# Specialist support – Property and environmental issues

This section covers the property and environmental issues which the buyer must be aware of in the context of corporate transactions.

# Key property issues to consider

When undertaking an acquisition of a business, properties are often key assets to be reviewed, whether due to the value on the balance sheet, or because of their importance to the continued operation of the business. When a property is part of a wider transaction the process of investigation and transfer may not follow the same conveyancing investigations and precedents as those you studied in Property Practice.

However the transaction is structured, the buyer will want to ensure that it will acquire, or that the target has, **good and marketable title** to all the relevant properties. This means that it is important to establish that:

* the seller or the target has good title to the properties and that the properties have the benefit of all necessary rights required for their beneficial use and enjoyment;
* the properties are not subject to any onerous condition or third-party rights which may affect their marketability or valuation; and
* the properties may be used for the purposes intended by the buyer.

The buyer may instruct a valuation of any significant sites.

In addition, a buyer will want to identify any significant liabilities that may arise from the properties.

# Property Due Diligence

Title to the properties will be investigated in the normal way, through the carrying out of searches and enquiries appropriate to the properties in question. The extent and depth of the investigation will be dependent upon the value of the property, its importance to the transaction as a whole and the time available.

In particular, the buyer’s solicitors will consider if there are access issues, planning issues or covenants that will impact the value and future use of the property. This is particularly important if the buyer plans to sell or change the use of the property after completion.

In leases the following provisions will be considered:

* Rent reviews – if they are upcoming and upwards only may impact the forecasts and value of the target;
* Repair obligations - if the lease is close to an end there could be liability accrued known as dilapidations;
* Change of control consents (on a share sale) or assignment provisions (on an asset sale);
* Break notices - if the buyer intends to end the lease early.

# Environmental issues affecting property

1. It is important that, whatever the structure of the deal, a buyer ensures that appropriate environmental investigations have been conducted. The reason for this is that an owner may be liable for the **costs of cleaning up contaminated land** even if the owner was not responsible for the original contamination.
2. The presence of contaminated land on a site will seriously affect the owner’s ability to sell or mortgage the property because the potential cost of cleaning up the land can be considerable, and the buyer could end up inheriting that liability.
3. The buyer’s solicitors should advise the client of potential liabilities associated with contaminated land, make specific enquiries of the seller in all commercial cases, make enquiries of all statutory and regulatory bodies and, where appropriate, advise the client to undertake an independent site history investigation. This will inevitably impact on timing and costs for the client. It is also important to bear in mind that the owner of contaminated land may have both **civil and criminal liability.**

**Summary**

* The title to property will be investigated with similar searches to those undertaking in a standalone property transfer but standard precedents may not be used.
* The buyer will want to determine that there is good title to key properties to ensure business continuity and value is preserved.
* Terms of leases will be considered carefully to make sure there are not hidden liabilities.
* In terms of environmental issues, it is important to ensure that any contaminated land issues have been dealt with and appropriate investigations carried out in order to ensure that the buyer is clear about the potential cost implications of any issues that are uncovered.