

Guidance for a non-standard investment by a Dentons' SIPP or SSAS

The following investments are covered within these guidance notes:

1. Shares in unconnected unquoted UK Limited trading or non-trading companies
2. Shares or units in a Collective Investment Scheme
3. SIPP secured loans to unconnected UK Limited trading and non-trading companies
4. SSAS secured loans to unconnected UK Limited trading and non-trading companies
5. SSAS loan to a sponsoring employer
6. Shares in a sponsoring employer (SSAS)
7. Structured products
8. Property syndicates

Under HM Revenue and Customs (HMRC) pension tax rules, investment by a SIPP or SSAS in **'taxable property'** (i.e. residential property and/or tangible moveable property) whether directly by the SIPP or SSAS or **indirectly** by acquiring shares in, or making a loan to, a vehicle (which includes individuals, companies, partnerships, trusts and collective investment schemes) is an 'unauthorised member payment'.

Dentons allows a wide range of investments to be held in its Schemes and we would strongly encourage you to seek regulated financial advice before making any investment decisions.

Dentons will not provide any advice on the suitability of investments but it reserves the right to refuse to hold any proposed investment in its Schemes. Dentons also reserves the right to ask for further information if it needs it to enable it to make a decision.

Unauthorised payments

Under HMRC rules, a loan to a connected person (other than a loan by a SSAS to a sponsoring employer) is automatically an unauthorised member payment.

Special rules have to be satisfied for a loan by a SSAS to a sponsoring employer to be an authorised payment and this is covered in a Section 5 on page 4.

An unauthorised member payment can give rise to severe tax charges on the SIPP or SSAS member and on the SIPP or SSAS itself via the scheme administrator. In some cases the total tax charge could be as high as 70% of the amount of the unauthorised member payment.

Exemption from the taxable property rules

A vehicle can however be exempt from the **taxable property** rules if it qualifies as a 'Genuinely Diverse Commercial Vehicle (GDCV)' and the conditions to qualify depend on whether the vehicle is trading or non-trading. A vehicle is trading if its main activity is the carrying on of a trade, profession or vocation and is taxed as such by HMRC.

As a result of these complicated HMRC rules, a Dentons' SIPP or SSAS can only:

- (a) acquire shares in, or make a loan to, an unquoted UK Limited trading company (which for these purposes includes Alternative Investment Market (AIM) listed UK companies) provided it is a GDCV at all times that the SIPP or SSAS holds the investment;
- (b) make a loan to an unquoted UK Limited non-trading company provided it is a GDCV or that it is not controlled directly or **indirectly** by a SIPP or SSAS member or a connected person and will not hold, directly or **indirectly**, any taxable property at any time while the loan is outstanding; and

⏪ **Please note:**
Terms in bold are defined at the end of the form.

Exemption from the taxable property rules

- (c) acquire shares or units in an unquoted UK Limited non-trading company or collective investment scheme provided it is either a GDCV or it will not hold, directly or **indirectly**, any **taxable property** at any time while the SIPP or SSAS holds the investment and HMRC borrowing limits will not be exceeded.

Investment requirements

Details of how to establish whether a proposed investment satisfies our requirements are set out below along with the relevant questionnaire that will need to be completed if our initial requirements have been met.

Non-standard investments may be /are subject to restrictions, which include a percentage (%) of funds or the number of investments.

1. Shares in unconnected unquoted UK Limited trading and non-trading companies

- the SIPP or SSAS must have a minimum fund size of £100,000 with £5,000 kept in the SIPP or SSAS bank account
- are only permitted where the company is financially sound with a minimum of three years' positive trading accounts
- are restricted, in each company, to 25% of the net market value of the SIPP or SSAS at the point of purchase
- in aggregate, cannot exceed 75% of the net market value of the SIPP or SSAS fund at the point of purchase, and the remaining 25% must be held in readily realisable investments.

To initially establish if the SIPP or SSAS can acquire shares in an **unconnected unquoted UK Limited trading company**, please complete **Part A on page 6**.

To initially establish if the SIPP or SSAS can acquire shares in an **unconnected unquoted UK Limited non-trading company**, please read **Part B on page 7**.

If you believe that the investment may be possible after answering the relevant questions, please complete our **"Shares in Unquoted UK Limited Company" questionnaire**.

2. Shares or units in a Collective Investment Scheme (CIS)

- Where the investment vehicle is a collective investment scheme that is not regulated or recognised by the Financial Conduct Authority (FCA) or regulated by the European Union, it is an unregulated collective investment scheme or UCIS and Dentons does not permit these investments.
- Loans cannot be made to collective investment schemes.

To initially establish if the SIPP or SSAS can acquire shares in a **Collective Investment Scheme**, please read **Part B**.

If you then believe that the investment is eligible to be held in a Dentons' SIPP or SSAS, please complete the **"Shares or units in a collective investment scheme" questionnaire**.

Please note:

We do not permit investment in unregulated collective investment schemes.

3. SIPP secured loans to unconnected UK Limited trading and non-trading companies

- Up to 95% of the net market value of the SIPP fund can be used provided it is secured by a first charge on property (with the loan not exceeding 70% of the property value) and there will be a balance of at least £5,000 in the SIPP default bank account after the loan has been made
- Security for a loan must be a first charge in the form of property
- Loans cannot be made to collective investment schemes, trusts, partnerships or individuals
- SIPP investment in Limited Liability Partnerships or overseas unquoted companies is not permitted.

If you believe that the investment is eligible to be held in a Dentons' SIPP, please complete the **"Secured loan to a UK trading company"** questionnaire or **"Secured loan to a UK non-trading company"** questionnaire.

4. SSAS secured loans to unconnected UK Limited trading and non-trading companies

- Up to 95% of the net market value of the SSAS fund can be used provided it is secured by a first charge on the property (with the loan not exceeding 70% of the property value) and there will be a balance of at least £5,000 in the SSAS default bank account after the loan has been made.
- Security for a loan must be a first charge in the form of property.
- Loans cannot be made to collective investment schemes, trusts, partnerships or individuals
- **Please note:** SSAS investment in Limited Liability Partnerships is not permitted

If you believe that the investment is eligible to be held in a Dentons' SSAS, please complete the either the **"Secured loan to a UK trading company"**, or **"Secured loan to a UK non-trading company"** questionnaire.

5. SSAS loan to a sponsoring employer

A small self administered scheme (SSAS) can lend up to 50% of its net assets in aggregate to one or more sponsoring employers of the SSAS, subject to the below conditions:

- the amount of the loan, together with outstanding amounts of any existing loans to sponsoring employers, must not exceed 50% of the net asset value of the SSAS fund at the time the loan is made
- loans must be repaid in equal installments, either monthly or quarterly, of capital and interest for each complete year of the loan. An incomplete year at the end of the term is treated as the final complete year.
- the maximum term is five years from the date the loan was advanced. The total amount owing, including interest, must be repaid by the loan repayment date.
- the minimum interest rate a SSAS may charge is calculated at 1% above the average of the base lending rates of six leading high street banks. Higher rates may be charged but only if the terms applied mirror a commercial loan offer and can be evidenced. We will require the interest rate to be fixed at outset.
- the loan must be secured by a first charge on a suitable asset of at least the equivalent value to the loan plus interest. The asset charged need not be owned by the borrower.

Although HMRC will permit any asset to be used as security, certain assets will create tax problems and liabilities in the event of default. For example, plant and machinery often realise significantly less than book value in the event of a company failing.

In addition, the act of seizing any such **"tangible moveable property"** by the Trustees on default by the sponsoring employer immediately gives rise to tax charges on the members and the SSAS.

In addition to this HMRC requirement, this loan and all existing loans to sponsoring employers must not exceed 70% of the market value of the security.

Dentons' position is that security must take the form of UK land or property and we will review each proposal individually. The asset used as security need not be owned by the borrower.

If you believe that the investment is eligible to be held in a Dentons' SSAS, please complete the **"SSAS Loan to a Sponsoring Employer"** questionnaire.

6. Shares in a sponsoring employer (SSAS)

- It is most unlikely that a sponsoring employer of a SSAS will be a GDCV but if it is, the amount of the SSAS fund used to acquire shares in a sponsoring employer must be less than 5%. If there are four or more sponsoring employers in a SSAS, the total amount of the SSAS fund that can be used to acquire shares in them must be less than 20%.

Please complete the **"Secured loan to a UK trading company"** questionnaire or the **"Secured loan to a UK non-trading company"** questionnaire.

7. Structured products

- Structured products are fixed term investments and are generally complex and it's important that the product is fully understood before deciding to invest.

Please complete the **"Structured Products"** questionnaire.

8. Property syndicates

- Property syndicates are treated as proportional ownership of a commercial property and up to 95% of the net market value of the SIPP or SSAS can be used.
- The property must be wholly commercial, if not the investment cannot be made

Please complete the **"Property Syndicate Investments"** questionnaire.

PART A - Applies to: Section 1 - Acquire shares in, or make a secured loan to, an unquoted UK Limited trading company

STEP 1: You will need to establish if the UK Limited trading company is a GDCV

- > Is the company **controlled**, directly or indirectly, by the SIPP or SSAS member (i.e. is it controlled by the member and/or any **associated person**)? Yes No
- > Is the SIPP or SSAS member or a connected person, a controlling director of the company? Yes No
- > Is the proposed purchase of the shares to enable the SIPP or SSAS member, or a **connected person**, to occupy or use **taxable property** held by the company? Yes No

If the answer to any of the above is Yes, the company is not a GDCV. The SIPP or SSAS cannot acquire shares in or make a loan to the company.

If the answer to all three of the above is No, the company is a GDCV. A secured loan can be made at this stage. Please complete the relevant sections of the Investment Questionnaire.

STEP 2: Where the proposed investment is shares

- > Does the company have trading accounts for at least three years and is it currently trading profitably? Yes No

If the answer is No, the SIPP or SSAS cannot acquire the shares. If Yes, the shares can be acquired at this stage.

- > Is the SIPP or SSAS acquiring the shares from a connected person? Yes No

If **No**, the SIPP or SSAS can acquire the shares at the agreed price.

If **Yes**:

For **AIM listed shares**, the SIPP or SSAS must acquire the shares at the market price.

For **unquoted shares**, the market price of the shares will need to be established by an independent professional (e.g. the company's auditor) and the SIPP or SSAS can then acquire the shares at that price. Please complete the relevant Investment Questionnaire.

Please note:

We will need copies of these accounts to check that the company is trading profitably.

PART B - Applies to: Section 1 - Investment in an unquoted UK Limited non-trading company Section 2 - Shares or units in a Collective investment scheme

You will need to understand if your investment is a GDVC or not. Please follow the steps below and then complete the relevant investment questionnaire.

Please note: A company or any collective investment scheme that is not a GDVC may still satisfy our requirements provided it is not controlled, directly or indirectly, by a SIPP or SSAS member or connected person and will not hold, directly or indirectly, any interest in taxable property at any time while the SIPP or SSAS holds the investment and HMRC borrowing limits will not be exceeded.

STEP 1: A UK Real Estate Investment Trust (REIT) will be a GDVC provided:

- The SIPP or SSAS does not hold directly or **indirectly** an interest in the UK REIT for the purposes of enabling a SIPP or SSAS member to occupy or use property held by the UK REIT.
- Any rights and/or entitlements in the company or collective investment scheme that come with the investment by the SIPP or SSAS, when aggregated with any similar rights and/or entitlements of any **associated persons**, must be less than the following limits:
 - 10% of the share capital or issued share capital
 - 10% of the voting rights
 - 10% of the income
 - 10% of the amounts distributed on a distribution
 - 10% of the assets on a winding up or in any other circumstances.

In addition, the SIPP or SSAS must not have a right or entitlement to income and gains from a specific property.

STEP 2: A company or collective investment scheme (other than a UK REIT) will only be a GDVC provided it satisfies all of the following at any time while the SIPP or SSAS holds shares or units in it:

- Either:
 - (a) the total value of the assets held directly by the company or collective investment scheme is at least £1 million, or
 - (b) it holds at least three residential properties,
 and in either case, no single directly held item of taxable property has a value of more than 40% of the total value of directly held assets.
- If it is a company and resident in the UK and is not a **close company**.
- It does not have as its main purpose, or one of its main purposes, the direct holding of animals used for sporting purposes.
- The SIPP/SSAS's interest in it is not to enable the SIPP/SSAS member or a **connected person** to occupy or use taxable property it holds directly or **indirectly**.
- Any rights and/or entitlements in the company or collective investment scheme that come with the investment by the SIPP or SSAS, when aggregated with any similar rights and/or entitlements of any **associated persons**, must be less than the following limits:
 - 10% of the share capital or issued share capital
 - 10% of the voting rights
 - 10% of the income
 - 10% of the amounts distributed on a distribution
 - 10% of the assets on a winding up or in any other circumstances.
 In addition, the SIPP or SSAS must not have a right or entitlement to income and gains from a specific property.

STEP 3: SECURED LOAN TO AN UNQUOTED UK LIMITED NON-TRADING COMPANY

Is the UK limited non-trading company a GDCV?

Yes

No

If Yes, **the investment can be made.**

If No, will the company be controlled, directly or indirectly, by a SIPP or SSAS member or a connected person at any time while the SIPP or SSAS holds the investment?

Yes

No

If Yes, **the investment cannot be made.**

If No, will the company hold, directly or indirectly, any interest in taxable property at any time while the SIPP or SSAS holds the investment?

Yes

No

If Yes, **the investment cannot be made.**

If No, will the SIPP or SSAS's deemed 'share' of any borrowing by the company, when aggregated with any other borrowing by the SIPP or SSAS, exceed 50% of the net market value of the SIPP or SSAS?

Yes

No

If No, **the investment can be made.**

If Yes, **the investment cannot be made.**

STEP 3: SHARES/UNITS IN AN UNQUOTED UK LIMITED NON-TRADING COMPANY/ COLLECTIVE INVESTMENT SCHEME

Is the UK limited non-trading company or collective investment scheme a GDCV?

Yes

No

If Yes, **the investment can be made.**

If No, will the investment vehicle hold, directly or indirectly, any taxable property?

Yes

No

If Yes, **the investment cannot be made.**

If No, will the SIPP or SSAS's deemed 'share' of any borrowing by the investment vehicle, when aggregated with any other borrowing by the SIPP or SSAS, exceed 50% of the net market value of the SIPP or SSAS?

Yes

No

If No, **the investment can be made.** If Yes, **the investment cannot be made.**

Definitions

Associated person includes a SIPP or SSAS member, any connected person, any pension scheme relating to the member or a connected person and any associated pension scheme.

Close company broadly means a company:

- (a) which is under the control of five or fewer participators or any number of participators if those participators are all directors; or
- (b) more than half the assets of which would be distributed to five or fewer participators or to participators who are directors, in the event of the winding up of the company.

Connected person in relation to a SIPP or SSAS member includes their spouse or civil partner, their relatives (including but not limited to children, brother, sister, parent, grandparent, grandchild), the relatives of the member's spouse or civil partner, the spouse or civil partner of a relative of the member, the spouse or civil partner of a relative of the member's spouse or civil partner, partners in a partnership business in which the member or a connected person is a partner, companies controlled by the member and/or associated person(s) and trustees of certain settlements.

Control - a person has control of a company if they exercise, are able to exercise, or are entitled to acquire, direct or indirect control over the company's affairs.

Controlling director - includes any person who is:

- occupying the position of director by whatever name called and any person in accordance with those directions or instructions the directors are accustomed to act, or is a manager of the company or otherwise concerned in the management of the company's trade or business, and
- is either on his or her own or with one or more associated persons the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means, to control not less than 20% of the ordinary share capital of the company.

The expression 'with one or more associated persons' means that a person is treated as owning, or as the case may be, controlling, what any associated person owns or controls, even if he or she does not own or control share capital of his or her own.

Indirectly means through another vehicle (including - but not exclusively - individuals, partnerships, companies, trusts and collective investment schemes).

Taxable property means residential property and/or **tangible moveable property** (e.g. plant and machinery; motor vehicles; fixtures, fittings and furnishings that are not part of the fabric of a building; and office equipment). However any item that is worth no more than £6,000 and is held solely for the purposes of the administration or management of the company/vehicle and is not available for the personal use of a SIPP or SSAS member or a connected person is exempt. The direct/indirect holding of taxable property by a SIPP or SSAS is an unauthorised payment and may give rise to tax penalties on the SIPP or SSAS member(s) and the scheme administrator. If security for a loan includes residential property and the legal charge is not drawn up correctly and the SIPP or SSAS ends up holding the property or an interest in it then there could be tax charges.

Trading company (for Corporation Tax purposes) is, broadly, a company that is engaged in any business activity (i.e. carrying on a trade or profession, or buying and selling goods and services with a view to making a profit or surplus) and that only a small part, if any, of its profits or surplus relate to non-trading activities.



Dentons Pension Management Limited
Sutton House, Weyside Park
Catteshall Lane, Godalming
Surrey GU7 1XE

T 01483 521 521
F 01483 521 515
E enquiries@dentonspensions.co.uk
W www.dentonspensions.co.uk

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