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

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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.

	<b>Jersey System</b>	<b>Guernsey System (excl. Sark and Alderney)</b>	<b>English System</b>
	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"	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	

## Contract and Transfer

stage. Charges secured over immovable property in 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.

property then consent is usually given to that charge on the same day that the purchase 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.

## Leases

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. Leases for 9 years or less are a personal right (movable property). Leases are in English and are in a substantially

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. 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.

Leases of any length (whether a 7 year registrable term or not) can be completed when the parties choose.

similar form to institutional English leases.

## Security of Tenure

A tenant of commercial 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.

In principle, all tenants that have occupied the premises 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).

The parties

## Attendance

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

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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

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.

## 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 property e.g. a flat above offices.

Superior landlord (and any lender) consent may be required for an assignment/ a sub-lease.

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

## Specific Performance

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.

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  
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

Presumption  
that a tenant  
may assign a  
lease without  
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

## Assignment

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

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.

## 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).

## Stamp Duty on

Duty is calculated on new contract leases and on the assignment of such a lease by multinationals

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 lease (Net Present Value = NPV)



## Leases

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

(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.

## Stamp Duty on Share Transfers

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

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

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)

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

## Termination/Forfeiture

to forfeit a lease by peaceable re-entry. There is no Jersey equivalent to the Law of Property Act 1925 so landlords are 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.

of the tenant). To obtain vacant possession a landlord must commence eviction proceedings. The Court may grant a stay of eviction, the length of which will depend on all the circumstances of the case.

A Landlord may be able to forfeit a lease either by peaceably re-entering the property or 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. A tenant may apply to the courts for relief from forfeiture.

There is no Value Added Tax ("VAT") in Jersey but there may be

VAT at the

## Sale Tax

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 (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.

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 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).

	No Capital	<p>No Capital Gains Tax ("CGT").</p> <p>Property income is taxed at 20%.</p> <p>Guernsey property rental income is taxable net of</p>
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## Other Taxes

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.

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

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

## About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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