

Ref: DPE063/10/15

To: Heads of Departments/Offices

Circular 17/2016: Policy for Property Acquisition and for Disposal of Surplus Property.

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The Government's Public Service Reform Plans 2011-2013 and 2014-2016 outline a series of reform actions for property asset management in the Public Service. The reforms in this area are to improve efficiencies in relation to the use and operational management of the wider State property portfolio.

A Steering Group on Property Asset Management was established in 2012 chaired by the OPW, to identify the key reform actions that are required to drive the property management reform programme. Membership of the Steering Group is drawn from property holding Government Departments (which also represent Agencies under their remit), the Health Service Executive and the Local Authority sector.

In July 2013, on foot of work done by the Steering Group, the Government published "*Accommodating Change - Measuring Success: Property Asset Management Delivery Plan*" (PAMDP) which sets out the necessary actions to be progressed by property holders implementing the property reform programme. This policy document, on acquisition and disposal, has been prepared by the Steering Group on Property Asset Management in response to actions set out in the Delivery Plan which included the development of (i) a coordinated acquisitions appraisal process for leasehold and freehold premises and (ii) an agreed public service policy in relation to the disposal of surplus State property – following the best practice principles of the Public Spending Code.

The Policy is not intended to address the full range of issues that might arise in the acquisition or disposal of property but rather to provide high level guidance on what should be considered before a decision is made to acquire or dispose a property and the approach to implementation of the decision, including the timely engagement of professional advice, to ensure that the decision is implemented as intended and the interests of the Exchequer are protected.

**Each Owning Stakeholder will continue to be responsible for managing its properties and for complying with all legislative and regulatory requirements. This Policy Document should be used in conjunction with *Circular 11/15 Protocols on Asset Transfer and Sharing* and also with the *State Property Register Viewer*.**

**The Policy will be subject to review from time to time by the Steering Group on Property Asset Management.** All queries or suggestions on future development of these Protocols should be addressed to [jane.mcgee@opw.ie](mailto:jane.mcgee@opw.ie).

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28 June 2016

# **Policy for Property Acquisition (including leases and lease renewals) and for Disposal of Surplus Property**

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# **Policy for Property Acquisition (including leases and lease renewals) and for Disposal of Surplus Property**

## **1. INTRODUCTION AND OBJECTIVE**

The Government's Public Service Reform Plan sets out commitments relating to Property Asset Management to drive public service-wide efficiency and ensure that optimal value for money is achieved in managing the State's property portfolio. The Government agreed a range of measures to realise the benefits of better property management and these are set out in *Accommodating Change – Measuring Success: Property Asset Management Delivery Plan (Delivery Plan)*, which was published in July 2013.

This policy document, on acquisition and disposal, has been prepared by the Steering Group on Property Asset Management in response to actions set out in the Delivery Plan which included the development of (i) a coordinated acquisitions appraisal process for leasehold and freehold premises and (ii) an agreed public service policy in relation to the disposal of surplus State property – following the best practice principles of the Public Spending Code.

The objective of this policy document is to encourage good management of freehold and leasehold property portfolios which delivers value for money for the taxpayer while continuing to provide for the needs of individual organisations:

- through good decision making on acquisitions and disposal based on consistent appraisal processes;
- by promoting a consistent approach by State bodies in the acquisition of freehold or leasehold property, in the renewal of leases or the disposal of State property;
- by ensuring a strategic approach to rationalising the public sector estate as a whole, identifying redevelopment opportunities and surpluses, and coordinating, planning, and devising the optimal utilisation, re-use or disposal programme in respect of land and property;
- by identifying and releasing surplus property with the least possible delay, subject to the need to realise best value for the Exchequer;
- by ensuring that commercial risks are placed with the party best able to manage them;

and

- by ensuring that the Exchequer's interests are protected and its commercial position optimised by availing of a range of professional advice at the appropriate time and by completing all legal and registration requirements.

*This policy should be implemented in conjunction with the Protocols on Asset Transfer and Sharing<sup>1</sup> and the State Property Register.*

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<sup>1</sup> DPER Circular 11/15: Protocols for the Transfer and Sharing of State Property Assets

*Each Owning Stakeholder will continue to be responsible for managing its properties and for complying with all legislative and regulatory requirements. This policy does not replace existing governance requirements or alter the position of public officials in the performance of their functions in relation to acquisitions and disposals. Where the Stakeholder is a Local Authority, this policy shall not replace existing governance requirements or alter the position of elected members in the performance of their reserved functions in relation to disposals and acquisitions.*

*This policy may be subject to review from time to time by the Steering Group on Property Asset Management.*

## **2. DEFINITIONS:**

For the purposes of this Protocol, these words shall have the following meaning:

“**Acquiring Stakeholder**” shall mean the Stakeholder proposing to acquire a State Property;

“**Central Government**” shall mean all central Government Departments and the Office of Public Works;

"**CSSO**" shall mean the Chief State Solicitor's Office;

“**Freehold**” shall mean a Fee Simple interest where ownership is not restricted to a number of years;

“**Lease**” shall mean a Lease held directly from the freehold owner;

“**Leasehold**” shall mean property which is held for a specified number of years;

“**Market value**” shall mean the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;

“**Non-State Party**” shall mean a party that is not a Stakeholder;

“**Ownership**” shall mean freehold ownership and leasehold ownership;

“**Property**” shall mean land and buildings;

“**Owning Stakeholder**” shall mean any Stakeholder who owns or holds under lease the relevant State property by freehold or leasehold;

“**Stakeholder(s)**” shall mean Central Government, State bodies or agencies, Health Service Executive or Local Government;

“**State Property**” shall mean lands and buildings owned or held by the State;

“**State Property Portfolio**” shall mean all freehold or freehold equivalent property or leasehold property now owned or held by any Stakeholder or to be acquired by any Stakeholder in the future;

“**Steering Group**” shall mean such persons nominated by Stakeholders who with the Senior Responsible Owner will have an oversight and monitoring role in the implementation of the Government’s programme of reforms and the actions outlined in the Property Asset Management Plan. Any meetings held will be chaired by the Senior Responsible Owner or senior nominated official;

“**Surplus Property**” shall mean property that the Owing Stakeholder identifies on the State Property Register as being surplus to its requirements and available for occupation or disposal. Such property can comprise either a whole State Property or part of a State Property. It is acknowledged that there are instances where Stakeholders are required to dispose of properties/land for a specific purpose in accordance with their statutory obligations e.g. for the purposes of developing industrial or commercial units by local authorities. Such properties/land are not required to be identified as surplus for the purposes of intra-State transfers. Surplus property includes houses, buildings, other structures and land.

### **3. PARTIES GOVERNED BY THE POLICY:**

The parties governed by this policy and known as the Stakeholder(s) are all ‘parties’ with a legal entitlement to acquire or otherwise hold State property, including but not limited to the following:

3.1 Central Government;

3.2 State bodies or agencies;

3.3 Health Service Executive;

3.4 Local Government (namely, each Local Authority).

The property occupied by many State bodies including central Government Departments is vested in the Commissioners of Public Works. The application of this acquisition and disposal policy will be applied by the Office of Public Works (OPW) in consultation with those Departments and bodies.

#### **4. ADOPTING A STRATEGIC APPROACH TO PROPERTY**

Each Stakeholder and body under its aegis is responsible for managing its own properties but should view public property from a 'State' perspective rather than individual ownership. Property assets should be managed like other parts of organisations' business and Strategy Statements/Business Plans should contain a property related section. Regular review of the stakeholder's property portfolio in the context of its business requirements will identify surplus land and buildings, expanding or contracting accommodation requirements, the possible need to acquire property or opportunities for more innovative actions that may involve disposal, acquisition or sharing of property.

The management of surplus property to include disposal should form part of the consideration of an organisation's overall objectives. Some element of vacancy is normal in property management but should be in line with recognised norms for the category of property concerned. Identification of surplus property is the responsibility of individual public property-holding bodies who should keep their property holdings under continual review. The surplus need not comprise entire properties or buildings and can comprise portions or parts of properties.

The regular strategic review of property holdings and requirements will identify potential acquisitions and disposals which are the subject of this policy document.

#### **5. CORPORATE GOVERNANCE**

Where Stakeholders engage in the acquisition or disposal of property, the following corporate governance principles shall apply:

- The Stakeholders shall comply with all legislative and regulatory requirements, including codes of practice on the governance of State Bodies. In the case of local authorities, disposal of property/land will be entered into in compliance with their statutory obligations.
- Stakeholders shall comply with the Public Spending Code and any update or amendment thereto to include a replacement thereof.
- Stakeholders shall ensure that they each obtain all appropriate consents (where necessary) prior to entering into formal arrangements.
- Stakeholders should ensure that the necessary funding and approvals are in place.
- Stakeholders proposing to enter into a formal arrangement with another Stakeholder should ensure that they each adhere to their own internal procedures and requirements in respect of that transaction, including but not limited to sealing requirements.
- The process should be clearly documented and there should be a clear audit trail in line with prescribed governance arrangements.

- Particular cognisance should be taken of the principles of openness, transparency, fairness and competition essential in all procurement processes. This should be balanced by commercial sensitivities attached to many property transactions.

## 6. BUSINESS CASE

Developing a Business Case, following a standard appraisal process, is a necessary step in the achievement of value for money. A Business Case for each possible acquisition is required. While disposal of surplus property should be managed in a manner consistent with optimizing value for money, an appropriate Business Case should first be developed for any disposal. A Business Case is also required where it is proposed to retain any unused property within public ownership.

### 6.1 BUSINESS CASE - ACQUISITION

If the regular high level strategic review of the organisation's property identifies the potential need to acquire a property, this identified need has to be subject to further analysis and the development of a Business Case which supports an acquisition. In developing a Business Case the acquisition proposal should, as a minimum, be subjected to the standard appraisal steps, set out below, in accordance with the Public Spending Code. The development of a Business Case should be in line with each organisation's governance requirements.

#### Standard Appraisal Steps:

(i) Define the objective or need. *This should be stated in language that allows a wide range of options to be considered i.e. the objective should not be to purchase the office block on Main Street but might be "to satisfy the accommodation needs of 100 extra staff due to the expansion of the organisation's role".*

(ii) Explore options taking account of constraints. *The options examined should include 'no change' (and its impact), freeing up existing space, space modification, site purchase and build, purchase or lease of an existing building, different locations etc. While identification of all candidate properties is not required at this time, potentially suitable property that has been identified on the State Property Register, as surplus, by other Stakeholders should form part of the options assessment. See *Protocols on Asset Transfer and Sharing*<sup>2</sup>.*

(iii) Quantify the costs of viable options and specify sources of funding. *An initial costing of the different options is required and at this point it may be necessary to seek the advice of*

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<sup>2</sup> DPER Circular 11/15: Protocols for the Transfer and Sharing of State Property Assets

*valuers/surveyors in determining the likely costs of purchase versus site purchase and build etc. The lifecycle costs of each different option should be used.*

(iv) Analyse the main options. *What options meet the need?*

(v) Identify the risks associated with each viable option.

(vi) Decide on a preferred option. *The method used to select a preferred option from the range of viable options available will depend on the scale of the project but the likelihood is that a multi-criteria analysis would be used which will give a weighting to the required attributes of the solution, including cost. The preferred option may be stated in terms that are broader than a particular site or building.*

(vii) Make a recommendation to the Decision-Making Authority. *The preferred solution will need approval from the appropriate authority as determined by an organisation's governance requirements.*

The outcome of this process will be a decision in principle of what is to be acquired with a set of the parameters for the next steps e.g. the budget, the range and type of properties that will be sought etc. If in implementing the decision the preferred option is not feasible in some way, the business case may have to be revisited, other options considered and a new approval sought. It may be that the costs of the preferred option are far higher than anticipated, in which case other options may now be preferred.

An appraisal should always demonstrate that value for money considerations have been taken into account before a decision is taken to acquire a property.

## **6.2 BUSINESS CASE – DISPOSAL**

If the regular, high-level strategic review of the organisation's property identifies surplus property, that surplus needs to be subjected to some further analysis and the development of a Business Case which supports progressing a disposal or the retention of the property. In developing a Business Case the potential disposal should, as a minimum, be subjected to the standard appraisal steps, as set out below, in accordance with the Public Spending Code. The development of a Business Case should be in line with each organisation's governance requirements.



Standard Appraisal Steps:

(i) Define the objective or need. *This should be stated in language that allows a wide range of options to be considered i.e. the objective is to dispose of property which has been identified as surplus in order to reduce costs or release value for the Exchequer. This does not for the purposes of stating the objective mean identifying the actual building or piece of land as this might restrict the options that should be considered in the overall management of the property portfolio.*

(ii) Explore options (taking account of constraints). *What properties or combinations of properties could be disposed of to eliminate the property surplus? Could better value be achieved through alternative usage of property thereby releasing a larger property? Would better value be obtained by obtaining planning consent for a change of use? Consideration should be taken of: the heritage status of assets; the listed building status; environmental issues and community related issues.*

(iii) Quantify the cost reductions or income from viable options. *An initial quantification of the different options is required and at this point it may be necessary to seek the advice of valuers/surveyors in determining the likely cost reductions or revenue from the disposal options. The lifecycle costs of each different option should be used.*

(iv) Analyse the main options. *What options meet the objective? If market conditions are such that the expected sale price is considered to be well below the price that might be expected in a properly functioning market, a decision may be taken not to dispose of a property on the open market for the time being. In these circumstances, only (i) & (iii) in the Hierarchy of Method of Disposal set out at 8. below can feasibly meet the objective.*

(v) Identify the risks associated with each viable option

(vi) Decide on a preferred option. *The method used to select a preferred option from the range of viable options available will depend on the scale of the project but the likelihood is that a multi-criteria analysis will need to be used which will give a weighting to the required attributes of the solution including cost reduction/income from sale. Maximising the amount realised should not be the sole criterion. The impact of the decision taken on the public service and the local community must also be considered. The benefits of any decision taken must be clearly identified.*

(vii) Make a recommendation to the Decision-Making Authority. *The preferred solution will need approval from the appropriate authority as determined by the organisation's governance requirements.*

The outcome of this process will be a decision in principle on what property to dispose of or not and the decision will set parameters for its implementation e.g. the expected sale price<sup>3</sup>, conditions of transfer etc. If in implementing the decision the preferred option is not feasible in some way, the Business Case may have to be revisited, other options considered, and a new approval sought.

An appraisal should always demonstrate that value for money considerations have been taken into account before a decision is taken to dispose of a property.

## **7. USING THE STATE PROPERTY REGISTER - <https://maps.opw.ie/>**

The State Property Register was developed to give the State sector full visibility of property held by State entities. The scale of the State Property Estate provides opportunities for *interdepartmental rationalisation*. Each stakeholder has a responsibility to cooperate with others to ensure that its property decisions secure best value for money. The Protocols on the Intra State Transfer or Sharing of State Property Assets require Stakeholders to identify surplus property on the State Property Register.

The State Property Register is therefore the first port of call once a decision has been made to acquire or dispose of property. If a State body is acquiring property, it should first consult the State Property Register and engage with other State property holders to ascertain if a suitable surplus property exists which could be transferred or shared. If a State body is disposing of a surplus property it must, as per the Protocols, allow one month for expressions of interest from other State bodies before disposing of the surplus property to a Non-State Party.

## **8. HIERARCHY OF METHOD OF DISPOSAL**

### **(i) Transfer or Share with another public body**

State property holders of surplus property should, in the first instance, identify if other State organisations have a use for the property. This, as a minimum, is done by recording the property as surplus on the State Property Register and allowing one month for other State organisations to express an interest.

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<sup>3</sup> If it is an intra-state transfer or share then the price is set independently by the Valuation office as per DPER Section 9 of the Protocol for the Intra State Transfer of State Property Assets or Section 9 of the Protocol for the Intra State Sharing of State Property Assets

## (ii) Dispose on the Open Market

If no State use is identified, the property holder will consider disposing of the property on the open market in order to generate revenue for the Exchequer. Open Market means of disposal include public auction, private treaty, informal tender, formal tender, sale of long leasehold interest properties, surrender, assignment of leasehold interest, disposal and leaseback, break clauses, and subletting to a third party. Cognisance should be taken of “special interest purchasers” when considering disposal options.

The disposal method used should be both transparent and likely to achieve a fair market-related price. Prior to putting any property on the market, a sales strategy is developed in partnership with the appointed auctioneer (where applicable).

## (iii) Hold Property or consider other uses

If market conditions are such that the expected sale price is considered to be well below the price that might be expected in a properly functioning market, a decision may be taken not to dispose of a particular property for the time being. In those circumstances, property holders may consider other uses such as:

- a) community use under licence, or
- b) use of the property by start-up businesses through engagement with IDA/EI, or
- c) subletting to a third party.

These alternatives are subject to the receipt by the property holder of an appropriate business case that demonstrates that the applicant has the means to insure, maintain and manage the property as well as providing a benefit to the wider community. The practice is recognised as a means of delivering regeneration, community empowerment and social enterprise. The property holder must ensure that arrangements are in place to guarantee the timely return of the property when the license period expires.

The guiding principles governing any decision to allow alternative use by community groups etc. include:

- a) Savings to the State on maintenance, services, insurance and other costs;
- b) The benefit to the broader community in terms of local services, activities or employment/training opportunities to be achieved from the use of the property;
- c) Ownership remaining with the State with a re-entry clause at a time to be decided by the property holder.

## **9. IMPLEMENTING THE DECISION TO ACQUIRE OR DISPOSE AND EARLY ENGAGEMENT OF PROFESSIONAL ADVICE**

After the decision in principle to pursue an acquisition or disposal, a process of implementing that decision begins. At the implementation phase the focus will be on a specific property or number of candidate properties. Some professional advice on, for example, valuation, may already have been obtained during the appraisal process in order to reach a view on costs, etc.

At this point it is necessary to consider the range of legal, valuation, planning, structural, or other advice that is needed in implementing the decision taken. **It is important to engage professional advice in good time to ensure that the decision taken is implemented as intended.** The following non-exhaustive list of issues highlights instances where professional advice (whether internal or external to the relevant organisation) is required.

### **9.1 Title**

Title to any property being considered for purchase by the State should ideally be held in fee simple. If a leasehold interest is to be considered, the unexpired term of the lease should be of sufficient duration to safeguard the State's interest. It should be ascertained as to whether the lease contains any restrictive covenants which would in any way affect the proposed development or disposal. Clean title to properties for disposal should be established before disposal. If not, then title should first be registered with the Property Registration Authority of Ireland (PRAI). The investigation of title should be conducted by a suitably qualified legal person acting for the State.

### **9.2 Planning**

The relevant planning authority should be contacted for the purposes of examining the zoning and planning history of the property proposed to be purchased. It should be established whether the local authority has issued or threatened enforcement action for breach of planning or building regulations. It is recommended that a planning search to property in the immediate vicinity is undertaken and enquiries made in relation to the existence of agreements, notices or objections to previous planning applications that may affect the property.

Consideration should be given as to whether the purchase may be subject to securing planning permission for a change of use, modification of works, etc.

### **9.3 VAT**

Advice should be sought at an early stage on liability for VAT in respect of property transactions or activities.

### **9.4 Professional Reports**

When acquiring an existing structure, an architect's report, a fire officer's report, and a mechanical, electrical and structural engineer's report should be obtained. Verification must be obtained that the building conforms to existing planning legislation/regulations and any construction or alterations complied with regulations or relevant planning permissions. These reports are in addition to valuation reports but may cause valuers to revisit their assessment.

An assessment of the requirements of a public body and a technical assessment of the property or properties being considered should be obtained by a range of professional services either from within the public body or externally outsourced. The cost, timeframe or other implications

of any technical assessment are crucial to ensuring that the proposed solution remains consistent with the decision taken on foot of the Business Case.

## **9.5 Negotiation**

Care has to be taken before entering into negotiations with potential vendors or purchasers to ensure, among other things, that unintended commitments are not entered into. Before entering any negotiation legal advice should be secured to guide through the purchase or disposal process. During the course of negotiations, any exchange whether oral or written, must clearly state that any agreement reached is without prejudice and is conditional on the exchange of formal written contracts and the payment of a deposit. All correspondence should be marked **SUBJECT TO CONTRACT/CONTRACT DENIED**.

When agreement to purchase/sell is reached in direct negotiation, the principal terms agreed should be set down in writing to the vendor/purchaser and marked **SUBJECT TO CONTRACT/CONTRACT DENIED**. The terms should generally include that agreement is subject to the following:

- (a) Sanction from the Minister/Department of Public Expenditure and Reform;
- (b) The provision of a current Tax Clearance Certificate;
- (c) Title to the satisfaction of the public body, in consultation with its legal representative.

## **10. GENERAL CONSIDERATIONS**

### **10.1. Purchase of Sites**

Where the decision has been made to purchase a site and no suitable surplus State property is identified on the State Property Register, the process of seeking potential sites should be based on sound analysis of the property market in the area. All proposals should be evaluated against pre-determined criteria appropriate to each case. These criteria will normally include location, cost and, suitability in terms of how closely it fits the brief or operational requirements of the client.

The relevant local authority should be consulted to ascertain if there are plans that would affect construction on the site and to confirm that the connections to public water supply and sewage systems would be feasible. It is advisable to ask the local authority to confirm that it has no objections to the particular development proposal for the site in question.

### **10.2 Construction Procurement**

The Capital Works Management Framework (CWMF) has been developed as best practice guidance in public sector construction procurement. It consists of best practice guidance,

standard contracts and generic template documents that ensure greater cost certainty at contract and award stage and better value for money at all stages of project delivery and handover.

### **10.3 Purchase of Buildings**

Similar to the purchase of sites, the first step in the process is to examine potential buildings in the State Property Register and consult with other relevant State bodies on what might be available within the State's portfolio. The professional advice of valuers, quantity surveyors, engineers and legal personnel should be sought.

The exact requirements of the building will have been described in the development of the Business Case and will be used in the assessment of any building purchase. If it has been decided that the purchase of a building is the best option, the cost of purchase plus the cost of necessary conversion works should be assessed against the cost of construction of an equivalent building, including the acquisition of a site if necessary (this should have formed part of the options considered in developing the Business Case but it may also be revised during the implementation phase).

### **10.4 Design Standards**

In relation to a major office accommodation project or a significant refurbishment, Departments should seek high quality design that provides value to the taxpayer. Major projects are progressed in conformity with Government policy on development and spatial strategy and planning legislation. As the sole procurer of office accommodation for the Civil Service, the OPW's Accommodation Design Standards will apply to the construction or fit out of its office accommodation. The OPW is responsible for setting the requirements relating to office space allocation standards in the Civil Service.

### **10.5 Location**

Office accommodation, where possible, should be located within walking distance of local amenities and close to public transport. Current Government policy encourages the use of public transport by employees and visitors to reduce the impact of private car use on the environment; it also promotes active lifestyles through the bike to work scheme.

### **10.6 Sustainability and Energy Performance**

Government objectives and targets relating to more efficient energy, waste and water consumption should, where possible, be taken into account in selecting the design of or leasing office premises. Under the EU Energy Performance of Buildings Directives, Member States must establish and apply minimum energy performance requirements for new and existing buildings, ensure the certification of building energy performance and require regular inspection of energy systems. From 1 January 2015, Public Bodies can only buy or lease buildings with an A3 BER Rating - S.I. No. 542 of 2009. An Energy Certificate must be provided, updated annually and clearly displayed at accommodation in excess of 500sqm.

## **10.7 Universal Access**

Accessibility to public buildings is governed by legislation and building control regulations, including the Disability Act 2005. A series of booklets by the Centre for Excellence in Universal Design sets out the best practice guidelines on designing, building and managing buildings and spaces to ensure accessibility by all. In the case of existing buildings, compliance with access standards has been required since 31 December 2015 and the costs associated with bringing a building into compliance would need to be considered prior to purchase.

## **10.8 Building Management**

Where a public body leases a building, the responsibilities of the landlord and tenant regarding facilities management and maintenance must be clearly defined. Details of facilities management services and their costs provided within service charges should be clearly identified.

Where a public body is the sole occupier of the whole building, it should consider whether it is financially advantageous to take over-riding responsibility for the management and maintenance of the building. This will be determined on a case by case basis after careful due diligence taking account of the nature, age, condition and construction of the relevant building.

## **10.9 Leasing Requirements**

For more detail on the description of the specific terms that would be included in most leases, see Appendix A.

## **10.10 Potential for Shared Services**

The process of acquiring and disposing of property frequently requires the retention of the services of external professionals – legal, financial, valuers, architects, engineers etc.

Opportunities for collaborative procurement of professional services should be actively pursued with the assistance of the Office of Government Procurement.

## **11. POST PURCHASE/SALE**

When a property has been purchased, transfer of title should be properly executed and registered with the PRAI. Accounts systems should be updated to facilitate payments related to the newly acquired property etc. The relevant organisation's Asset Register should be updated with all details of the property acquired.

Property holding bodies should use the common coding language contained in the ISEN 15221 Standard for Facilities Management - inclusion of standardised coding in the new shared financial management service (FMSS) for the Civil Service.

Similarly, if a property is sold the Asset Register should be updated and all codes relating to the property should be deleted from the Accounts system to prevent further payments relating to the property. All maintenance contracts, utility contracts etc. should be terminated. Transfer of title to the purchaser should be recorded with the PRAI.



# **APPENDIX A - LEASING REQUIREMENTS**

## **1. Description**

A lease is a legal document which gives a tenant temporary ownership of the Landlord's property and its provisions will govern the relationship between the Landlord and tenant.

The description of the property (demised property or demised premises) should be entirely accurate as to the boundaries, means of access and rights of way and these should be clearly identified on a map accompanying the lease. The area of the premises being leased must be included in the description.

## **2. Term**

When negotiating a lease, the State should, as a minimum, seek to confine the length of the lease or length of the renewal lease to a term consistent with the appraisal period adopted in the Business Case by the client. In most cases, a term of 10 years is sufficient to allow a return on relocation and fit-out investment costs where required. If a Department's Business Case justifies a longer lease than 10 years, this should not exceed a maximum of 25 years with rent reviews at five year intervals. Short-term leases of 4 years and 9 months may be satisfactory to meet short-term accommodation requirements. It is essential that every effort is made to negotiate a rent free period in every major letting. The state of the market at any given time will dictate how feasible it is to achieve these objectives. Legal advice and assistance should be sought in the process.

## **3. Rent**

All rent negotiations should be undertaken by individuals with relevant qualifications and experience of similar properties. The amount of annual rent negotiated should reflect the length of term, rent free periods contributions to fit out works, or any other letting inducements, in addition to when and how the rent is payable.

## **4. Rent Reviews**

The minimum review period in leases should normally be not less than five years. It must specify a precise procedure for making a revision and set out responsibilities. It must specify the criteria by which the new rent is to be decided e.g. by agreement between the parties, by indexation to an appropriate index (for non-commercial leases) or by determination by an independent arbitrator or expert. The method of appointment of an arbitrator/expert should also be clearly stated. When the revised rent is agreed between the parties, a memorandum signed by the parties must be attached to the lease.

## **5. Break Options**

If an exception request is made and approved for a term of more than 10 years, a tenant break right must be included in the lease at the expiry of the tenth year. Lessee options to break should be unconditional, save only for the payment of principal rent reasonably demanded in advance. Landlord break rights should not be accepted.

## **6. Alienation**

Departments must have the ability to share occupation with another State body without obtaining landlord's consent. Departments should resist any requirement to pay landlord's fees for giving approvals to alienation applications.

## **7. Assignments**

An assignment or a transfer involves the transfer of the total interest of the lessee under the lease (the assignor) to a new lessee (the assignee). The assignee would assume responsibility for all the covenants, conditions and agreements of the original lease which then become enforceable between the landlord and the assignee.

The assignment shows the history of the title down to the assignor (vendors) and recites the agreement to assign for the unexpired term of years created by the lease, subject to the payment of the rent reserved therein and to the performance and observance of the covenants and conditions of the lease.

## **8. Subletting**

A subletting is the grant, by the original lease of a lease of part only, or of the entire, of the demised premises for a term less than the unexpired term of the original lease. This will involve the payment of rent by the sub-lessee to the original lessee. The original lessee remains the tenant of the landlord subject to the terms of the head lease.

## **9. Collateral Warranties**

Where applicable, the landlord should provide appropriate collateral warranties to the tenant, which should be capable of assignment to subsequent occupiers of part, or all of the demise.

## **10. Usage**

The covenant on usage/user must be considered carefully as it may prohibit the use of the premises for particular purposes. Any restriction which would limit the usefulness of the property to the State should be resisted.

## **11. Insurance**

Normally the State carries its own insurance i.e. it does not enter into an insurance policy in respect of property rented by the State.

Where the State leases only a part of a property and the Landlord takes out a general insurance policy on the entire property, the State would refund to the Landlord a proportion of the premium commensurate with the area of the building leased by the State. Both the Landlord and the tenant have an insurable interest in the lease premises and their interests are usually protected by appropriate insurances for public liability, employer's liability and insurance against fire and other damage to property.

Where the State is a tenant in part of a property, it should ensure that the terms in the lease covering insurance ensure that the Landlord indemnifies the tenant against and loss or damage to third parties while on that part of the property not leased to the tenant and the tenant should indemnify the landlord against claims relating to that part of the property leased by the tenant. To this end, the property held exclusively by the tenant must be clearly defined in the lease. The question of loss or damage to or by the Landlord or his agents when carrying out inspections or repairs on the leased property should also be considered.

## **12. Services and Service Charge**

A service charge is the amount payable by the tenant for services provided by the Landlord and includes the plant, machinery and other equipment installed in a property for the provision of water, drainage, heating, lighting and power, air conditioning, lifts, fire protection and the like. Service charges are most appropriate where a tenant rents part only of a premises and shares the services and common areas with other tenants. The Landlord provides and maintains the various services and facilities enjoyed in common by all tenants and recovers the costs by way of a charge levied on the tenants in proportion to the area occupied by each.

## **13. Sinking Fund**

A sinking fund is a fund in which a Landlord collects charges levied in advance to pay for maintenance/repair/replacement works in common areas which the Landlord is required by the terms of the lease to undertake at the cost of the tenants. It protects the Landlord against the risk of being unable to recover costs from tenants after expenditure has been incurred. Since the State is vulnerable to overuse of such charges, it should resist contributing to sinking funds where it is the tenant.

Where the State may have to accept a sinking fund clause, it should make it as restrictive as possible and ensure the strongest possible provisions for accountability that the market will accept.

#### **14. Easements**

An easement is a generic term to include a right of way, a right to construct and lay pipes and other underground conduits, a right of light, a right of support, a right to carry water/gas/electricity or similar through or over a property. The existence of an easement can restrict/prevent the future development of a property or seriously restrict the opportunities for the sale of the property in the future.

If granted over State property, an easement will continue to affect and burden the property into the future and, therefore, consideration should always be given to limiting the period during which the easement will apply to a period of years or with reference to another occurrence e.g. until the works secure a connection to a public water supply. In assessing the value of an easement to be granted by a State body to a third party, consideration should be given to the value of how the easement facilitates the future development of the property benefiting from same.

Where the State requires an easement to develop or optimise the use of a property, the acquisition should be negotiated in the normal way and cognisant of the need to ensure value for money.

#### **15. Repair and Dilapidations**

Care should be taken to agree precisely what each party is liable to repair as this can be one of the most costly obligations under a lease. Repair obligations should be proportionate to the length of the lease term and the condition of the property at the commencement of the lease. A condition report attaching to the lease at the time of taking it is invaluable in that regard.

In a short term lease taken by a State body, the body should only accept responsibility for internal repairs for the term of the lease and where the interior is already in a poor state of repair this should be recorded. In most cases, a Condition Schedule is agreed with the Landlord prior to entering into a lease to reduce the scope for argument over the extent of repairs for which the State could be liable on expiry of the Lease.

#### **16. BER Certificate**

A Landlord is required by law to provide a BER certificate to any Lessee of its property. It is good practice to require the BER to be made available at the point of preliminary negotiations, though Landlords may resist this until formal approval to take the lease is provided.

## **17. Renewal of a Lease**

It is important that the renewal terms of a lease are fully negotiated and documented prior to the expiry of the initial lease to avoid risk of inadvertently committing to a longer extension of the lease than intended.