

**Project on Standardization of Mortgage Origination Documents in Hong Kong
(the "Project")**

Guidance Notes to the Solicitors' Completion Certificate

1. **The Steering Committee of the Project, and each member of the Steering Committee, expressly disclaims any liability to the fullest extent possible for the contents of the Certificate (as defined below), or for any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with, or in reliance on, the whole or any part of the Certificate. Any mortgage lender or any other person proposing to use the Certificate must seek its own legal advice as to the suitability of the Certificate for its intended purposes.**
2. The Steering Committee of the Project has prepared a Solicitors' Completion Certificate ("**Certificate**") as a standard form of completion certificate to be enclosed in the mortgage lender's instructions to the solicitors. The solicitors' firm is required to issue a certificate in the standard form to confirm completion of the mortgage transaction.
3. The Certificate is only a recommended form of completion certificate. In deciding whether to adopt the Certificate as its prescribed form of completion certificate, the mortgage lender should consider whether the Certificate is compatible with its operational procedures and the requirements of the loan transaction. The use of the Certificate for any mortgage transaction is entirely voluntary by the mortgage lender or the solicitors' firm.
4. Where any mortgage lender intends to use the Certificate but requires any modification or amendment to it, this should be drawn to the attention of the solicitors' firm. The solicitors' firm should notify the mortgage lender immediately on receiving instructions if they are unable to issue a completion certificate in the form as requested. Any amendment which they wish to make to the Certificate should first be agreed to and approved by the mortgage lender in writing.
5. The Certificate contains confirmations given by the solicitors' firm as regards the title of the property, the bankruptcy / winding up / company search of the mortgagor / borrower and such other matters as are required by the mortgage lender in the relevant instruction letter. The solicitors' firm also undertakes in the Certificate that they will attend to the registration of the mortgage and the delivery of the title deeds within the specified time limit.
6. The mortgage lender should be aware that the Certificate is addressed to, and for the benefit of, the addressee mortgage lender only. Accordingly, the benefit of the matters opined on by the solicitors is not able to be passed on to the mortgage lender's successors or assigns.

**The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong**

November 2003

Solicitors' Completion Certificate

From : [Name of the solicitors' firm]
To : Mortgage Department, [Name of Bank] (the "**Bank**")
Attention : [•] Bank's Ref. [•]
Re : [•] (the "**Borrower**")
[•] (the "**Mortgagor**")
[•] (the "**Guarantor**")
Property : [•]

In accordance with your instructions set out in your letter of [•], we advise as follows:

1. Contents of Mortgage

We have prepared a mortgage (the "**Mortgage**") of the Property on the basis of the Bank's standard mortgage form [to which we have made only those changes and additions required by the Bank's instructions or subsequently approved by the Bank in writing]¹.

2. Contents of Completion Certificate

This Certificate is prepared on the basis of the Model Solicitors' Completion Certificate * [to which we have made only those changes and additions required by the Bank's instructions or subsequently approved by the Bank in writing].

3. Bankruptcy / Winding Up Search

A bankruptcy / winding up search has been conducted and the search does not reveal the existence of a bankruptcy / winding up petition or order against the Mortgagor * [and/or the Borrower].

4. Company Search (if the Mortgagor and/or the Borrower is a corporation)

A company search has been conducted and the search does not reveal (a) the existence of any resolutions of winding up of the Mortgagor and/or the Borrower; or (b) the appointment of a receiver of the Mortgagor and/or the Borrower.

* Delete as appropriate.

¹ Not applicable if the Model Mortgage Deed is used.

5. Execution of Mortgage and *[Deed of Guarantee and Indemnity]

The Mortgage *[and the Deed of Guarantee and Indemnity] has / have been duly authorized and executed by the Mortgagor *[and the Borrower] *[and the Guarantor respectively] and witnessed in accordance with the acceptable practice applicable in the Hong Kong Special Administrative Region ("Hong Kong") and constitutes a valid and enforceable legal charge or (where the Mortgagor's interest in the property is equitable) an equitable mortgage.

6. Registrable Interest and Ranking

The Mortgage will create a registrable interest in the Property and on registration will rank as a first legal charge or (where the Mortgagor's interest in the Property is equitable) a first equitable mortgage subject to the provisions of the Land Registration Ordinance.

7. Title

We have reviewed title documents of the Property and have conducted searches at the relevant public registries. *[Save for those matters already disclosed to the Bank in our letter dated [•] (a copy of which is attached),] we are of the opinion that the Mortgagor has a good and marketable title to the Property free from all encumbrances.

8. Date of Drawdown

We confirm that the drawdown date of the mortgage loan is not more than 2 business days earlier than the date of each of the following documents: the mortgage deed, the Assignment and the release pertaining to the preceding mortgage loan.

9. Registration

We undertake that the Mortgage will be presented for registration with (a) the relevant Land Registry within the one (1) calendar month priority period and the memorial number will be advised to the Bank when available; (b) the Companies Registry within 5 weeks after its execution in accordance with section 80(1) of the Companies Ordinance (if the Mortgagor is a corporation formed under the Companies Ordinance or a foreign corporation registered under Part XI of the Companies Ordinance).

10. Documents to be sent to the Bank

We undertake that within one (1) month from:

- (a) (where the Mortgagor is an individual) the date of receipt of the duly registered Mortgage from the relevant Land Registry; or
- (b) (where the Mortgagor is a corporation formed under the Companies Ordinance or a foreign corporation registered under Part XI of the Companies Ordinance) the later of the date of receipt of the duly registered Mortgage from (i) the relevant Land Registry and (ii) the Companies Registry,

* Delete as appropriate.

we will send to the Bank the Mortgage and all title documents to be kept by the Bank as mortgagee.

11. Application of Proceeds

We shall apply the proceeds of the loan in accordance with the Bank's written instructions.

12. Information and advice to be given to the potentially unduly influenced party (if required in the instruction letter)

*The [Borrowers (which should be more than one)] / [Guarantor] has instructed their / his / her own independent solicitors.

*We have provided the necessary information and advice to the potentially unduly influenced party(ies), and in so doing have followed the latest relevant procedures / guidelines issued by The Law Society of Hong Kong.

13. Qualifications

(A) The opinions expressed in Paragraphs 4, 5, 6 and 7 above are subject however to:

- (a) the laws of bankruptcy, insolvency, liquidation, reorganization and other laws of general application relating to or affecting the rights of creditors;
- (b) the rights of the Government to re-enter the Property, or forfeit the Government Lease or other contractual arrangement under which the Property is held from the Government, for any existing or future breach of any covenant or condition in that Government Lease or contractual arrangement, whether by the Mortgagor or other occupants of the Property, which rights are subject only to the right to claim relief from re-entry or forfeiture in certain circumstances;
- (c) powers of compulsory acquisition, resumption or surrender by or on behalf of the Government of Hong Kong or any sub-division, or agency thereof or otherwise pursuant to any authority in that respect set out in any ordinance or other enactment of the legislature of Hong Kong;
- (d) any equitable interest in favour of a third party of which the Bank has notice or may be deemed by law to have had notice at the time of the giving of the security;
- (e) an assumption that:
 - (i) all signatures on documents relevant to title and security are genuine and that all documents submitted to us as originals or copies of originals are authentic;
 - (ii) the execution of all documents and delivery of the title deeds and other documents (other than the Mortgage prepared by us) has been duly authorized;

* Delete as appropriate.

- (iii) each individual in relation to whom the same is material was of full legal age and capacity at the time;
 - (iv) the relevant documents have been signed and/or executed by each individual referred to in (iii) above at his/her own free will and without any duress or undue influence from any person whatsoever;
 - (v) the files at the relevant Land Registry contained all matters which ought to have been recorded therein and certificates and searches were and will continue to remain accurate;
 - (vi) the information disclosed and representation (including as to the correctness of each of the foregoing assumptions) made to us by the Mortgagor/*Borrower/*Guarantor or any other security provider are true and correct in all respects and the Mortgagor/*Borrower/*Guarantor or any other security provider has not omitted to inform us of anything material to this Certificate; and
 - (vii) no person to whom any cheque or cashier's order has been delivered by us will misappropriate it.
- (B) We have not inspected the Property, we have advised that a careful physical inspection of the Property should be carried out by the Bank as such inspection may reveal matters which are not necessarily reflected from the title deeds or by the results of searches and enquiries which we have made as part of our legal investigation.
- (C) The Bank is aware that the existence of unauthorized structure may render the title to the Property defective and the Bank has been advised to instruct a competent professional surveyor or other authorised person to check the approved plans of the Property to see if there is any unauthorized structure and whether a breach of the provisions of the Government Lease, the Buildings Ordinance, the Deed of Mutual Covenant and/or Management Agreement or any other document has occurred.
- (D) This Certificate is addressed to the Bank and is intended solely for the benefit of the Bank in connection with the relevant transaction.
- (E) This Certificate is given on the basis of:
- (a) a search of title to the Property at the Land Registry; and
 - (b) our examination of the title deeds and documents supplied to us in support thereof.

Yours faithfully,

 [Firm]
 Date : [●]

* Delete as appropriate.