

Date: 5 June 2014

Item 8: Audit Exemption for Subsidiary Companies

This paper will be considered in public

1 Summary

- 1.1 Recent changes under section 479A of the Companies Act 2006, enable certain UK subsidiary companies to claim exemption from audit of their accounts. The exemption is conditional on a parent undertaking giving a guarantee to its subsidiary in respect of all liabilities of that subsidiary outstanding at the balance sheet date.
- 1.2 For the year ending 31 March 2014, it is proposed that the holding company for TfL's trading subsidiaries, Transport Trading Limited (TTL), should offer the guarantee to a majority of its subsidiaries. The Group's proposed approach has been discussed with the external auditors, KPMG, and its audit plan, presented to the Audit and Assurance Committee in December 2013, was prepared on this basis.
- 1.3 It is expected that the exemption from audit will provide savings to the Group in terms of staff time saved in dealing with audit queries and information requests as well as a reduction in the TTL audit fee of £190k.
- 1.4 Under Standing Orders (paragraph 105(b)), approval of the TfL Board is required in order for TTL to issue a guarantee. On 26 March 2014, the Board delegated to the Committee authority to approve any matter reserved to the Board from 27 March to 2 July 2014. A decision on this matter is requested at this meeting of the Committee as the subsidiary companies affected are due to meet before the meeting of the Board on 3 July 2014.

2 Recommendations

- 2.1 **The Committee is asked to note the paper and, in accordance with the authority delegated from the Board:**
 - (a) **approve the issuing of the required guarantee, as set out in draft form in Appendix 1 (the Guarantee).**
 - (b) **authorise the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) to finalise the terms of the Guarantee;**
 - (c) **authorise the agreement and execution (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate)) any documentation to be entered into in connection with the completion and implementation of the Guarantee; and**
 - (d) **authorise TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the execution and performance of the Guarantee.**

2.2 The following Officers and Subsidiaries shall have authority:

- (a) **TfL Officers: the Commissioner, Managing Director Finance, General Counsel and Chief Finance Officer; and**
- (b) **Subsidiaries: Subsidiaries of TfL including Transport Trading Limited and any other subsidiary (whether existing presently or to be formed) of Transport Trading Limited and any of the directors of the relevant company shall be authorised to act for and on behalf of that company.**

3 Background

- 3.1 As a result of changes to the Companies Act 2006, certain subsidiary companies can be exempted from mandatory audit of their accounts. Subsidiaries are exempted if the following conditions are complied with:
- (a) the parent undertaking is established under the law of an EEA state;
 - (b) the company's shareholders unanimously agree to dispense with an audit for the relevant year;
 - (c) the parent must give a statutory guarantee of all the outstanding liabilities to which the subsidiary is subject at the end of the financial year;
 - (d) the company must be included in the consolidated accounts drawn up by the parent undertaking prepared in accordance with the Seventh Directive of the European Union on consolidated accounts of companies with limited liability;
 - (e) the use of the exemption must be disclosed in the notes to the consolidated accounts of the parent;
 - (f) certain filing requirements must be complied with; and
 - (g) certain types of entity are excluded (not relevant to TfL).
- 3.2 Claiming the subsidiary exemption, results in savings on the audit fee, but it should be noted that the TTL group accounts will still be audited, and therefore operations in the subsidiaries claiming the exemption have to be audited to the group level of materiality. The saving is therefore only a fraction of the previous year's total audit fee for the subsidiaries concerned. A list of subsidiaries is included as Appendix 2. This identifies those subsidiaries for which a guarantee is sought and those subsidiaries remaining subject to audit or otherwise not impacted by the exemption for 2014.
- 3.3 It should be noted that where external audit work is being significantly reduced on individual subsidiaries, Internal Audit will monitor those subsidiaries to ensure that adequate overall scrutiny is maintained. KPMG confirmed to the Audit and Assurance Committee in December 2013 that there were no control issues with any of the TfL Group subsidiaries.
- 3.4 The guarantee covers all liabilities that exist in the subsidiary at the year end, whether recognised or not, and remains in force until those liabilities are settled. The guarantee therefore includes any contingent liabilities. The parent company's liability under the guarantee only ceases once all liabilities covered by the guarantee have been settled, and is not affected by the subsidiary reverting to an audit in subsequent years.

3.5 The form of guarantee is a statutory one and differs, therefore, in form from the type of parent company guarantee usually associated with a commercial transaction. Nevertheless, TfL proposes to include certain administrative provisions [as set out in the draft in Appendix 1] in order to maximise certainty of administration. As the form of guarantee is specific, it is not anticipated that the existence of the TTL guarantee will impact on requests for TfL parent company guarantees.

List of appendices to this report:

Appendix 1: Draft form of the guarantee
Appendix 2: List of Subsidiary Companies

List of Background Papers:

None

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Draft form of the guarantee

This guarantee is given under Section 479C of the Companies Act 2006 by Transport Trading Limited a company registered in the UK with number 03914810 and whose registered office at the time of filing this form is Windsor House, 42-50 Victoria Street, London SW1H 0TL (“the Guarantor”).

Without prejudice to the effect of the guarantee as stated in section 479C of the Companies Act 2006, the following conditions shall apply to such guarantee:

1. any demand or other notice made by a claimant shall be sent by Special Delivery Guaranteed post to the registered office of the Guarantor, addressed for the attention of General Counsel;
2. the Guarantor shall be under no greater liability under this guarantee than it would have been if it had been the subsidiary company party to the original contract in respect of which a claim is made;
3. to the extent that any claim is made under the guarantee and is satisfied, neither:
 - a. the subsidiary company listed in this form; nor
 - b. any associated body corporate (as defined in section 256 of the Companies Act 2006) of that subsidiary company that has also provided a guarantee of the relevant liabilities of the subsidiary company,shall be liable to the claimant;
4. any claim made must set out clearly the subsidiary company to which it relates and the basis on which any liability has been incurred by that company;
5. the guarantee is governed by and shall be construed in accordance with the law of England and the courts of England shall have exclusive jurisdiction to settle any dispute or claim which may arise out of or in connection with this guarantee;
6. the guarantee relates only to the financial obligations of the subsidiary company listed in this form and not to the discharge of any other obligation of that subsidiary company; and
7. the guarantee hereby given is available only to a party to whom the subsidiary company listed in this form has an outstanding liability at the end of the relevant financial year and the benefit of such guarantee may not be assigned or charged and no other party shall have any right to enforce its terms.

List of subsidiary companies

Direct subsidiaries of TfL not affected by exemption

Transport Trading Limited (TTL)	Holding company
London Transport Insurance (Guernsey) Limited	Captive insurance company
TfL Trustee Company limited	Pension trustee company; dormant therefore exempt from requirement for audit

Subsidiaries of TTL for which the guarantee is sought for year ended 31 March 2014

London Underground Limited	London Underground operations
LUL Nominee BCV Limited	Maintenance of underground lines
LUL Nominee SSL Limited	Maintenance of underground lines
Tube Lines Limited	Maintenance of underground lines
Rail for London Limited	London Overground operations
Docklands Light Railway Limited	DLR operations
City Airport Rail Enterprises Plc	Maintenance of DLR lines
City Airport Rail Enterprises (Holdings) Limited	No operational activity
Woolwich Arsenal Rail Enterprises Limited	Maintenance of DLR lines
Woolwich Arsenal Rail Enterprises (Holdings) Limited	No operational activity
Tramtrack Croydon Limited	Croydon Tramlink operations
London Bus Services Limited	Management of a network of public bus passenger transport services
London Buses Limited	Dial-a-Ride operations
London River Services Limited	Pier operator
Transport for London Finance Limited	Manages financial risk of the Group

Subsidiaries of TTL continuing to be subject to external audit for year ended 31 March 2014

Victoria Coach Station Limited	Coach station Note: requires external audit because of ABTA licence
Crossrail Limited	Construction of Crossrail infrastructure Note: will continue to be subject to audit due to unique governance arrangements
London Transport Museum Limited	Charitable company
London Transport Museum (Trading) Limited	Trading company and consolidated into charitable group accounts

Subsidiaries for who the exemption is not relevant for year ended 31 March 2014

Tube Lines (Holdings) Limited	Holding company (expected to be dissolved in near future)
Tube Lines (Finance) Plc	Former financing company (expected to be dissolved in near future)
Tube Lines Pension Scheme Trustees Limited	Pension trustee company; dormant therefore exempt from requirement for audit
TTL Earls Court Properties Ltd	Property investment holding company (incorporated on DATE and first accounts will be made up to 31 March 2015)
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