Summary

This style is for use in a purchase of licensed premises, such as a public house, including the business, goodwill, stock and moveable contents associated with such premises. No deposit is envisaged in this style. The style is designed to dovetail with the liquor licensing system introduced by the Licensing (Scotland) Act 2005, which became fully effective on 1 September 2009 following a transitional period during which the outgoing and replacement licensing regimes both operated alongside one another. A significant focus of the style is on the Purchaser's requirement to obtain from the Seller a valid transfer of an existing premises licence by way of an application made to the appropriate local licensing board. A premises licence authorises the sale and supply of alcoholic drinks at licensed premises. The style recognises that the Purchaser may also need to obtain a personal licence on behalf of a suitably qualified employee intended to be engaged by the Purchaser as premises manager at the Property. The style also assumes that the employment contracts of the employees of the Business will transfer to the Purchaser by operation of law under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Another significant feature of the style is the inclusion of a mechanism for the carrying out of works to be undertaken by the Seller in advance of settlement of the transaction (the assumption being that the cost of the works is reflected in the purchase price). The style assumes that the works are extensive enough to warrant the involvement of a professional team (e.g. as designers of the works), the members of which may be required to grant collateral warranties in favour of the Purchaser. The Seller's Works may also be extensive enough to justify the use of a building contract such as one of the standard forms of building contract published by JCT (Joint Contracts Tribunal). The mechanism relating to the Seller's Works ensures the involvement of the Purchaser in the inspection and approval of the works and the issuing of a practical completion certificate (which is a trigger for settlement of the transaction). More generally, the style is drafted from the standpoint of the Purchaser. The Purchaser's due diligence exercise is underpinned by Seller's warranties and suspensive – in preference to resolutive – conditions. The suspensive conditions ensure that in order for the transaction to progress to settlement the Purchaser must be satisfied with, among other things, documentation exhibited (particularly the conditions of any existing premises licence), and other information disclosed, to the Purchaser by the Seller or arising from the Purchaser's own investigations. The Purchaser must also be satisfied as to the validity of the title and with the terms of the property enquiry certificate and other reports and audits etc. ordinarily obtained in the context of a purchase of a commercial property. The extensiveness of the Seller's warranties in the style will normally ensure that the Purchaser is well informed on a range of matters affecting the Property and the Business – for instance matters concerning licensing of the Property, the physical condition of the Property, the adoption status of roads and sewers, and issues affecting the employees of the Business and its financial situation. But even if many, or indeed the majority, of the warranties are ultimately deleted by the Seller, their presence in the style will serve to place the relevant matters on the agenda for the Purchaser's due diligence exercise. To facilitate negotiations various documents, such as assignations of significant interests (e.g. rights arising under construction documentation) and letters of obligation are annexed in the Schedule. In general, the style will need to be modified or adapted in a way that practitioners using the style find to be appropriate to the transaction in hand.