

# LETTER OF CONSENT TO ASSIGNATION

## Guidance Notes



### Introduction

This Letter of Consent is for use where you are acting for the Landlords in consenting to the Tenants assigning their interest in a Lease to another party.

The Landlords may require a guarantor for the Assignees or a rent deposit from the Assignees. The PSG style Letter of Consent includes wording for a guarantee but if a rent deposit is required instead or in addition to a guarantee you will need to insert additional wording. Normally all that will be required will be definitions of "Rent Deposit Agreement" (the form of which should be attached as a schedule) and "Rent Deposit Sum" and provisions regarding the mechanics of entering into the agreement (similar to those in respect of the Guarantee) and payment of the Rent Deposit Sum.

#### 1 **Condition 1 Definitions**

It is assumed (and recommended) that the draft Assignment is attached to the Letter of Consent. If this is not the case amend the definition of Assignment appropriately.

Delete those definitions that will not apply in your transaction eg Guarantee, Guarantors, Head Landlords and Heritable Creditors and insert any additional definitions required such as Rent Deposit Agreement, Rent Deposit etc.

Although the PSG do not consider it necessary, you can if you wish refer to all the letting documentation, in which case the definition "Lease" should be amended accordingly and the letting documentation listed in the schedule.

#### 2 **Condition 2 Tenants' Confirmation**

This is designed to cater for the situation where there is some side agreement which alters the financial terms of the arrangement, having regard to case law (mostly English) on this matter.

#### 3 **Condition 3 Landlords' execution and delivery of assignment**

If the Landlords do not want to be a party to the Assignment this Condition can be deleted but be aware of the following points if you delete this Condition:-

- the Landlords will need to be satisfied that there are no arrears of rent before the Letter of Consent is issued;
- if third party consents (such as head landlords' or heritable creditors' consent) have not been obtained before the Letter of Consent is issued you will need to include Condition 6 making the consent to assignment conditional on those third party consents being obtained within a certain timeframe;

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- unless the Landlords' legal fees have been paid before the Letter of Consent is issued the wording in square brackets in Condition 8 (Costs) giving a time limit for payment of the Landlords' costs must be included.

If Condition 3 is remaining in the Letter of Consent delete Condition 6 and any of Conditions 3.2.1-3.2.3 which do not apply to your transaction.

The usual practice used to be for the landlords to sign the assignment last if the landlords were a party to the assignment. As a result of the new SDLT regime this practice could cause problems for the assignees. The effective date for SDLT purposes, from which the 30 day period for submission of the SDLT return and payment of any SDLT runs will be the last date of execution of the assignment. If the landlords are last to sign and then delay the return of the signed assignment the assignees could run the risk of submitting their SDLT return and payment late. We recommend therefore that the Assignees should be the last to sign the Assignment giving them an element of control over the triggering of the effective date.

#### 4 **Condition 4 Intimation of assignment**

The Assignment will not be binding on the Landlords until it is intimated. This Condition entitles the Landlords to withdraw the consent if the Assignment is not intimated within a certain period of time. Consider what is a reasonable length of time in the circumstances of your transaction. It is important from the Landlords' point of view that the consent is not open ended.

#### 5 **Condition 5 Assignment to be registered**

In most cases the Assignment will be registered in the Books of Council and Session.

Consider if the Assignment needs to be registered in the Land Register or recorded in the General Register of Sasines as well.

If the Lease is registered in the Land Register the Assignment will need to be registered in the Land Register for the Assignees to acquire a real right. An Assignment for consideration of a Lease which is recorded GRS where there are twenty years or more left of the term will trigger a first registration in the Land Register. If there are less than 20 years left of the term the Assignment will need to be recorded GRS. If the Lease was for a term of less than 20 years the Assignment will only need to be registered B of C & S.

#### 6 **Condition 6 Suspensive condition**

Delete if not applicable or if Condition 3 is remaining in the Letter of Consent.

#### 7 **Condition 8 Costs**

The Landlords will want to ensure that all their fees and costs are paid promptly. In view of the member firms' experiences of recovering such fees and costs from third parties in situations such as this, the PSG recommend that the Letter of Consent is not issued until all such fees and costs have been paid.

There is no mention of SDLT and registration dues in this Condition because liability for SDLT will rest with the Assignees (who are not a party to this Letter of Consent) and it is for the Assignors and Assignees to agree who will pay the registration dues on the Assignment.

**8 Miscellaneous**

Any additional conditions (for example conditions relating to alterations proposed by the Assignees) can be inserted at the end of the Letter of Consent before Condition 9.

Attach the agreed form of Assignment and Guarantee (or Rent Deposit Agreement) to the Letter of Consent if required.