

# Guide to: Buying or Selling a Pub or a Bar

If you are buying or selling a pub or a bar, then you should seek expert legal advice. This overview sets out a few key points to consider when acquiring or disposing of a pub or bar.

## Heads of Terms/Memorandum of Understanding

A property agent often helps negotiate the main deal terms (price etc.). This is then set out in a 'subject to contract' document known as Heads of Terms (or a Memorandum of Understanding). It is important to take advice before signing Heads of Terms as it may be difficult to renegotiate the terms later.

This should set out whether the deal is a share sale or an asset sale. Pub/bar transactions often take place by way of an asset sale as a going concern. The parties agree which assets and which liabilities (if any) the buyer acquires. The buyer often does not take on historic liabilities.

The parties should consider how the pub's/bar's wet and dry stock is to be valued. This may involve using an independent valuer immediately before Completion but can depend on the size of the transaction and deal agreed.

## Property transaction

Another aspect of an asset sale is the property transaction. Depending on whether the property is freehold or leasehold, this may involve the sale of the property, assignment of a lease or granting of a new lease.

If the property is leasehold, then the landlord likely will require their costs (legal fees etc.) to be covered as part of the transaction. The buyer and seller should consider how this is to be split and look to get the landlord on board at an early stage.

A brewery or pub company may own the pub. As part of the letting the property the brewery/pub company will require a beer tie to be entered into where you will be required to purchase stock from them. This is regulated by the Pubs Code 2016.

## Due diligence

The buyer will want to investigate the business that it is buying. This should be targeted and proportionate to the transaction. This may include obtaining replies to Commercial Property Standard Enquiries and information relating to the pub's/bar's:

- a. Employees, as required under TUPE (see below).
- b. Contracts.
- c. Suppliers.
- d. Website, social media accounts and review site pages.
- e. Where relevant, accounting information.

- f. Inventory, such as post-mix and draught dispense equipment.

A buyer may want to consider hiring a surveyor to assess the equipment.

### Licences

The businesses' Premises Licence for the sale of alcohol will need to be transferred to the buyer. The buyer will need to be, or appoint, a Designated Premises Supervisor (DPS) in relation to the Premises Licence. A DPS must have a Personal Licence to sell alcohol.

The buyer will need to carefully review the terms and conditions attaching to the Premises Licence to make sure this fits with their planned use of the business. If not, then the buyer may need to make an application to vary it.

Other potentially relevant licences which need to be considered are Pavement Seating Licences, Gaming Machine Permits, and PRS and PPL music and public performance licences.

### Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE)

If a pub or bar is being purchased by way of an asset sale as a going concern, then its employees have a right to transfer to the buyer on their existing terms under TUPE. Failure to transfer or making changes to the employees' terms and conditions risks an unfair dismissal claim.

The seller needs to provide certain information on its employees to the buyer. The buyer and the seller have certain requirements to inform and consult with their own employees or appointed employee representatives in relation to the transfer.

This guide is provided for general information purposes only and does not constitute legal or other professional advice.

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