Welcome to Market Financial Solutions’ training video on Share Purchase Agreements (SPAs). Stay tuned to learn the basics of how SPAs can be factored into a property investment strategy, and how they may affect your client base. So, without further ado, let’s get started.

**What is an SPA?**

In the simplest terms, an SPA is a document that sets out the terms and conditions relating to the sale and purchase of a company’s shares.

The main terms will typically include:

* the identities of the buyer and seller involved
* the sale price,
* conditions of the sale,
* and information about the underlying business itself which is operated by the company being sold or purchased.

Purchasing a company can require a lot of due diligence, and can present advantages and disadvantages for the parties involved. As such, investors will need to think carefully about whether entering into an SPA, and purchasing a company is right for their situation.

In the property investment market, an SPA may be used for the purpose of selling and purchasing a Special Purpose Vehicle (or an SPV). An SPV is a company that’s formed to undertake a specific business purpose or activity. It is a legally distinct entity that has its own assets and liabilities.

Depending on the structuring of it, an SPV may provide a way to mitigate or segregate certain risks.

An SPA may be used for purchasing shares in an existing SPV. The title to any properties held by that SPV will not need to be amended further to completion of its purchase.

**Who organises an SPA?**

The parties to an SPA will be the buyer and seller of the shares of the relevant company. There may be other professionals involved in the process, for example

* lawyers,
* accountants,
* tax advisers
* and any other advisors who may help with specific structuring of the purchase.

Typically, an SPA is drafted by the buyer’s legal team. It is then negotiated between the parties involved, and the seller also utilises their own legal advisers to assist with negotiation. The buyer will try to ensure the SPA protects them against any post-sale challenges or liabilities.

The end point of all this negotiation is the finalisation of the SPA. Once a form of SPA has been agreed, the completion date will be determined, the SPA will be signed, and a deposit may be transferred by the buyer to the seller with respect to the transaction. By this point, all the parties involved would have had the opportunity to review and agree their obligations, and ensure that everyone is happy with the terms and conditions with respect to the sale.

The final completion date will be a mutually agreed date by both parties to the SPA, with the assistance of their respective legal advisers. On that date, shares of the company will be transferred to the buyer, and the buyer in turn will pay the agreed purchase price.

It should be noted that termination provisions should be included in the SPA so that if the terms and conditions are not fulfilled, it can be terminated.

**What are the legal implications?**

An SPA is a legally binding document and so it can provide certain legal protection to the signing parties.

While dependent on circumstances, there can be certain risks associated with not having an SPA in place, where sale of shares is contemplated.

For instance, without an SPA, the terms of a share sale may not be clearly defined. This could lead to disputes between the parties involved, and even costly legal battles. There may also be limited legal recourse options for the buyers and/or sellers, as SPAs typically contain warranties, indemnities, and conditions that offer protection.

Broader due diligence on the SPV will be required to ensure the following are discussed, and any associated liabilities are quantified where possible:

1. establishing the shareholders’ identity;
2. the extent of any trading history of the SPV (as it is often anticipated that the SPV will be solely set up for the acquisition, development, holding and operation of the property);
3. any other assets within the SPV, other than the property (an unrelated property, for example). If the SPV holds other properties and the purchaser does not wish to acquire them, they will need to be removed pre-completion, usually at the sellers’ expense and risk (but this will depend on each individual transaction)
4. any employees (for example, maintenance staff) and, if so, their position in the context of the sale of the employing SPV;
5. any environmental issues; and finally
6. the status of any planning consents with respect to the property.

Due diligence should also be carried out on the property itself.

The SPA will typically contain a set of warranties (that is, statements of fact) given by the sellers. Additional warranties may be sought should areas of concern arise from the due diligence findings. If these are considered material, an indemnity may be included within the SPA.  These are all matters of negotiation between the parties.

It is increasingly common for parties to take out warranty and indemnity insurance to cover breaches and claims under the SPA.

**Lending**

**How are LTVs calculated if a borrower is buying an SPV which holds multiple properties using an SPA?**

While lenders will differ on how they assess this kind of case, at Market Financial Solutions, we may be able to lend against the market value as opposed to the share purchase price, depending on the facts and circumstances of the case.

What’s important to remember is that every deal we underwrite is assessed on its own merits, and no two cases are ever the same.

**How do personal guarantees work if lenders require them?**

Some lenders may require a personal guarantee before they deliver capital. This is essentially a binding promise from a guarantor to the lender that if the borrower cannot repay the loan, the guarantor will be personally liable for what’s owed.

The guarantor will need to repay the loan if the underlying borrower defaults on the loan – depending on the drafting of the guarantee, this may be a primary obligation of the guarantor. Lenders may need this kind of guarantee if the borrower or investment poses heightened risk, or if it is part of a lender’s standard process for corporate borrowers. These guarantees provide an additional layer of protection for lenders.

Before agreeing to a personal guarantee, it’s advisable to seek legal advice. A guarantor should be aware of the potential risks and implications before they proceed.

**What should landlords and brokers look out for in an SPA?**

Borrowers, landlords, and brokers should be kept updated on the terms of an SPA by the legal teams involved.

There are certain terms of the SPA that the underlying parties should keep an eye on and/or prioritise. Specifically, the buyers and sellers will want to concern themselves with the “purchase price and payment terms” and any obligations on each of them. The parties involved will need to know if the sale will be via

* an immediate cash injection,
* a deferred consideration,
* an issue of shares,
* via a debt instrument,
* or some combination of all these options.

Some of the key provisions of the SPA will be laid out in the “warranties and indemnities” section. There may also be a “conditions precedent” section, which will set out specific events or actions that must occur before the SPA is finalised and the sale can be completed (for example, planning and third-party consents).

Depending on the proposed length of time between exchange and completion, and the risk to the purchaser of new issues arising after it enters into the SPA, there may be additional matters to negotiate; for example, the conduct of the SPV, the value of the properties between exchange and completion, and the purchaser’s ability to terminate the SPA.

After completion, there may be “post-completion restrictions and covenants” included in the SPA. These are restrictions and obligations typically put forward by the seller to be completed, and examples may include non-compete agreements and confidentiality clauses.

There will also be termination provisions, which will detail the circumstances where the parties involved can terminate the SPA prior to completion.

Any lender to the purchase will need a copy of the SPA.

Investing via this route may bring with it increased solicitors’ costs. There may also be tax implications, which may require additional guidance from accountants or financial planners.

**Taxation**

**What are the taxation implications of an SPA?**

While there are many reasons why buyers and sellers would want to progress via an SPA, tax implications are likely to be a key consideration. Stamp duty costs, for example, might be reduced, as opposed to an outright asset purchase.

With an SPA, a stamp duty bill may be 0.5% of the underlying transaction, whereas with a standard purchase, rates for non-residential and mixed land and property can be up to 5%.

This is a generalised example, however, and every buyer and seller’s tax obligations will be unique to their circumstances. No assumptions should be made on how an SPA could cut tax costs, and professional advice from qualified tax advisers should always be sought.

Your advisers may advise that the SPA includes certain tax warranties, covenants, and/or indemnities to protect the parties in the event that unforeseen liabilities or challenges arise.

**Specialist finance**

**How can specialist finance help?**

Evidently, progressing with a property investment via an SPA can be complicated. There are many moving parts. So many in fact that some lenders may not be willing to offer finance where an SPA is involved.

Fortunately, this is where specialist lenders such as Market Financial Solutions come into play. We have been created from the ground up to accommodate the property market’s complexities and offer bespoke solutions.

At Market Financial Solutions, in the right circumstances, we can work with SPAs, SPVs, LLPs, trusts, and other unique corporate setups. We’re also happy to receive enquiries from offshore entities, foreign nationals, limited companies, as well as self-employed borrowers.

Since our founding in 2006, we have built up plenty of expertise in handling complex circumstances that property investments and markets may present.

Our products also provide plenty of flexibility and optionality for a range of investment strategies. Borrowers can utilise a range of repayment options to suit their circumstances. This includes fully retained, serviced monthly, and part retained and serviced monthly interest options.

Our BTL mortgages bring “bridging-like” speed and flexibility to both the residential, and commercial markets. What’s more, our new Bridge Fusion product combines the best aspects of bridging and a buy-to-let mortgages, offering a solution for clients seeking bridge criteria and flexibility with a longer-term solution, to ride out recent market uncertainty.

This unique product provides a longer term-length for more substantial or tricky investments, with the option to extend the deal by an additional 12 months at the end of the term. Borrowers may want to utilise this extra breathing space to wait for improved rates, reassess their goals, or find alternative options for unexpected challenges.

Regardless of how borrowers may want to progress with us, they will receive a response to an enquiry within four hours. As well as this, every one of our deals is underwritten from day one.

Every case we deal with is assessed on its own merits. Meaning, what’s needed from our borrowers may vary on a case by case basis. But what’s key is that our brokers and borrowers are open with us from the beginning. Transparency allows our underwriters to get ahead of any potential problems.

If you or your client have questions on any of this, we can be reached online, via email, or over the phone.

Congratulations! You’ve now reached the end of the training video. Thank you for tuning in to Market Financial Solutions’ SPA Training Certification! Don’t forget to test your understanding with the questions at the end. See you next time!