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4th May 2019

Dear Katherine

RICS draft professional statement - Code for leasing business premises in England and Wales, 1st edition

The City of London Law Society ("CLLS") represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. This response on the RICS draft professional statement: Code for leasing business premises in England and Wales, 1st edition is by the CLLS specialist Land Law Committee, the details of which are on the CLLS website herewith:

http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=142&Itemid=469

The Committee has considered the proposed Code for leasing business premises in England and Wales 2019. The Committee is of the view that it achieves a more sensible and balanced position between landlords and tenants than the previous draft of the Code consulted on by the RICS.

The Committee considers that the mandatory requirements are proportionate and supports the option of landlords and agents being able to use their own form of heads of terms, provided the heads satisfy the “minimum heads of terms checklist”. The heads of terms are appropriate for a new lease of commercial property. In view of the regulatory implications for RICS surveyors and firms of the mandatory requirements, we consider that the Code should acknowledge that the heads of terms may be inappropriate for certain types of letting including reversionary leases; sub-station or electronic communications apparatus leases; leases for a long term at a capital sum; and leases of certain public assets/asset classes where other forms are more appropriate, for example, in relation to schools or healthcare. For those and other leases that do not conform to the typical business lease model, it should be made clear in the Code that alternative heads of terms can be used.

In relation to paragraph 3.3 of Part 3 of the Code, the words “there being no rent arrears” should be deleted, since this could be interpreted to extend beyond the basic rent. The condition relating to payment by the tenant up to the end date is limited to the basic rent (and does not extend to items such as service charge or insurance premiums). In our view, this is reflective of the bargain on the condition of rent payment that is typically struck between landlords and tenants.

The consultation draft does not provide any of the RICS’s standard wording on the status of the Code being a professional statement. This should highlight the sanctions for an RICS surveyor or firm breaching the mandatory requirements in particular. It would be helpful for the Code to make clear the status of paragraphs 2-13 of the Code. Those paragraphs appear to have the status of good practice and the Code should be clear as to the circumstances when departures are acceptable.

The Committee considers that the supplemental guide in Appendix B is a helpful aide memoire and will be especially useful for parties who are less experienced in leasing or taking a lease of business premises.

If you have any queries about this response, please do not hesitate to contact us.

Yours sincerely

Jackie Newstead
Chair, Land Law Committee
City of London Law Society

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