

LETTER TO COMPANY - DRAFT CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE CERTIFICATE OF TITLE (7TH EDITION 2016 UPDATE)

This is the first of two letters which may be sent by the solicitors giving the Certificate to the Company requesting relevant information and confirmations to enable the solicitors to prepare and issue the Certificate.

This letter may be sent with the first draft of the Certificate and gives the Company the opportunity to highlight points in the Certificate which it cannot confirm and certain other information. Where appropriate, the Company should be asked further questions about access to the Property. Once the solicitors have received the Company's response to the first draft, the solicitors can work through any issues with the Company and make appropriate disclosures in the Certificate.

There may be further confirmations required of the Company as the form of the Certificate develops and this letter can be adapted accordingly for that situation.

The second letter, which can be found on the Land Law Committee section of the City of London Law Society's website, may be sent by the solicitors with the final form of the Certificate to the Company.

These letters will need to be amended where a company in the same group of companies as the Company provides documents or information to the solicitors, or where there is a corporate acquisition and confirmations will need to be obtained from the seller of the shares in the Company as well as the Company.

There is no obligation to use these letters. Solicitors may wish to obtain the required information and confirmations from the Company using other documentation, such as questionnaires or other types of enquiries.

Please ensure this italicised wording is removed before sending this letter out.

The Directors

[Name and address of Company] ("**Company**")

[Date] _____

Dear Sirs

CERTIFICATE OF TITLE RELATING TO [_____] ("Property**")**

We enclose a draft certificate of title in respect of the Property. Please can you carefully read through the certificate and confirm, by countersigning the enclosed duplicate of this letter, that to the best of the knowledge, information and belief of the Company, the information contained in the certificate is complete and accurate in all respects.

In addition, other paragraphs of the certificate refer to the Company telling us something or specifically confirming certain points. We set these out below, using the same numbering as in the certificate.

If you cannot confirm any of these points or other information in the certificate, please let us know when you countersign the enclosed duplicate.

We also ask you to provide information about the location of access points to the Property and certain changes of use and the carrying out of certain works.

[You should note the position referred to in clause 4.3 of the certificate where the Company has acquired the Property from the Seller (as defined in the certificate).]

Except where the context otherwise requires, references in this letter to schedules are to schedules to the certificate.

References in this letter to "disclosures" means any disclosure made against a statement in the certificate, or any details of the Property, Lease, Letting Documents and searches and enquiries provided in the schedules to the certificate.

We ask that you confirm the following:

2. CERTIFICATE

2.1.3(a) The Company does not know of any reason why [the Company should not be registered as proprietor of the Property with absolute title¹] [or the Chargee as registered proprietor of the Charge²] [the Chargee should not be registered as registered proprietor of the Charge³], but this is subject to any disclosures.

¹ This statement is relevant where the Company is not the registered proprietor of the Property at the date of the certificate.

² This statement is relevant where there is a chargee or mortgagee for the purchase by the Company.

³ This statement is relevant where there is a financing or refinancing and the Company is the registered proprietor of the Property at the date of the certificate.

SCHEDULE 1

2. ASSUMPTIONS

- 2.2 The Company has provided us with all documents of title relating to the Property of which it has knowledge together with any other information in its possession as is material for the purpose of giving the certificate and each copy document produced to us is a true copy of the original.
- 3.5 The Company is not aware of any circumstances which could render any transaction affecting the Company's title to the Property liable to be set aside under the provisions of the Insolvency Act 1986.⁴

⁴ A transaction could be liable to be set aside under the 1986 Act if for example it was a gift or at an undervalue or with an intention to defraud creditors.

SCHEDULE 3

TITLE

- 1.3 No further land transaction return or payment in relation to stamp duty land tax is required in respect of any transaction involving the Property which has an effective date⁵ prior to the date of the certificate and there is nothing on the face of the documents to suggest otherwise.
- 1.5 A valid option to tax has been exercised by the Company or a body corporate in relation to which the Company is either a relevant associate or a relevant group member over the whole Property and such option has not been, or been deemed to be, disapplied or revoked so that value added tax is due in respect of any supply of the Property by it.⁶
- 3 Information about the location of each point where access is gained to the Property is provided in or with the Company's response to this letter.
- 4.1 So far as the Company is aware, the Benefits⁷ set out in Schedule 2 Part 2 are the only Benefits necessary for the use and enjoyment of the Property for the Existing Use⁸ or if no Benefits are so set out, none are required.
- 5.1 The Company has not received notice of any breach of and is not aware of any breach of any Incumbrances⁹ disclosed in Schedule 2 Part 3 and those Incumbrances do not materially adversely affect the Existing Use.

⁵ "Effective date" is the date of completion of a transfer or lease. It will be earlier if there is a preceding contract to sell or let which is "substantially performed" (for example, where the buyer or tenant goes into occupation between exchange and completion).

⁶ "Exercising a valid option to tax" means carrying out the necessary statutory processes and satisfying the necessary statutory criteria to charge VAT. "Option to tax" includes an option to tax which has been deemed, or treated as having been, exercised.

⁷ This means:

- (i) any right or easement (including any acquired through prescription (use over a specified period)); and
- (ii) any restriction, stipulation, restrictive covenant, mining or mineral right, franchise or other interest;

benefiting the Property, but not including any such matter under a Letting Document. "Letting Documents" are the leases and other rights of occupation and enjoyment to which the Property is subject, as referred to in Schedule 5 Parts 1A and 1B to the certificate.

⁸ The Existing Use is the actual use to which the Property is presently put as referred to in Schedule 2 Part 4 to the certificate.

⁹ This means :

- (i) any covenant, restriction, stipulation, easement, customary or public right, local land charge, mining or mineral right, franchise, manorial right and any other right or interest in or over land in each case whether or not registered; and
- (ii) any interest not included in paragraph (i) above that will override any registrable disposition or where appropriate first registration;

burdening the Property, but not including any such matter granted to a tenant under a Letting Document.

- 5.3 The Company is not aware that any person is in the process of acquiring an Incumbrance over the Property through prescription other than rights to light or rights to air.
- 8.1 The Company is or is entitled to be in actual occupation on an exclusive basis of those parts of the Property as are not the subject of the Letting Documents¹⁰ and, except by virtue of the Letting Documents, no person, other than the Company, has any right (actual or contingent) to possession, occupation or use of, or interest in, the Property.
- 8.2 The Company has inspected the Property not more than 20 working days before the date of the certificate and, so far as it is aware, no one is in adverse possession of the Property or has acquired or is acquiring any rights adversely affecting the Property other than rights to light or rights to air.¹¹
9. There are no insurance policies relating to planning, title or covenants affecting the Property.
- 10.1 The Company has not made and not had occasion to make any claim or complaint in relation to any neighbouring property or its use or occupation.
- 10.2 There are no disputes, claims, actions, demands or complaints in respect of the Property which are outstanding or which are expected by the Company.
11. No notices materially affecting the Property or any of the Benefits¹² detailed in Schedule 2 Part 2 have been given or received by the Company.

PLANNING

- 12.1 The Property is presently used for the Existing Use.¹³
- 12.2 The subsisting planning permission for the Existing Use has been implemented.
- 13.1 The Company is not aware that:
- 13.1.1 any development which has been carried out in relation to the Property is unlawful or has been carried out without any necessary consents or permissions being obtained;
 - 13.1.2 any enforcement proceedings under the Town and Country Planning Legislation have been commenced or notices served; or

Matters under paragraph (ii) above may include public or customary rights, local land charges, squatter's rights or other rights being acquired through prescription, third party occupation, leases granted for 7 years or less and rights to work minerals.

¹⁰ "Letting Documents" are the leases and other rights of occupation and enjoyment to which the Property is subject as referred to in Schedule 5 Parts 1A and 1B to the certificate.

¹¹ For example, squatter's rights or other rights being acquired through prescription. Please provide the date of inspection by the Company if more than 20 working days before the date of the certificate.

¹² See Note 7.

¹³ The Existing Use is the actual use to which the Property is presently put as referred to in Schedule 2 Part 4 to the certificate.

- 13.1.3 any such proceedings or notices have been proposed.
- 13.2 The Company is not aware of any acts, omissions or other circumstances by reason of which a planning enforcement order may be applied for or made in relation to the Property.¹⁴
14. No planning permission affecting the Property is the subject of an existing challenge as to its validity.
- 15.1 The planning permissions affecting the Property are subject only to conditions which have either been satisfied so that nothing further remains to be done under them or, in the case of continuing conditions, are being complied with and the Company knows of no reason why those conditions should not continue to be so complied with.
16. There is no application for planning permission in respect of the Property awaiting determination and no planning decision or deemed refusal which is subject to appeal.¹⁵
- 17.1 The Company is not required to enter into any agreement or planning obligation or planning contribution (together a "Planning Agreement") affecting the Property under:
Section 52 of the Town and Country Planning Act 1971¹⁶
Section 38¹⁷ and 278¹⁸ of the Highways Act 1980
Section 33 of the Local Government (Miscellaneous Provisions) Act 1982¹⁹
Section 106 of the Town and Country Planning Act 1990²⁰
Section 104 of the Water Industry Act 1991²¹
Part 11 of the Planning Act 2008²²
or any provision in legislation of a similar nature.

¹⁴ There is the possibility in England of enforcement action being taken by a local planning authority (LPA) in relation to deliberate concealment of a planning breach, even though the relevant time limit within which enforcement must ordinarily be taken has expired. The LPA may apply to a magistrates' court for a "planning enforcement order" where it appears to them that there may have been such deliberate concealment.

¹⁵ "Deemed refusal" will arise where the local planning authority has not made a decision on a planning application within the statutory period (usually 8 weeks) or such longer period as has been agreed by the authority and the applicant.

¹⁶ Now repealed provision by which applicants for planning permission or other parties could be required to enter into planning obligations usually in relation to the obtaining of planning permission.

¹⁷ Agreement with highway authority (or Minister) for adoption of a highway.

¹⁸ Agreement with highway authority in relation to execution of works to highway.

¹⁹ Agreement between a person with interest in land and a local authority or certain other public authorities to secure the carrying out of works or to regulate the use of land.

²⁰ Planning obligation entered into by person with interest in land usually in relation to application for planning permission.

²¹ Agreement with sewerage undertaker to adopt sewer, drain or sewage disposal works.

²² This relates to the community infrastructure levy, primarily paid by the owners or developers of buildings that are developed.

- 17.2 Where there is any Planning Agreement referred to in 17.1 above, so far as the Company is aware, all of the obligations which have fallen due as at the date of the certificate have been observed or performed and no notice of breach has been received and there are no material obligations which remain to be observed or performed.
20. The Company is not aware of any resolution, proposal, order or act made or contemplated for the compulsory acquisition of the Property or any private access to it.

STATUTORY MATTERS

21. The Company is not aware of any outstanding order, notice or other requirement of any local or other authority that affects the Existing Use or involves expenditure in compliance with it nor of any other circumstances which may result in any such order or notice being made or served.
22. The Company has not received notice of any breach of and is not aware of any material breach of the requirements of any statute affecting the Property that are capable of enforcement at the date of the certificate.

ENVIRONMENT

- 23.1.1 The Company holds all necessary permits, licences, consents, authorisations, registrations or any other approvals (together an "environmental permit") under any legislation relating to pollution or protection of health and the environment (together "environmental laws" which expression is also used in 23.1.2 below) in respect of the Existing Use of the Property²³.
- 23.1.2 The Company has not received any written notices, notifications or orders under any environmental laws in respect of the Property or the Existing Use and it is not aware of any circumstances which may result in any such notices, notifications or orders being made or served.
- 23.3 The Company holds the energy performance certificates for the Property.

GENERAL

- 24.1 No buildings or other structures on the Property have been erected or been subject to extension or major alteration within the six years prior to the date of the certificate.
- 24.2 There are no subsisting agreements, certificates, guarantees, warranties or insurance policies relating to the construction, repair, replacement, treatment or improvement of any building or structure on the Property.

²³ This could include (but without limitation) an Environment Agency licence in relation to dealing with, treating or disposing of waste; consent for storing hazardous substances; or for discharging into waters; or for discharging trade effluent.

25. The Property is not subject to the payment of any outgoings other than the uniform business rate and water rates (and where the Property is leasehold sums due under the Lease²⁴) and all such payments have been made to date.
26. All fixtures and fixed plant at the Property, other than (where the Property is leasehold) landlord's fixtures or (where the Property is subject to a Letting Document²⁵) tenant's fixtures, are, or will on completion of the Transaction²⁶ be, the Company's property free from incumbrances.²⁷

Any statements specified above in relation to Schedule 3 are subject to any disclosures.

²⁴ The lease, by virtue of which the Company holds or will hold the Property, and referred to in Schedule 4 to the certificate.

²⁵ "Letting Documents" are the leases and other rights of occupation and enjoyment to which the Property is subject as referred to in Schedule 5 Parts 1A and 1B to the certificate.

²⁶ The transaction, in respect of which the certificate is to be relied upon.

²⁷ Any matter of an onerous nature, such as a mortgage or hire purchase arrangement.

SCHEDULE 4

THE LEASE²⁸

Part 1A

The name and address of the present landlord under the Lease is set out in Schedule 4 Part 1A.

Part 2

- 3.2 The last instalment of rent (and service charge if any) was paid to and was accepted by the landlord or its agents without qualification.
- 4.3 Where there are any provisions for rent review, no rent reviews are currently outstanding or under negotiation or the subject of a reference to an expert or arbitrator or the courts.
- 13.2 The Company is not aware of any former landlord having been released under Section 8 of the Landlord and Tenant (Covenants) Act 1995 or otherwise.
14. So far as the Company is aware, no collateral assurances, undertakings or concessions have been made by any party to the Lease.
- 15.2 Information about any works carried out by or change of use effected by any tenant is provided in or with the Company's response to this letter²⁹. So far as the Company is aware, there are no other works carried out or change of use effected.
- 18.1 The Company is not aware of any subsisting material breach of the covenants or conditions contained in the Lease, whether on the part of the landlord or the tenant, or of any other event which could give rise to forfeiture of the Lease.
- 18.2 No notice alleging any breach of the covenants or conditions contained in the Lease, whether on the part of the landlord or the tenant, remains outstanding.
- 18.3 So far as the Company is aware, no breach of covenant has been waived or acquiesced in.
- 19.2 A valid option to tax has been exercised by the landlord or a body corporate in relation to which the landlord is either a relevant associate or a relevant group member over the whole Property and such option has not been, or been deemed to be, disapplied or

²⁸ The lease, by virtue of which the Company holds or will hold the Property, and referred to in Schedule 4 to the certificate.

²⁹ Some of this information will be revealed by documents reviewed by us.

revoked so that value added tax is due in respect of any supply of the Property by the landlord.³⁰

- 19.4 The Company is not aware of any reason why the landlord should be prevented from charging value added tax in relation to supplies made to the tenant (in particular as a result of the operation of any of the disapplication provisions in Schedule 10 to the Value Added Tax Act 1994).³¹
- 20.1 Neither the grant of the Lease nor any agreement for the grant of the Lease was exempt from charge to stamp duty land tax by virtue of any of the provisions specified in paragraph 11(2) of Schedule 17A ('cases where assignment of lease treated as grant of lease'³²) to the Finance Act 2003 ("FA 2003").
- 20.2 Nothing is, or may be, required or authorised to be done by the tenant or any successor in title in respect of the grant of the Lease or any agreement for the grant of the Lease under or by virtue of any of the provisions mentioned in paragraph 12 ("Assignment of lease: responsibility of assignee for returns etc") of Schedule 17A to the FA 2003.³³

Any statements specified above in relation to Schedule 4 are subject to any disclosures.

³⁰ "Exercising a valid option to tax" means carrying out the necessary statutory processes and satisfying the necessary statutory criteria to charge VAT. "Option to tax" includes an option to tax which has been deemed, or treated as having been, exercised.

³¹ For example, because the tenant is using the Premises for a relevant charitable purpose, or there was an intention or expectation that the land would become exempt for VAT purposes.

³² For example, where the grant of the Lease was exempt from stamp duty land tax, because of group relief or a sale and leaseback arrangement or charities relief.

³³ Relevant, for instance, where the transaction involved consideration (for example, money to be paid) that was contingent, unascertained or uncertain. There may be stamp duty land tax implications when the consideration is no longer contingent or is ascertained or becomes certain. Paragraph 12 of Schedule 17A also relates to a return or further return in consequence of a later linked transaction, or where a lease for an indefinite period continues (such as leases that continue after a fixed term).

SCHEDULE 5

THE LETTING DOCUMENTS³⁴ (the confirmations are required in respect of each Letting Document)

Part 2

2. The Premises the subject of the Letting Document are occupied by the tenant or the person authorised pursuant to the Letting Document to be in occupation.
- 3.2 All rent and additional rent, service charges or other payments have been paid to date and no rent or other payment has been commuted, waived or paid in advance of the due date for payment.
- 3.3 Where any fixed charge was not paid on the due date and is still in arrears for more than three months, an effective notice has been served under section 17 of the Landlord and Tenant (Covenants) Act 1995 on every relevant former tenant and on every relevant guarantor of a former tenant and the disclosures contain full particulars of all such notices.³⁵
- 4.2 Where there are any provisions for rent review:
 - 4.2.1 all steps in current rent reviews have been duly taken and no rent reviews are currently under negotiation or the subject of a reference to an expert or arbitrator or the courts.
 - 4.2.3 no building, alteration or improvement has been carried out pursuant to an obligation to the landlord.
- 10.2 Where the premises comprised in the Letting Document form part of the Property:
 - 10.2.1(c) there are provisions for payment of a service or other similar charge which entitle the landlord to recover from the tenant the appropriate part of the cost of providing a range of services which are reasonable and appropriate for the type of buildings in the Property;
 - 10.2.2 there are no material irrecoverable items, caps or other limitations on recovery of the costs referred to in paragraph 10.2.1 of Part 2 of Schedule 5;
 - 10.2.3 there are no lettable areas of the Property that are currently unlet.
- 13.1 No notice has been served in respect of any Letting Document pursuant to Sections 25 or 26 of the Landlord and Tenant Act 1954.

³⁴ "Letting Documents" are the leases and other rights of occupation and enjoyment to which the Property is subject as referred to in Schedule 5 Parts 1A and 1B to the certificate.

³⁵ Notice required to be served by the 1995 Act on any former tenant or relevant guarantor if they are to be obliged to pay the arrears.

16. No person has made a claim for an overriding lease³⁶ under Section 19 of the Landlord and Tenant (Covenants) Act 1995 against the Company nor, so far as it is aware, against any of its predecessors and, so far as it is aware, no person is entitled to make such a claim and, so far as it is aware, no notice has been served under Section 17 of the 1995 Act (other than those referred to in paragraph 3.3 of Part 2 of Schedule 5) which would give rise to any such entitlement.
17. So far as the Company is aware, no collateral assurances, undertakings or concessions have been made by any party to any Letting Document.
- 20.1 The Company is not aware of any subsisting material breach of the covenants or conditions contained in the Letting Document, whether on the part of the landlord or the tenant, or of any other event which could give rise to forfeiture of the Letting Document.
- 20.2 No notice alleging any breach of the covenants or conditions contained in the Letting Document, whether on the part of the landlord or the tenant, remains outstanding.
- 20.3 So far as the Company is aware, no breach of covenant has been waived or acquiesced in.
- 22.2 A valid option to tax has been exercised by the Company or a body corporate in relation to which the Company is either a relevant associate or a relevant group member over the whole Property and such option has not been, or been deemed to be, disapplied or revoked so that value added tax is due in respect of any supply of the Property by it.³⁷
- 22.4 The Company is not aware of any reason why it should be prevented from charging value added tax in relation to supplies made by it under any Letting Document (nor, therefore, why its recovery of input value added tax attributable to those supplies should be restricted), in particular as a result of the operation of any of the disapplication provisions in Schedule 10 to the Value Added Tax Act 1994.³⁸
24. So far as the Company is aware, no notice of intention to make improvements has been served under Section 3(1) of the Landlord and Tenant Act 1927.³⁹
26. The Company is not aware of any sub-letting, parting with possession or sharing of occupation by any tenant.

³⁶ An entitlement to an overriding lease, which would slot above the relevant Letting Document, arises where a former tenant or its guarantor pays arrears of rent following the service of a section 17 notice under the 1995 Act requiring such payment.

³⁷ "Exercising a valid option to tax" means carrying out the necessary statutory processes and satisfying the necessary statutory criteria to charge VAT. "Option to tax" includes an option to tax which has been deemed, or treated as having been, exercised.

³⁸ For example, because the tenant is using the Premises for a relevant charitable purpose, or there was an intention or expectation that the land would become exempt for VAT purposes.

³⁹ The concern here being that the tenant may be entitled to compensation for improvements.

28. So far as the Company is aware, the Letting Document has not been varied in such a way as to give rise to a surrender and regrant or as to render any former tenant or the guarantor of any former tenant no longer or not fully liable to comply with any tenant covenant, whether under the Landlord and Tenant (Covenants) Act 1995 or at common law.⁴⁰

Any statements specified above in relation to Schedule 5 are subject to any disclosures.

⁴⁰ A surrender of the Letting Document and regrant of a new lease would arise where the term or the extent of the let premises is increased. Any former tenant or its guarantor may be released (in whole or in part) where it has not consented to a variation of the obligations it is guaranteeing.

Yours faithfully

[LAW FIRM SIGNATURE]

On duplicate

We acknowledge receipt of the original of the above letter together with the draft certificate of title referred to. We confirm that to the best of our knowledge, information and belief, the information contained in the certificate is complete and accurate in all respects and we further confirm the specific points set out in this letter, with the exception of the following:

[PLEASE LIST THE CLAUSE NUMBER OR SCHEDULE/PART/PARAGRAPH NUMBER OF ANY INFORMATION OR POINTS IN THE CERTIFICATE WHICH THE COMPANY CANNOT SO CONFIRM]

We are able to provide the following information about the location of each point where access is gained to the Property (see paragraph 3 on page 4 of this letter).

[INSERT INFORMATION]

We are able to provide the following information about any works carried out by or change of use effected by any tenant under the Lease (see paragraph 15.2 on page 9 of this letter).

[INSERT INFORMATION]

.....

Director for **[NAME OF COMPANY]**

Dated this ____ day of _____ 20__.