

**CLLS LAND LAW COMMITTEE DRAFT FORM OF OVERSEAS LEGAL OPINION ON
TRANSACTIONS RELATING TO REAL PROPERTY IN ENGLAND AND WALES (FORM REVIEWED
AND UPDATED SEPTEMBER 2022)**

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.

Your Ref:

Our Ref: Fee earner Initials/Secretary
 Initials/Matter Number

Please quote this when replying

Date:

Please ask
for: Fee Earner Name
Ext: Extension
Direct Dial: Direct Dial Number
E-mail: Email Address
Direct Fax: Location Fax

To: [SPECIFY NAME AND ADDRESS OF ADDRESSEE(S) OF THE OPINION]

[And HM LAND REGISTRY - TO WHOM IT MAY CONCERN]

From: [SPECIFY NAME AND ADDRESS AND, WHERE RELEVANT, CORPORATE REGISTRATION NUMBER OF FIRM OR PERSON PROVIDING THE OPINION]

To be provided on the letterhead of [INSERT NAME OF FIRM OR PERSON PROVIDING OPINION]

Dear Sirs

Re: [Property Address - title number] (the "Property")

[Transaction description] between [Parties] (the "Transaction")

We are legal advisers to [INSERT NAME] a [INSERT ENTITY TYPE e.g. a company, a partnership] (the "Entity") incorporated in [COUNTRY, AND, IF APPLICABLE, STATE OF ORIGIN] (the "Jurisdiction").

We are duly qualified to and do practice law in the Jurisdiction.

1. Request for legal opinion

We refer to the Property and the Transaction.

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

1.1 the validity of the [intended] execution of the documents by the Entity listed in [the] schedule [1] (the "**Opinion Documents**" and "**Opinion Document**" is to be construed accordingly) by the Entity and

1.2 the enforceability of the Opinion Documents 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 Opinion Documents [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 Opinion Documents 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 Entity;

4.5 the Opinion Documents will, when duly executed and delivered [or exchanged], constitute valid, binding and enforceable obligations of the Entity under the law of England and Wales.

5. **In our opinion:**

5.1 **Status**

The Entity is a [limited liability company] [limited [liability]] [general] partnership] [OR AS APPROPRIATE], [which has a separate legal personality and] is duly established under the laws of the Jurisdiction. The Entity 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 Entity's ownership of property is separate from the ownership of its members and officers.

5.2 **Enforceability of Opinion Documents**

5.2.1 The Opinion Documents, when duly executed by the Entity will be recognised as constituting valid and binding obligations of the Entity enforceable in the courts of the Jurisdiction.

5.2.2 In relation to due execution of the Opinion Documents by the Entity, the constitution of the Entity provides that the duly appointed [President] [Vice President] [Senior Corporate Officers] [Directors] of the Entity from time to time are empowered to execute documents in the nature of the Opinion Documents on its behalf and [INSERT NAME] is such a duly appointed and authorised corporate officer and the Opinion Documents will be duly executed by the Entity if they are signed by [him] [her]. All necessary corporate and other action has been taken to enable the Entity validly to execute and deliver the Opinion Documents. The proper method of execution of the Opinion Documents by the Entity in the Jurisdiction is set out below:¹

EXECUTED as a **DEED** by **[NAME OF ENTITY]**,
a company incorporated in **[INSERT TERRITORY]** acting by **[INSERT FULL NAME(S) OF PERSON(S) SIGNING]** who, in accordance with the laws of that territory, [is OR are] acting under the authority of the company

Signature in the name of **[TYPE NAME OF ENTITY]**
[Entity]:

.....

Signature of authorised
signatory of [Entity]:

Name of authorised signatory
(in block capitals):

[Note: Repeat the second and third lines where there is an additional signatory for the Entity]

5.2.3 The entry into any of the Opinion Documents and performance of the Entity's obligations under the Opinion Documents will not violate:

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

5.2.3.2 the constitutional documents of the Entity.

5.2.4 The Entity 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.

5.2.5 No authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations or other requirements of governmental, judicial or

¹ Bear in mind that the form of execution required by the Land Registry has now changed and this letter has been updated to reflect that. The Land Registry wording is for an overseas company and may need to be changed if it is not a company. The execution block here should reflect that contained in the actual documents.

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 Opinion Documents.

- 5.2.6 No stamp, registration, documentary or similar tax is payable in respect of the entry into, performance or enforcement of the Opinion Documents or to render them admissible in evidence in the Jurisdiction.
- 5.2.7 No deduction or withholding, whether on account of tax or otherwise, will be required from any payment by the Entity under the Opinion Documents in the Jurisdiction.
- 5.2.8 Neither the Entity nor its assets is entitled to immunity from suit, execution, attachment or other legal process in the Jurisdiction.
- 5.2.9 [The Entity's payment obligations under the Opinion Documents 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].]
- 5.2.10 The Entity 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 Opinion Documents.
- 5.2.11 So far as we are aware, after making [due enquiry] [searches on [INSERT DATE] at [INSERT DETAILS OF RELEVANT REGISTRIES], no proceedings have been started or other steps taken for the winding-up or dissolution of the Entity or the appointment of an administrator, liquidator, receiver, trustee or similar officer of the Entity or any of its assets or revenues, or any analogous event in the Jurisdiction.
- 5.2.12 A final judgment (which includes, without limitation, any equitable remedy) obtained in the courts of England and Wales in respect of any of the Opinion Documents would be recognised and enforced by the courts of the Jurisdiction without re-examination of the merits of the case.²
- 5.2.13 [The choice of the law of England and Wales as proper law of each of the Opinion Documents will be valid and binding and not subject to revocation and is recognised and given effect to by the courts of the Jurisdiction].³
- 5.2.14 Any submission to jurisdiction by the Entity and appointment of process agents contained in any of the Opinion Documents is valid and binding on the Entity and not subject to revocation.

² 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.,

³ This statement may be inappropriate depending on the jurisdiction in which the company is established or its centre of main interests.

5.2.15 Any address within any part of the United Kingdom given in any Opinion Document as an address for service of proceedings in respect of such Opinion Document is valid and binding on the Entity.

5.2.16 So far as we are aware, the Opinion Documents 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.⁴

6. ⁵**Qualifications to opinion**

[This opinion is subject to the following qualifications: [INSERT QUALIFICATIONS].]⁶

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

7.1.1 [Subject to [7.1.3] [and] [7.1.2] this opinion is addressed to you solely for your benefit and for the purpose of the Opinion Documents.]

7.1.2 [In addition, this opinion may be relied upon by [INSERT NAME] [any successors in title to your interest in the property to which the Opinion Documents relate] and [his] [her] [its] [their] legal advisors.]

7.1.3 [You or your legal advisors (and any other person who has cause to apply to HM Land Registry in relation to the Transaction) may also use this opinion in relation to registering or noting the Opinion Documents at HM Land Registry and this opinion may also be disclosed to and relied upon by HM Land Registry for this purpose alone⁷.]

7.1.4 It is not to be relied upon by anyone else or for any other purpose without our express written consent.⁸

8. **[HM Land Registry – Form 7 Certificate and Certified Copy Documents**

8.1.1 For the purpose of compliance with the requirements of HM Land Registry we enclose the following documents:

8.1.1.1 [a "Form 7" certificate (in the form required by HM Land Registry in practice guide 78 paragraph 4.1);]⁹

⁴ The provider of the opinion may resist this in view of the ill-defined nature of public policy.

⁵ Previous para 5.2.17 and 5.2.18 removed as it is not thought likely that overseas law firms would be willing to include, at least not without material amendment and potentially protracted discussion/negotiation which is contrary to intended approach of a draft opinion of this type.

⁶ 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 Note that HM Land Registry will only accept an opinion if it conclusively complies with Form 7 in PG78 and is neither qualified nor conditional. To avoid being caught out by qualifications or limitations it may be safer to provide a separate form 7 certificate – see the optional para 8 below. Also consider if supplying a full opinion to the Land Registry is appropriate – remember the full opinion letter may cover other confidential documents which should not be disclosed to HMLR.

⁸ This may need to be expanded to allow reliance by a mortgagee and its legal advisers if the opinion is being obtained by a buyer/borrower.

⁹ PG78 at para 4.1 provides for: "a certificate in Form 7 completed by a qualified lawyer practising in the territory of incorporation of the company". Form 7 is set out on page 9 for ease of reference and will be an enclosure with the opinion.

- 8.1.1.2 a certified copy of the charter, rules, statute, memorandum and articles of association or other document(s) constituting the Entity [;¹⁰
- 8.1.1.3 to the extent that the documents set out in 8.1.1.2 are in a language other than English or Welsh we also enclose a certified or notarised translation of the same].¹¹

9. [Power of Attorney

- 9.1.1 We refer to the Power of Attorney made between [●] and [●] dated [●] (the "Power of Attorney").
- 9.1.2 The Opinion Documents are to be executed by [describe attorney] (the "Attorney")
- 9.1.3 We confirm that:
 - 9.1.3.1 execution by the Attorney is permitted by the laws of the Jurisdiction in which the Entity is incorporated
 - 9.1.3.2 the Entity has the legal capacity to appoint the Attorney
 - 9.1.3.3 the Entity has complied with any formalities governing the appointment of an Attorney in the Jurisdiction and is bound by the Power of Attorney
 - 9.1.3.4 the Power of Attorney authorised the Attorney to execute the relevant document on behalf of the Entity, and
 - 9.1.3.5 the Power of Attorney remained valid at the time of execution of the Opinion Documents].¹²

Yours faithfully

[Signatory Name]

[Insert relevant bar association/law society name and professional registration number]

Partner/Duly authorised to sign on

behalf of [Firm Name]

¹⁰ PG78 at para 4.1 requires alternatively (but it may be useful to have both): "a certified copy of the charter, rules, statute, memorandum and articles of association or other document(s) constituting the company".

¹¹ This may prove useful for Land Registry requirements – PG78 provides that "any documentation in a language other than English or Welsh must be accompanied by a certified or notarised translation.

¹² PG78 para 5.3.5 requires a foreign power of attorney to be accompanied by a suitable opinion letter. This optional paragraph is intended to deal with those requirements, albeit the Land Registry may object to the qualifications in the opinion.

SCHEDULE 1

1. [A [certified] copy of] a Power of Attorney made between [●] and [●] dated [●].
2. [A [certified] copy of] a proposed Contract for Sale [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
3. [A [certified] copy of] a proposed Transfer [(in HM Land Registry form TR1)] [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
4. [A [certified] copy of] a proposed Agreement for Lease [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
5. [A [certified] copy of] a proposed Lease [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
6. [A [certified] copy of] a proposed Licence for Alterations [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
7. [A [certified] copy of] a proposed Licence to Assign [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
8. [A [certified] copy of] a proposed Licence to Underlet [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
9. [A [certified] copy of] a proposed Guarantee [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
10. [A [certified] copy of] a proposed Rent Deposit Deed [to be] made between [●] and [●] [(draft annexed)] [dated [●]].
11. [A [certified] copy of] a proposed [describe other document] [to be] made between [●] and [●] [(draft annexed)] [dated [●]].¹³

¹³ Include any of the above documents that are relevant and/or any other documents as appropriate.

SCHEDULE 2

The charter, rules, statute, memorandum and articles of association or other document(s) constituting the Entity.

[List other documents inspected such as:

(a) the resolution of the board of directors of the Entity authorising the execution, delivery and performance of the Opinion Documents and authorising a person or persons to sign the Opinion Documents;

(b) the results of [relevant searches]; and

(c) any other relevant documents.]

[To the extent that the aforesaid are in a language other than English or Welsh a certified or notarised translation is also enclosed.]¹⁴

¹⁴ This may prove useful for Land Registry requirements – PG78 provides that "any documentation in a language other than English or Welsh must be accompanied by a certified or notarised translation.

[To: HM LAND REGISTRY - TO WHOM IT MAY CONCERN

From: [SPECIFY NAME AND ADDRESS OF PERSON AND FIRM PROVIDING THE OPINION]

To be provided on the letterhead of [INSERT NAME OF FIRM OR PERSON PROVIDING OPINION]

Dear Sirs

Re: Form 7 – Certificate of powers of overseas companies relating to:

[Property Address - title number] ("the Property")

[Transaction description] between [Parties] ("the Transaction")

[I] [We] [INSERT NAME OF PERSON PROVIDING THE OPINION AND FIRM NAME AND WORKPLACE ADDRESS, INCLUDING COUNTRY] certify as follows:

1. [I] [We] refer to the Property and the Transaction.
2. [I] [We] give this certificate in respect of [INSERT NAME] a [INSERT ENTITY TYPE e.g. a company] (the "**Entity**").
3. [I] [We] practice law in [COUNTRY, AND, IF APPLICABLE, STATE OF ORIGIN] (the "**Territory**") and we are entitled to do so as [a qualified lawyer] [qualified lawyers] under the law of the Territory.
4. [I] [We] have the requisite knowledge of the law of the Territory and of the Entity to give this certificate.
5. The Entity is incorporated in the Territory with its own legal personality.
6. The Entity has no limitations on its power to hold, mortgage, lease and otherwise deal with, or to lend on a mortgage or charge of, land in England and Wales.

Yours faithfully

[Signatory Name]

[Insert relevant bar association/law society name and professional registration number]

[Partner/Duly authorised to sign on

behalf of [Firm Name]]]

Date