

**HSBC UK Bank plc**  
for use with Private Banking clients

**INSTRUCTIONS AND GUIDANCE NOTES TO  
SOLICITORS AND LICENSED CONVEYANCERS**

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**We certify that these Instructions and Guidance Notes ("Instructions") have been prepared to comply with the requirements of the SRA Code of Conduct 2011, published by the Law Society.**

**These Instructions cover a variety of situations and not all will apply to the case concerned. It is for you to apply them accordingly.**

## **1 GENERAL INSTRUCTIONS**

You are instructed to act on behalf of us on the terms set out in these Instructions.

- (a) "your Client" means the Borrower / Mortgagor / Company / Limited Liability Partnership / Guarantor / Consentor who is giving the Security that we require.
- (b) "Security" means the Mortgage, Debenture, Guarantee, Letter of Consent or other security which you are instructed to take for us.
- (c) "Property" means the freehold (including commonhold) and/or leasehold property being given as Security.
- (d) "Facility Letter" means any letter or formal loan or other agreement (including a Consumer Credit Act 1974 ("CCA") regulated loan agreement and/or a Loan Agreement form) under which we provide mortgage loan, overdraft, banking and/or other facilities if enclosed with these Instructions.
- (e) "Facility" means the mortgage or other loan, overdraft, banking and/or other facilities which we make available to the Mortgagor or Borrower named in the Facility Letter / Security.
- (f) "Transfer Instructions" means those referred to in section 11.

**1.1** The guidance contained in these Instructions is intended to assist you in the discharge of your responsibilities to us and does not in any way limit or reduce your responsibilities either to us or to your Client. You are not by these Instructions constituted our agent in the taking of the Security.

**1.2** You must hold a current practising certificate and have professional indemnity insurance.

**1.3** You must recover all your costs and disbursements including any stamp duty and registration fees from your Client whether or not the matter is completed. Your obligation to comply strictly with these Instructions is not dependent or conditional upon payment of your costs and disbursements by your Client.

**1.4** You must not act for the seller / landlord in any transaction as well as the buyer / tenant unless we agree and your professional rules allow.

**1.5** You must comply with any general and special conditions which we state require the confirmation of a legal adviser and which relate to our Security and/or to its enforceability as shown in any Facility Letter enclosed with these Instructions. The Facility Letter does not restrict what is secured by our Security which, unless stated, does not secure only those facilities. All money and liabilities both present and future are secured as explained in section 6 below.

**1.6** Having regard to our instructions you must ensure that the correct form of Security is taken for that which is to be secured. In accordance with paragraph 4.2 of these Instructions you should take reasonable steps to satisfy yourself that the person(s) executing the Security is/are in fact the person(s) as named in the covering letter.

**1.7** You must ensure the Mortgagor has a good and marketable title to the Property and/or other assets over which Security is being given.

**1.8** In addition to any specific requirements in these Instructions you will report to us, as soon as possible, any matter arising which may adversely affect our Security. This includes the following:

- (a) Any inability to comply with the matters detailed in these Instructions which apply to the case concerned or any term that we ask you to confirm in any enclosed Facility Letter.
- (b) After investigating title, any differences in the parties named in any covering letter with these instructions or a Facility Letter and the parties who on completion of the transaction will be the owners of the Property.
- (c) Any Security which will remain in place or the granting of other security at completion.
- (d) Report if your Client is acquiring the property from a Seller who has owned the property for less than 6 months and provide appropriate advice.
- (e) Report to us how your Client says any contribution towards the purchase price of the Property is to be provided (e.g. from a third party, including any discount, allowances, cash payments or where there are included any chattels or other items of value) and also report if you do not have control of all the purchase monies, as it may be necessary for us to reconsider the amount of loan being provided.
- (f) Any doubt as to the extent of the Property to be mortgaged or rights of access or the benefit of other necessary easements.

(g) Any letting of the Property being given as Security unless we have told you we know of it.  
(h) Any planning scheme or other proposal (for example road widening, redevelopment or clearance) which may affect the Property or its use.

(i) Any rights of pre-emption or options granted or affecting the Property

(j) In the case of a Company or a Limited Liability Partnership, any adverse matter revealed by a search of the register maintained by the Registrar of Companies.

(k) Any other circumstances which after investigating title and making all appropriate searches and enquiries in your professional opinion you consider might affect our decision to provide the Facility and/or agree to the transaction.

**1.9** In any case where you are unable to continue to act for us you must advise us immediately in writing and return all documents enclosed with these Instructions.

**1.10** Once the Facility is drawn the Borrower will be charged interest from the date of drawdown at the rate specified in the Facility Letter. If completion is delayed you must return the advance monies to us within 3 working days of receipt, failing which we will require an interest payment from you from the date of receipt of the monies to the date of payment.

**1.11** Any monies comprising the Facility which you receive will only be applied by you in respect of the transaction in which you are instructed. These monies will (unless otherwise notified by us) be held in trust for us and are to be held to our order and returned on demand.

**1.12** If we advance any monies in respect of a deposit, the monies will be held (i) subject to paragraph 1.11 above and (ii) by the Seller's solicitor as stakeholder.

## **2 CERTIFICATE OF TITLE (the "Certificate of Title")**

**2.1** You are required to give the Certificate of Title in the attached form and in unqualified terms. It is to be sent to us at least 10 days before the funds are required.

**2.2** The Certificate of Title must be signed by a Solicitor, Legal Executive or Licensed Conveyancer (employed in the Solicitors' practice) who will be deemed authorised to sign it. A Licensed Conveyancer (not employed in a Solicitors' practice) may only give the Certificate of Title for house purchase, transfer of equity and remortgage transactions.

**2.3** We reserve the right to refuse to allow the Facility to be drawn or execute any document relative to the transaction unless we have received the original properly completed Certificate of Title.

## **3 CERTIFICATE OF EXECUTION (the "Certificate of Execution")**

**3.1** If a Certificate of Execution is enclosed with these Instructions, you are required to give it in the form enclosed. The loan cannot be drawn down until this is in our possession.

**3.2** The Certificate of Execution in the form enclosed must be given in unqualified terms. It must be signed by the same person who advised on, and witnessed, the execution of the Security who must be either a Solicitor, Legal Executive or Licensed Conveyancer (employed in the Solicitors' practice). A Licensed Conveyancer (not employed in a Solicitors' practice) may only give the Certificate of Execution for house purchase, transfer of equity and remortgage transactions.

If the person executing the Security is outside England and Wales and you are not able to personally witness their signature, provided that you have explained the terms of, and given independent advice on, the Security, it will be sufficient that the signature is witnessed by a third party as long as you have satisfied yourself that the Security has been validly executed and witnessed. You will be asked to confirm this in the enclosed Certificate of Execution.

**3.3** If you cannot give the Certificate of Execution as mentioned above you should not allow the Security to be executed. The Certificate of Execution should be returned to us as soon as the Security has been executed.

## **4 INDEPENDENT LEGAL ADVICE**

**4.1** We have always recommended, and will continue to do so, that depositors of Security seek independent legal advice. This is particularly so as a result of the Barclays Bank -v- O'Brien, CIBC -v- Pitt and Royal Bank of Scotland -v- Etridge cases.

The above is of special concern to depositors of Security for the account of third parties where they have no direct business interest in, or control over, the third party or where, despite the fact that the borrowing is in joint names, the borrowing is not obviously for the benefit of both parties. Where such a depositor of Security is your Client, we are anxious that your Client does

receive independent legal advice before executing the Security. Your Client has nominated you as the solicitor from whom they wish to take such advice. You need to ensure that you can act separately for the Mortgagor in circumstances where you are also instructed by the Borrower. If, as a result, you feel that you cannot act, you must return the Security to us with a brief explanation of the reasons.

If you feel that you can act (and are satisfied that by doing so, the Security will not be open to challenge) then any advice you give must be given in the absence of the Borrower or any other person interested in the transaction. We envisage that you will wish to explain to your Client the meaning effect and nature of the Security particularly emphasising the "all monies" nature of the Security (up to any limit set out) and the fact that it will operate as continuing security. We would expect that if you have any doubt as to your Client's willingness to sign, their understanding of the Security or any knowledge of other circumstances that may lead to a successful challenge to the Security then you will not allow your Client to execute the Security which should be returned to us with a brief explanation of the reasons. If, in your opinion and following your advice, the Security can be executed by your Client then please proceed in accordance with the relevant sections of these Instructions. In particular, the Certificate of Execution mentioned in section 3 above should be returned to us as soon as the Security has been executed. We have informed your Client that we require this certificate from you so that, once they have signed the Security, they will not be able to dispute that they are legally bound by the same.

In certain cases where security is being provided for a Company or a Limited Liability Partnership, we may take a guarantee from your Client but may not take direct security (such as that described in section 6 below) from the Company or Limited Liability Partnership. If this is the case, it will be your responsibility to explain the consequences of this to your Client as well as advising your Client of their obligations under the guarantee. Where we have any direct security the details will be in the Facility Letter addressed to the Company or the Limited Liability Partnership and this will have been provided to you with these instructions (if it has not please tell us).

**4.2** You must take reasonable steps to satisfy yourself as to the identity of your Client giving the Security and any other person signing any other document required by us. This includes, if necessary, asking to check the identities of such persons against either a valid full passport or a current full UK driving licence or some other documentation we specify in writing. Please note that a duplicate driving licence is not acceptable.

**4.3** Where there is more than one person giving the Security, you should see each of them on their own, and in the case of indirect Security (see paragraph 6.1.2 of these Instructions), without the Borrower or the Borrower's representative being present.

**4.4** The fact that you are acting for us in providing assurance and the Certificate of Execution should not in any way restrict your ability to:

- (a) explain the Security and/or the Facility and its nature and effect to your Client;
- (b) provide your Client with such advice as you deem necessary to discharge your professional responsibilities; including, where appropriate, ensuring that your Client has independent advice. You are not by these Instructions constituted our agent.

**4.5** In the case of a house purchase, transfers of equity and remortgage transactions where all that which is initially secured is the mortgage loan to acquire the property, a Licensed Conveyancer (not employed in a Solicitor's practice) may advise and witness the Security but your Client must still be advised of all that which is potentially secured (see section 6 below).

**4.6** In Transfers of Equity transactions (see section 11) it will be your responsibility to fully explain the extent of the obligations and the meaning and effect of any existing and/or new Facility and/or Security to the continuing and/or incoming owner(s). You should satisfy yourself, before any drawdown of the Facility and/or the execution of the Transfer and/or the Security that they, as far as you are aware, fully understand the overall transaction and are entering into it willingly and free of any misrepresentation, undue influence or coercion.

**4.7** There may be occasions where new security is not being taken and we are relying upon existing security to secure new borrowing which despite being in joint names, will not obviously be for the benefit of both parties. We require that the depositor of security who does not obviously benefit from the new borrowing receive independent legal advice before the new loan is drawn down. That depositor or security has nominated you as the solicitor from whom they wish to take such advice.

In these circumstances, please comply with Section 3 above and this Section 4, but, instead of advising on the implications of executing the security, please advise on the implications of the existing security being used to secure the new borrowing. Furthermore, instead of a Certificate of execution, we require you to give a Certificate of ILA to be signed by the person who gave the independent legal advice, which will be enclosed with these Instructions. In Section 3, for "Certificate of Execution" read "Certificate of ILA".

If you cannot give the Certificate of ILA as mentioned above, you should not allow the new loan to be drawn down. The Certificate of ILA should be returned to us as soon as the depositor has agreed that the existing security may be used to secure the new borrowing".

**4.8** If you have any doubt as to the above you must advise us immediately and not complete the transfer or request the drawdown of any new Facility.

## **5 INSOLVENCY MATTERS**

### **Insolvency Act 1986 (as amended) (“the Act”)**

**5.1** It will be your responsibility to advise us of any risk that any transaction on which the Security is dependent (including any transfer of the mortgaged Property) may be set aside under the Act as a transaction by way of gift or at undervalue. We take the view that a transaction might be set aside under Section 342 (as a simple transaction at undervalue as defined in Section 339) or Section 425 (as a transaction at undervalue putting assets beyond the reach of creditors as defined in Section 423).

**5.2** In the case of transactions falling within Section 339 only, and taking effect after the coming into force of the Insolvency (No. 2) Act 1994, we take the view that unless there is actual knowledge of bankruptcy (or impending bankruptcy) affecting any party to the transaction and as long as there is a clear bankruptcy search obtained against all parties to the transaction then any new mortgage in favour of us should be protected. It is for you to advise us in respect of each individual case.

**5.3** If you advise there is a risk, we will require suitable indemnity insurance and you must arrange this. The policy must be for an amount which represents the full value of the Property or other asset being given as Security. It must benefit us and any successor in title. A copy of the policy must be sent to us with the title documents, with the original being passed to your client.

## **6 SECURITY DOCUMENTS**

There follows a brief explanation of our most commonly used standard forms of Security. These explanations, and any explanatory sections within the documents, are intended to be of general assistance only and do not relieve you of your responsibility to consider and explain their terms to your Client.

The Mortgagor is required to give Security “with full title guarantee”. This is so irrespective of what the covenants for title may be in the title to the Property. If the Mortgagor perceives any risk in doing so then it is for the Mortgagor to cover that risk as appropriate.

The Security may be limited as to the money and liabilities secured. If such limitation is agreed you will be given details.

### **6.1 Mortgages over Freehold (including Commonhold) and Leasehold Property**

These comprise a Mortgage Deed plus a separate Mortgage Deed Conditions document. You should give your Client the Mortgage Deed Conditions document and a copy of the Mortgage Deed.

These can be either direct (Form A1 series) or indirect (Form A2 series). In both cases these secure the Debt as defined in them (“the Debt”), i.e. all money and liabilities both present and future including mortgage and similar term loans, overdrafts and guarantee, surety and similar liabilities, secured as continuing security. This will also include certain charge card liabilities and CCA loans.

Where guarantee and similar surety liabilities are secured, you will be sent a copy of the Guarantee or other relevant document.

#### **6.1.1 Direct Legal Mortgage (Form A1 series)**

A direct legal mortgage is where the person who owns the Property is the same person who is borrowing from us. The direct legal mortgage (see our standard form A1 series) therefore secures the Debt of the Mortgagor. Generally, a direct Mortgage will only be forwarded to you in the following circumstances:

- (a) Where the Debt to be secured by the Mortgage is a direct liability of the Mortgagor and, in our opinion, not capable of being regarded as disadvantageous to the Mortgagor or any joint Mortgagor.
- (b) Where the Mortgage is to secure (whether or not in addition to another Facility) the Mortgagor's guarantee or other surety liabilities.
- (c) Where the Mortgagor seeks independent advice.

#### **6.1.2 Indirect Legal Mortgage (Form A2 series)**

An indirect legal mortgage is usually (but not always) where the person who is borrowing from us either jointly owns the Property with someone else or some other party owns the Property. For example, where A and B are the owners and B is the Borrower, or

where C and D are the owners and E is the Borrower. These examples are for illustration purposes only and are not exhaustive of the circumstances in which an indirect legal mortgage can be taken.

The indirect legal mortgage (see our standard form A2 series) therefore secures the Debt of the named Borrower. Where there is more than one person named as Borrower, there is secured the Debt of all or any of them as well as the Debt which all or any of them may owe with any other person. We are under no obligation to advise the Mortgagor of the Facility afforded to the Borrower.

## **6.2 Letter of Consent and Postponement by Deed**

This is taken from occupier(s) (aged 18 or over when the Mortgage is given) of a Property mortgaged or intended to be mortgaged to us. It will also be taken from anyone else who has an interest in the Property but who is not a legal estate owner of the Property. Whatever right or interest the Consentor might have in the Property is postponed to us. The Letter of Consent will secure the Debt as defined in, and secured by, the Mortgage (see paragraph 6.1 above) as continuing security.

## **6.3 Mortgages over Life Policies**

These can be either direct (Form A16 series) which will secure the Debt of the Mortgagor (see paragraph 6.1.1 above) or indirect (Form A17 series) which will secure the Debt of the named Borrower (see paragraph 6.1.2 above).

## **6.4 Mortgages over Shares**

These can be either direct (Form A14) which will secure any money and liabilities owing to us by the Mortgagor (see paragraph 6.1.1 above) or indirect (Form A15) which will secure any money and liabilities owing to us by the named Borrower (called the Principal) including that owing to us from any firm in which the Borrower may be a Partner.

## **6.5 Guarantees**

There are three forms of Guarantee:

**6.5.1** A13 series. This will guarantee the Debt of the named Borrower as mentioned in 6.1 above.

**6.5.2** Guarantee and Indemnity (396-9A) under the CCA. This will guarantee the Facility we provide to the debtor mentioned in it. In each case the Guarantee may be limited in amount of principal but interest, costs and charges are also payable as mentioned in the Guarantee.

**6.5.3** Composite Guarantee (A23 series). This is given by limited companies and/or limited liability partnerships. It guarantees all monies and liabilities (including surety and similar liabilities) both present and future as continuing security of each and every one of the companies and/or limited liability partnerships named in it. It may be limited as to the amount of the monies and liabilities guaranteed.

## **6.6 Debenture (Form D1 series)**

This secures the monies and liabilities as defined in it, i.e. all monies and liabilities (including surety and similar liabilities) both present and future as continuing security. The assets charged by the Debenture include the following (which is a summary only - please refer to the Debenture for the details):

- (a) a legal mortgage and first fixed charge over all freehold and leasehold property and all fixtures, fittings and fixed plant and machinery both present and future and associated rights etc. as mentioned in the Debenture;
- (b) a first fixed charge over all present and future chattels;
- (c) a first fixed charge over all present and future book and other debts (including any credit balance on any account the Company or Limited Liability Partnership has with us) goodwill, uncalled capital and intellectual property;
- (d) a first fixed charge over all stocks, shares, debentures, bonds, loan capital and insurances etc. as mentioned in the Debenture;
- (e) a floating charge over all other assets.

## **6.7 Agricultural Charge**

This is a direct form of charge incorporating Fixed and Floating Charges over Farming Stock and other Agricultural Assets (as defined in the Charge). This is given under the Agricultural Credits Act 1928. This secures the Debt (see paragraph 6.1 above) of the Mortgagor including any partnership in which the Mortgagor is, or is deemed to be, a partner.

## 6.8 Security over cash Deposits

These can be either direct (Form A21) which will secure any money and liabilities owing to us by the Mortgagor (see paragraph 6. 1.1 above) or indirect (Form A22) which will secure any money and liabilities owing to us by the named Borrower (called the Principal) including that owing to us from any firm in which the Borrower may be a Partner.

## 7 SECURITY OVER FREEHOLD AND LEASEHOLD PROPERTY

### 7.1 Occupiers and Third Parties Other than the Mortgagor

A Letter of Consent and Postponement by Deed will be enclosed. The Letter of Consent and Postponement may be wholly or partially completed by us before it is sent to you. However, if all or any of the details are missing you are required to fill in anything which has been left blank before it is signed. In every case, it is your responsibility to enquire:

- who occupies the Property, and/or
- if any third party has an interest in the Property

and notify us of any such person.

You should also notify us of any other occupiers who you have become aware of (as Letters of Consent and Postponement may also be required in respect of these). This is to ensure that we are able to secure vacant possession against any person who may have an interest in the Property in addition to the Mortgagor.

### 7.2 Vacant Possession

Unless any Facility Letter specifically states otherwise, the Facility is made on the condition that the Mortgagor will obtain vacant possession for the whole of the Property on completion. You must report to us if, after enquiries, you become aware that vacant possession is not to be granted.

If we are lending to the sitting tenant you must be satisfied that the Mortgagor/Borrower is the tenant. You must report any tenancy which will be created or remain in place and continue after completion of the Mortgage. Where any tenancy is to end before completion of the Mortgage, it is your responsibility to see that this is properly done.

### 7.3 Title and Related Matters

**7.3.1** You must advise us where you are aware of any specific defect, dispute or matter relating to the Property which might affect the acceptability of the Property as security.

The following are unacceptable:

- (a) Any refusal by a landlord to deduce title to the freehold or other superior interest on the original grant of a lease.
- (b) Where the title comprises a lease granted under the Leasehold Reform Act 1967, if the title to the new lease to replace the existing lease cannot be investigated.
- (c) Where a lease provides for an escalation of ground rent, if its terms do not comply with the statutory conditions precluding the creation of a protected tenancy within the leasehold term.

#### 7.3.2 Property not used for residential purposes

You should notify us if the Property is not to be used wholly for residential purposes and specify the intended use of the Property upon completion. You are required to ensure that nothing has been revealed by your searches and enquiries which would prevent the Property being used by any occupant for its intended use.

#### 7.3.3 Possessory Title

Title to unregistered land by adverse possession and Possessory Title to registered land which will not be converted automatically to Absolute Title is usually unacceptable as Security.

#### 7.3.4 Easements, Covenants etc.



It is your responsibility to ensure that the Property has the benefit of all necessary rights, easements, exceptions or reservations for its use and enjoyment including access and services. The Property must not be subject to any adverse, onerous or unusual right, restriction, reservation, exception or covenant.

### **7.3.5 Planning Consents and Building Regulations etc.**

It is your responsibility to ensure that all necessary planning, building regulations and other consents exist in relation to the Property for its present or intended use and to advise us of any breach, enforcement or absence of such consent. In addition any unusual or restrictive condition in any consent (for example, an agricultural restriction) must be advised to us. Generally, a property with such a restriction will be unacceptable as Security unless specifically agreed by us. When reporting to us on such matters, please provide your recommendations and advise on the appropriate action.

### **7.3.6 Roads and Sewers**

It is your responsibility to ensure that the Property fronts a publicly adopted highway and drains into a publicly maintained sewer or that there are appropriate easements and agreements and bonds in force to cover any potential financial liability for maintenance. If the roads and/or sewers are unadopted and there is no agreement and bond, then you should seek our written approval to proceed. When reporting to us on such matters, please provide your recommendations and advise on the appropriate action.

### **7.3.7 Searches**

It is your responsibility to make all necessary searches prior to completion of the transaction to include an appropriate local land charges search, a bankruptcy search against the Mortgagor and Borrower, Land Registry/Land Charges searches and (if applicable) a search of the register maintained by the Registrar of Companies. We will rely upon your advice as to which searches are appropriate. It will be your responsibility to make any additional searches which may be required (for example, Index Map, Commons, Coal Mining or Mine Working searches).

These searches must be clear and current, and any priority maintained until completion and/or any registration of our Security. Personal searches are unacceptable even if they are accompanied by insurance.

### **7.3.8 Site plans and Valuation Report**

In cases where a site plan is enclosed, you are required to satisfy yourself that the Property to be mortgaged accords with the site plan.

If the covering letter requires you to deal with matters raised in an enclosed valuation report, you must do so.

A copy of the valuation report may be provided to your client. We recommend that you advise your Client that they should not rely on any such report, or the fact that we have agreed to lend, in deciding whether to proceed with the purchase of a property. We further recommend that you advise your Client that they obtain their own more detailed report on the condition and value of the Property, based on a fuller inspection, to enable them to decide whether the Property is suitable for their purposes.

## **7.4 Leasehold Titles**

**7.4.1** If the lease will have less than 25 years to run after the end of the term of the loan, you must advise us and only proceed if we agree.

**7.4.2** If the title is registered, or to be registered, the Mortgagor must have Absolute Leasehold Title. A Good Leasehold Title will normally only be acceptable if it is not possible to upgrade and convert it to an Absolute Title.

Our consent will be required to accept a Good Leasehold Title. We will only be prepared to accept that if you advise us, in writing, of the reason why it cannot be converted and you are still able to give an unqualified Certificate of Title. Your advice should contain a brief explanation as to why only Good Leasehold Title is available. Title Indemnity insurance may be required and you will be responsible for obtaining it.

**7.4.3** If the title is unregistered, then the documents of title forwarded to us must include a marked Epitome of Title to the freehold title and to any superior lease.

**7.4.4** The lease must not contain any onerous or unusual covenants or restrictions. There must be mutually enforceable covenants between tenants and/or the landlord or the management company must be under an obligation, at the request of any tenant, to enforce covenants against any other tenant. The landlord or management company must be under an obligation to maintain the exterior of the building, main structure, including roof and foundations, and common parts of the building. There must be no outstanding disputes or breaches in relation to any provision in the lease at the date of completion of the Mortgage or the drawdown of the Facility.

**7.4.5** Residential leases which give the landlord a right of forfeiture for an insolvency or similar event or execution against the tenant, are unacceptable. There is no objection to this in a commercial lease.

**7.4.6** Leases which include any restriction on assignment and creation of mortgages are, generally, unacceptable.

**7.4.7** It is your responsibility to serve on the landlord (and/or any other appropriate party) all necessary notices including in all cases (irrespective of whether the lease requires it) notice of our Mortgage.

**7.4.8** Where the Mortgagor is obliged to purchase a share in any management company, we will require the share certificate (in the name of the Mortgagor) to be held as security which will entail a Mortgage over Shares and Stock Transfer Form being executed. You are to ensure that the documents are executed but that the Stock Transfer form is completed appropriately and signed by the Mortgagor but left undated.

### **7.5 Freehold Flats (“Flying Freeholds”)**

Freehold flats are only acceptable as Security if our requirements are met. We require that there are appropriate mutual rights of support and maintenance and mutually enforceable covenants usually including a Deed of Covenant being entered into on each dealing with the Property between the existing/other flat owners and the incoming purchaser. It is your responsibility to advise us as to acceptability.

### **7.6 Rent Charges**

Any rent charge imposed upon the Property which takes priority to our Mortgage and confers a right of re-entry will be unacceptable. Where the Property (whether freehold or leasehold) is subject to a rent, if the rent is payable in respect of other land as well as the Property to be mortgaged, and has not been legally apportioned, it will be unacceptable.

### **7.7 New Properties and Properties Built Within the Last Ten Years**

New properties and properties built within the last 10 years must be covered by any of the following: NHBC Buildmark, Zurich Municipal Newbuild, Zurich Municipal Rebuild or other appropriate and market-acceptable warranty cover as we shall agree, with all necessary top-up arrangements in force.

### **7.8 Purchase Price of New Properties**

Where the Property to be mortgaged has yet to be occupied for the first time in its current form, for example, because of a renovation or conversion, you must obtain a completed copy of the CML Disclosure of Incentives Form from the conveyancer acting on behalf of the seller. In such cases, when you send a completed Certificate of Title to us you are confirming that you are in receipt of a completed CML Disclosure of Incentives Form from the seller’s conveyancer which complies with your instruction.

This does not override your other duties regarding the purchase price set out elsewhere in these Instructions.

### **7.9 Shared Ownership Leases**

If the transaction involves a Shared Ownership Lease, you must advise us immediately. You need not do so if you have already been separately instructed to proceed with the Lease.

If instructed to proceed, you must advise on the suitability of the Lease as security in accordance with these Instructions.

### **7.10 Commonhold**

If the Property is commonhold:

- (a) you must be satisfied there is nothing in the Commonhold Community Statement that is unduly restrictive of the use and occupation of the Property for the purpose for which it is to be used;
- (b) you must make enquiry of the current unit holder and the Commonhold Association as to any known breaches of

Commonhold Community Statement by the Commonhold Association or any unit holder and report such breaches to us;

- (c) you must make sure that the liabilities of the outgoing unit holder are discharged prior to completion;
- (d) you must ensure that the Commonhold Community Statement provides that, in the event of a voluntary termination of the commonhold, the termination statement provides that the unit holder will ensure that any mortgage secured on their unit is repaid on termination;
- (e) you must ensure that notice of transfer of a commonhold unit and notice of the mortgage are sent to the Commonhold Association within 14 days of completion.

## **7.11 Attorneys**

Where an attorney appointed under a general or an enduring power of attorney is expecting a Legal Mortgage on behalf of the Mortgagor, you must ensure that (where appropriate) the execution clause for the attorney reads (or is amended to read) as follows:

“Signed as a Deed by [name of donor of the power], who has a beneficial interest in the Property at the date of this Legal Mortgage, acting by [his/her] attorney [name of attorney] in the presence of:”

If you fail to do this, the Land Registry may refuse to register the Legal Mortgage.

## **8 INSURANCE**

### **8.1 Property Insurance – General**

If property insurance is being arranged by us, please contact us at the earliest opportunity to enable cover to be effected in good time, as all insurance is subject to underwriting.

If property insurance is not being arranged by us, it is your responsibility to ensure that cover is brought into effect as mentioned below.

We require the Property is insured from exchange of contracts, or from such time as the Mortgagor assumes risk or drawdown of the Facility. If we provide you with a buildings insurance figure, it is your responsibility to ensure that insurance has been obtained for at least that amount.

We require the following risks to be covered by the buildings insurance policy: fire, lightning, aircraft, explosion, earthquake, storm, flood, escape of water or oil, riot, malicious damage, theft, falling trees, branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, professional fees, demolition and site clearance costs and public liability to anyone.

If we require, please request before completion the insurer’s confirmation that the insurer will notify us if the policy is not renewed or is cancelled. Unless we advise you otherwise, there is no need for you to send us the policy documents, or the last premium receipt.

### **8.2 Property Insurance - Leasehold Property**

Where it is a condition of the lease that the Property is insured by the landlord, it is your responsibility to:-

- Satisfy yourself (from exchange of contracts or from such time as the Mortgagor assumes risk or drawdown of the Facility) that the Property is insured; and
- Give notice to the insurer of our interest.

### **8.3 Endowment/Life/Pension Assurance**

Where you are instructed to do so, it will be your responsibility to ensure that appropriate steps are taken to ensure that we have enforceable security over each of these policies as appropriate.

You will:

- (a) arrange for the policy to be put on risk on or before completion of the Mortgage;
- (b) if requested by us, ensure that a Mortgage of the policy is executed before completion;

- (c) if we require you to do so, give notice to the insurance company of the Mortgage of the policy;
- (d) ensure that the policy, any Mortgage of it and receipted notice of Mortgage are deposited and forwarded to us.

## **9 PRIORITY OF SECURITY**

Unless otherwise instructed, we should rank ahead of any other Mortgage or other Security. The priority of our Security may be specified in any Facility Letter/Transfer Instructions (when enclosed) under the heading "Security". It is your responsibility to see that we have the appropriate priority.

The priorities stated in the Facility Letter/Transfer Instructions (when enclosed) do not take account of any statutory charge in favour of a third party (for example, to secure discount provisions where the Property is a former Council house or flat). It will be your responsibility to have postponed any prior statutory charge unless we have agreed otherwise.

There must be no restriction upon the creation of our Security. You must obtain any necessary consent to the creation of our Security. In all cases, you must give notice of our Security to any prior mortgagee and obtain acknowledgement of it. The latter must be forwarded with the title documents. Land Charges entries must be made as necessary.

## **10 PRE & POST COMPLETION PROCEDURES**

### **10.1 PRE COMPLETION:**

You must email to us at pbsecurities@hsbcpb.com scanned copies of:

- the Certificate of Title,
- any Certificate of Execution,
- Security over cash Deposits (if applicable)
- any Letters of consent and
- the current buildings insurance

### **10.2 POST COMPLETION**

**10.2.1** You must make application for registration at the appropriate District Land Registry immediately following completion of the Mortgage and in any event within the priority period conferred by any search. You must ensure that our Sorting Code and full address, as shown on these Instructions or the covering letter, are quoted on the appropriate Land Registry form as proprietor of the new Mortgage.

**10.2.2** Where the Property is subject to first registration, you must provide a copy of the Land Registry's acknowledgement form duly received.

**10.2.3** It is your responsibility to ensure that the necessary registration entries have been made correctly at the appropriate registry(ies) before forwarding to us the documents set out in paragraph 10.4 below. The documents must be sent to us within ten working days of receipt by you of the Land Registry Title Information Document.

#### **10.2.4 You should send to us:**

- IN ALL CASES:**
1. Title Information Document and Official Copy
  2. Original or if this is not available a certified copy of the completed Legal Mortgage in our favour
  3. Any Letters of Consent and Postponement by Deed in our favour
  4. Notice and acknowledgement to a prior mortgagee of our mortgage (where appropriate).
  5. **Copy** Indemnity Policy (where appropriate)
  6. Any other document(s) specified in our letter of instruction to you.

#### **IN ADDITION:**

**LEASEHOLD** Lease and any deeds/documents emanating from the lease, including, (where appropriate) but not limited to:  
Receipted Notice of the Transfer and Mortgage  
Consent of the landlord to us as Mortgagee, if required by the lease  
Landlord's undertaking to give us notice prior to forfeiture proceedings.  
Share Certificate/Stock Transfer Forms  
Deed of Variation

**FREEHOLD** We do not require any additional documents.

**REGISTERED (INCLUDING COMMONHOLD)** It is for you to decide what, if any, of the pre-registration documents you may wish to pass to your client.

**10.5** You should retain the information contained in the conveyancing file in a permanent form and provide the information relating to the Security to us immediately on request.

## **11 TRANSFERS OF PROPERTY ALREADY MORTGAGED TO US (TRANSFERS OF EQUITY)**

### **11.1 General**

Details of the Property, together with summaries of the pre-transfer position and post-transfer requirements are contained in the attached form entitled "Transfer of Mortgaged Property - Instruction Form" - ("The Transfer Instructions"). It is your responsibility to see that the information in the Transfer Instructions correctly represents the underlying transaction as instructed by your Client. It will be your responsibility to make appropriate searches and enquiries although a local search will not be required.

### **11.2 Transfer of the Property**

Any transfer must be completed in accordance with the Transfer Instructions. You will be responsible for ensuring that the transfer of the Property is properly completed with the transferee having good and marketable title to the Property. Any existing Mortgage and/or new Mortgage and/or other Security, must secure any existing and/or new borrowing (as appropriate) and any future borrowing. The Security must be valid and enforceable as set out in these Instructions and with particular regard to section 4.

### **11.3 Additional Instructions where transfer of the Property is subject to an existing Mortgage in our favour and no new mortgage is being taken**

The transfer of the Property may, in certain circumstances, result in determining the continuing nature of our existing Mortgage. Where the transfer is to take place subject to an existing Mortgage in our favour, and a new Mortgage is not being taken post transfer, we require you to ensure that, wherever possible, continuing security of our existing Mortgage is preserved.

If it is possible to preserve continuing security we require the following wording (adapting the definitions where necessary) to be incorporated in an appropriate place in the transfer deed or form TR1 (as the case may be):-

*"This Transfer is subject to a Legal Mortgage dated [ ] and registered on [ ] in favour of HSBC Bank plc which shall remain a continuing security for that which is secured by it and shall be read as if the Transferee was the mortgagor"*

If it is not possible to preserve continuing security, the following wording should be incorporated instead:-

*" This Transfer is subject to a Legal Mortgage dated [ ] and registered on [ ] in favour of HSBC Bank plc."*

We will tell you when it is and is not possible to preserve continuing security in our covering letter of instruction to you.

In addition, the following points must be complied with in respect of the transfer deed or form TR1 (as the case may be):-

- where continuing security can be preserved, there should be no reference made to the amount of the indebtedness outstanding under the Mortgage;
- if there is a clause where we release the transferor from the Mortgage covenants, this is only acceptable where that person is not also a transferee and where the clause makes it clear that the outgoing transferor is not released from their implied covenants for title.
- if there is a clause whereby we release one of the transferors from the obligations under the Mortgage, but that person is to remain contractually liable to us under the Facility Letter, the clause needs to make it clear that we are not releasing that person's contractual liability for the indebtedness; and
- there must be a statement as to what consideration is payable for the transfer. If it is less than the current market value of the share in the property being transferred, or is for nominal or no consideration, then:-

- (i) clear bankruptcy searches must be obtained at the time of completion of the transfer against the parties to it; and

- (ii) if, after having made enquiries, you are of the view that the transfer is at risk to being set aside as a transaction at an undervalue putting assets beyond the reach of creditors under Section 425 of the Insolvency Act 1986, or such provision that replaces it, you should obtain our instructions before proceeding further. If we agree to proceed, suitable indemnity insurance may be required to protect us and you will be responsible for obtaining it.

#### **11.4 Independent Legal Advice**

This must be given as stated in section 4 of these Instructions.

The transfer of the Property, particularly where there is any replacement Facility, may result in any continuing or incoming owner accepting liability for the Facility for which the outgoing owner was responsible, whether solely or jointly and separately with the continuing owner.

The Transfer Instructions should indicate when this is the case but the absence of such information does not relieve you from your responsibility to make suitable enquiries and investigation.

### **12 SECURITY TAKEN FROM COMPANIES AND LIMITED LIABILITY PARTNERSHIPS**

Where Security (other than Guarantees) has been given by a Company or Limited Liability Partnership you must immediately register this at Companies House. It has to be registered within 21 days of the Security being completed. If a pre-addressed advice is enclosed, you must, at the same time, complete and return it as confirmation that the Security has been signed.

Where the security has been given by a Company you must ensure that the date of the meeting referred to in the Board Resolution is either the same as, or earlier than, the date of the Security and that the Security is with the company at the time it passes the Resolution. If another company (i.e. secretarial / nominee company) signs the Board Resolution and Security as Company Secretary, then that company must provide a copy of their Board Resolution confirming that their official has full authority to sign documents on their behalf in that capacity. We will also require a confirmed specimen of that signature.

You must ensure that the Board Resolution (where security has been given by a Company) and the Certificate of Registration at Companies House are sent to us as soon as possible.

#### **12.1 Companies acting as trustees**

Please note that we require these registration procedures to be complied with even if the Company is acting in its capacity as a trustee. It is our understanding that section 395 of the Companies' Act 1985 and Companies House do not distinguish between legal and equitable interests. It would follow that the requirement for registration at Companies House would apply even though the depositor of the security does not own the assets beneficially. We are aware that a number of professional pension trustees insist on registration at Companies House on the basis that the duty to register the charge is imposed on the Company itself rather than a third party. One of the reasons for this may well be that the failure to register the charge may render the Company and every officer liable to a fine.

### **13 CHARITIES**

Where your Client is a charity, you must meet the requirements of sections 38 and 39 of the Charities Act 1993. The appropriate certificate(s) must be added to the Mortgage Deed or Debenture. These will be found in the current Land Registry Practice Guide 14. These apply to both registered and unregistered land.

Where the charity is an incorporated body, its "trustees" will be its board of directors, management committee or other governing body (section 97(1)) all of whom should give the certificate required by section 39(2) and sign the Mortgage Deed or Debenture. We will accept the signatures of two trustees if there is a resolution authorising them to sign in exercise of their power of delegation under section 82 of the Charities Act 1993.

Unincorporated charities may also proceed under section 82.

## 15 CONTACT POINTS

Purpose	Opening Hours / Contact
Credit Support Unit	<p>In the first instance, please use the contact on your instruction letter.</p> <p>Main switchboard:- +44 (0)20 7860 5000</p> <p>Credit Services + 44 (0) 207 024 0333 +44 (0) 207 260 5203</p> <p>Opening Hours: Monday to Friday 9am to 5pm.</p>
Submission of Documents/Pre and Post Drawdown Queries	EMAIL: pbsecurities@hsbcpb.com
Correspondence Address	<p><b>HSBC UK Bank plc</b> 8 Cork Street, London, W1S 3LJ</p>
HSBC UK Bank plc Address	<p><b>HSBC UK Bank plc</b> 8 Cork Street, London, W1S 3LJ</p>
Service Address for Mortgage Deed	<p><b>Private Banking</b> <b>HSBC UK Bank plc</b> 8 Cork Street, London, W1S 3LJ</p>

Sending documents via email:

- 1.1. Separate emails must be sent for each case with the relevant documents attached. Do not send emails containing the documents for more than one case.
- 1.2. Where the documents are emailed, do not submit duplicate paper versions through the post.