

**CLLS LAND LAW COMMITTEE DRAFT FORM OF OVERSEAS LEGAL OPINION ON TRANSACTIONS RELATING TO REAL PROPERTY IN ENGLAND AND WALES (FORM PRODUCED IN NOVEMBER 2012, UPDATED MAY 2018 TO REFLECT IN PARAGRAPH 5.2.1 THE LAND REGISTRY'S NEW EXECUTION WORDING FOR AN OVERSEAS COMPANY EXECUTING A DEED)**

201[●]

***Note:** As many firms, who may be asked to provide a legal opinion on an overseas company or other vehicle or partnership entering into a transaction relating to real property in England and Wales, will have their own standard form(s) of opinion, this form of opinion serves as a checklist as well as a precedent. This opinion is not intended to be used as the basis for an opinion on the law of England and Wales.*

To: **[specify name of addressee(s) of the opinion]**

Dear Sirs

[ ]

We are legal advisers to [ ] (the "**Company**") and are duly qualified to practice in **[country, and, if applicable, State of origin]** (the "**Jurisdiction**").

**1. Request for legal opinion**

We have been requested to give a legal opinion as to:

- 1.1 the validity of the intended execution of the documents by the Company listed in [the] Schedule [1] ("**the Agreements**" and "**Agreement**" is to be construed accordingly) by **[name/names], [capacity/capacities]** of the Company; and
- 1.2 the enforceability of the Agreements under the laws of the Jurisdiction.

**2. Examination of documents**

We have examined such documents [and undertaken such searches] as we have considered necessary for the purpose of giving this opinion, including, without limitation, the Agreements [and the other documents listed in Schedule 2 to this letter].

**3. Opinion and the Law of the Jurisdiction**

Our opinion is limited to the law of the Jurisdiction as at the date of this letter.

#### 4. **Assumptions made**

We have assumed, without enquiry, that:

- 4.1 all documents furnished to us as originals are authentic and complete;
- 4.2 all documents furnished to us as copies conform to the original documents of which they appear to be copies;
- 4.3 no documents furnished to us have been amended subsequently;
- 4.4 the Agreements are within the capacity and powers of, and will be duly authorised, executed and delivered by or on behalf of, each of the parties other than the Company;
- 4.5 the Agreements will, when duly executed and delivered [or exchanged], constitute valid, binding and enforceable obligations of the Company under the law of England and Wales.

#### 5. **In our opinion:**

##### 5.1 **Status**

The Company is a [limited liability company<sup>1</sup>], which has a separate legal personality and is duly established under the laws of the Jurisdiction. The Company has no limitation as to the duration of its corporate existence and possesses the capacity to sue or be sued in its own name. The Company's ownership of property is separate from the ownership of its members and officers.

##### 5.2 **Enforceability of Agreements**

- 5.2.1 The Agreements, when duly executed by the Company, will be recognised as constituting valid and binding obligations of the Company enforceable in the courts of the Jurisdiction.

In relation to due execution of the Agreements by the Company, the constitution of the Company provides that the duly appointed [President] [Vice President] [Senior Corporate Officers] of the Company from time to time are empowered to execute documents in the nature of the Agreements on its behalf and **[name]** is such a duly appointed and authorised corporate officer and the Agreements will be duly executed by the Company if they are signed by [him]. All necessary corporate and other action has been taken to enable the Company validly to

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<sup>1</sup> Amend if the Opinion concerns an alternative vehicle or partnership. If so, consider whether an alternative definition to "Company" should be used and what other amendments are required to the form of Opinion.

execute and deliver the Agreements. The proper method of execution of the Agreements by the Company in the Jurisdiction is set out below<sup>2</sup>:

Executed as a deed by (name of company), a company incorporated in (territory), acting by (full name(s) of person(s) signing) who, in accordance with the laws of that territory, [is][are] acting under the authority of the company.

Signature in the name of the company

Signature of

Authorised [signatory][signatories]

5.2.2 The entry into any of the Agreements and performance of the Company's obligations under the Agreements will not violate:

5.2.2.1 any present law, regulation, order, rule or treaty of or in the Jurisdiction; nor

5.2.2.2 the constitutional documents of the Company.

5.2.3 The Company has power to acquire, hold, sell, mortgage, charge, lease and otherwise deal with freehold and leasehold land in England and Wales and to enter into all documentation in connection with any freehold or leasehold land in England and Wales.

5.2.4 No authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations or other requirements of governmental, judicial or public bodies or authorities of or in the Jurisdiction are required or advisable in connection with the entry into, performance, validity, and enforceability of the Agreements.

5.2.5 No stamp, registration, documentary or similar tax is payable in respect of the entry into, performance or enforcement of the Agreements or to render them admissible in evidence in the Jurisdiction.

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<sup>2</sup> The execution wording in paragraph 5.2.1 is that usually required by the Land Registry for overseas companies executing deeds <https://www.gov.uk/government/publications/overseas-companies-and-limited-liability-partnerships-pg78/practice-guide-78-overseas-companies-and-limited-liability-partnerships#execution-of-deeds-by-overseas-companies>. Of course, such execution wording may not be valid in the Jurisdiction, hence the need for the Opinion to confirm the position. The execution wording will also need to be amended if for example the document is not a deed or if the authorised signatory is a corporate body. The Land Registry requires provision of the certified copy of the constitution or a duly completed Land Registry form 7 (Certificate of powers of overseas companies) for overseas companies, so that a form of opinion from overseas counsel will not suffice for Land Registry purposes.

- 5.2.6 No deduction or withholding, whether on account of tax or otherwise, will be required from any payment by the Company under the Agreements in the Jurisdiction.
- 5.2.7 Neither the Company nor its assets is entitled to immunity from suit, execution, attachment or other legal process in the Jurisdiction.
- [5.2.8 The Company's payment obligations under the Agreements rank at least equally or rateably in all respects with its other unsecured and unsubordinated indebtedness [except for obligations mandatorily preferred by law applying to companies generally].<sup>3</sup>]
- 5.2.9 The Company does not require any consent or authorisation, whether under exchange control regulations or otherwise, to transfer money out of the Jurisdiction in fulfilment of its obligations under the Agreements.
- 5.2.10 So far as we are aware, after making due enquiry<sup>4</sup>, no proceedings have been started or other steps taken for the winding-up or dissolution of the Company or the appointment of an administrator, liquidator, receiver, trustee or similar officer of the Company or any of its assets or revenues, or any analogous event in the Jurisdiction<sup>5</sup>.
- 5.2.11 A final judgment (which includes, without limitation, any equitable remedy) obtained in the courts of England and Wales in respect of any of the Agreements would be recognised and enforced by the courts of the Jurisdiction without re-examination of the merits of the case.<sup>6</sup>
- 5.2.12 The choice of the law of England and Wales as proper law of each of the Agreements will be valid and binding and not subject to revocation and is recognised and given effect to by the courts of the Jurisdiction.<sup>7</sup>
- 5.2.13 Any submission to jurisdiction by the Company and appointment of process agents contained in any of the Agreements is valid and binding on the Company and not subject to revocation.

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<sup>3</sup> For the reasons explained in paragraph 49 of the CLLS Guide on English legal opinions in financial transactions, this type of "pari passu" opinion is generally made only with qualifications and is often not given at all.

<sup>4</sup> If "due enquiry" is considered too wide, an alternative might be "searches on [insert date] at [insert details of relevant registries]".

<sup>5</sup> Consider the cost implications of making "due enquiry" as this may entail material extra expense.

<sup>6</sup> If there is no treaty between the relevant states, and it is necessary to start a new action in the overseas jurisdiction based on the judgment obtained in the courts of England and Wales, this sub-paragraph would need to be qualified or deleted.

<sup>7</sup> This statement may be inappropriate depending on the jurisdiction in which the company is established or its centre of main interests.

- 5.2.14 Any address within any part of the United Kingdom given in any Agreement as an address for service of proceedings in respect of such Agreement is valid and binding on the Company.
- 5.2.15 The Agreements contain no provision which is contrary to public policy in the Jurisdiction, or which would for any reason not be upheld by the courts of the Jurisdiction.<sup>8</sup>
- 5.2.16 No party to any Agreement is or will become (or be deemed to have become) resident, domiciled, engaged in the carrying on of business or subject to taxation in the Jurisdiction by reason only of the negotiation, preparation, execution, delivery, performance or enforcement of or receipt of any payment under any Agreement. It is not necessary for a party to any Agreement (other than the Company) to establish a place of business or be licensed, qualified or otherwise entitled to carry on business in the Jurisdiction, or to meet any other criteria applicable under the laws of the Jurisdiction for the entry into, performance or enforcement of any Agreement.

## 6. **Qualifications to opinion**

[This opinion is subject to the following qualifications:]

***[Note: You should not be surprised to find that the firm giving the opinion will seek to introduce various qualifications to the opinion, which address a variety of issues.]***

## 7. **Who may rely on this opinion**

This opinion is addressed to you solely for your benefit and for the purpose of the Agreements. You or your legal advisors may use this opinion in relation to registering or noting the Agreements at the Land Registry<sup>9</sup>.<sup>10</sup> [In addition, this opinion may be relied upon by [ ] [any successors in title to your interest in the property to which the Agreements relate] and your legal advisors.] It is not to be relied upon by anyone else or for any other purpose without our express consent.

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<sup>8</sup> Paragraph 5.2.15 may well be resisted by the provider of the opinion in view of the ill-defined nature of public policy. The provider of the opinion may want to preface this paragraph with the words "As far as we are aware,".

<sup>9</sup> The Land Registry requires provision of the certified copy of the constitution or a duly completed Land Registry form 7 (Certificate of powers of overseas companies) for overseas companies, so that a form of opinion from overseas counsel will not suffice for Land Registry purposes.

<sup>10</sup> Consider inclusion of any mortgagee if opinion is addressed, for example, to a purchaser.

In banking related transactions consider including a clause such as "Entry into the Agreements will not cause the Company to infringe its obligations to third parties under the terms of a debenture, trust deed, agreement or other instrument to which the Company is a party, or by which any of its property, undertaking, assets or revenues are bound, such that cross-default may arise".

Yours faithfully

Partner/Duly authorised to sign on  
behalf of [ ]

**Schedule [1]**

1. [A [certified] copy of] a proposed Contract to be made between [ ] and [ ] (draft annexed dated [ ]).
2. [A [certified] copy of] a proposed Transfer (in Land Registry form TR1) to be made between [ ] and [ ] (draft annexed dated [ ]).
3. [A [certified] copy of] a proposed Lease to be made between [ ] and [ ] (draft annexed dated [ ]).

***[Include any of the above documents that are relevant and/or any other documents as appropriate.]***

**[Schedule 2]**

***[Other documents such as (a) the constitutional documents; (b) the resolution of the board of directors of the Company or other entity authorising the execution, delivery and performance of the Agreements and authorising a person or persons to sign the Agreements; (c) the results of [relevant searches]; and (d) any other relevant documents.]***