

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

**Guidance Notes to the Instructions to Solicitors**

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 Instructions (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 Instructions. Any mortgage lender or any other person proposing to use the Instructions must seek its own legal advice as to the suitability of the Instructions for its intended purposes.**
2. The Steering Committee of the Project has prepared a standard form of the Instructions to Solicitors (“**Instructions**”) in connection with a mortgage transaction.
3. The Instructions are only a recommended form of instructions letter, which set out the instructions of the mortgage lender in relation to the security arrangements pursuant to a facility agreement granted by the mortgage lender which it requires the solicitors’ firm to perform. In deciding whether or not to adopt the Instructions as its prescribed form of instructions letter, the mortgage lender should consider whether the Instructions are compatible with its operational procedures and the requirements of the loan transaction.
4. Where any mortgage lender intends to use the Instructions, it should adopt the Instructions in whole without modification. Any modification or amendment made to the Instructions should be drawn to the attention of the solicitors’ firm in the interest of clarity. It should be made clear to the solicitors’ firm that they should accept instructions only if they are able to comply with the mortgage lender’s requirements as set out in the Instructions.
5. The Instructions contain (a) a number of blank spaces for filling in the details of the mortgaged property, the mortgage lender, the mortgagor, the borrower and other terms of the mortgage; (b) a number of boxes for options relating to the liabilities secured under the Mortgage; (c) the responsibility for costs associated with the production of certified copies; (d) what additional documents should be provided by the solicitors’ firm; and (e) the mortgage lender’s choice of mode of legal representation.
6. The Instructions require the solicitors’ firm to provide a solicitors’ completion certificate in the form issued by the Steering Committee. (Please refer to the Guidance Notes to the Solicitors’ Completion Certificate for further details).

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

**November 2003**

## **Instructions to Solicitors**

[Date]

[Solicitors' Firm]

Dear Sirs

### **Re: INSTRUCTIONS TO PREPARE A LEGAL CHARGE**

1. We wish to advise you that we have agreed to extend banking facilities to [the Borrower / the Mortgagor] on the terms and conditions set out below and pursuant to the contents of the facility letter which has been accepted by our customers (a copy of which is annexed hereto for your handling).
2. Please investigate the title and prepare the security document(s) over the following property in our favour pursuant to the following terms and particulars:

#### **(a) Property**

[•]

Subject to an existing tenancy with a monthly rental income of HK\$[•] expiring on [•] and our consent has been obtained before execution of the Security Documentation. Please pass to us a certified copy of the stamped tenancy agreement for our record.

The Property is or will be occupied by [the Borrower / the Mortgagor]. Please ensure that in view of the legal implications of the decision made in the case of *Wong Chim Ying v. Cheng Kam Wing* (Civil Appeal No. 75 of 1990), all necessary steps in accordance with the best practice as recommended by The Law Society of Hong Kong will be taken to protect our interest as the first mortgagee of the Property.

#### **(b) Borrower**

[•]

**[Mortgagor]**

[•]

**(c) Security Documentation**

- First Legal Charge over the Property in the [Two-party / Three-party] Model Mortgage Deed<sup>(1)</sup> to secure general banking facilities for an unlimited amount / or to the extent of HK\$[•].
- Deed of Guarantee and Indemnity in our favour to be executed by [•] ("the Guarantor") with an unlimited extent / to the extent of HK\$[•].

**(d) Interest**

Interest: [•]% per annum

Default interest rate in connection with the loan: [•]% per annum.

**(e) Repayment Term**

[•]

**(f) Legal Costs**

(i) All professional charges and other expenses (subject to (ii)) incurred are to be borne by [the Mortgagor and/or the Borrower]; and

(ii) For future disposition of the Property,

we will make available to [the Mortgagor and/or the Borrower] or its solicitors at no cost

[the Mortgagor and/or the Borrower] will at its cost obtain,

certified true copies of all the assignment and transfer documents executed by us or our assignee(s) and transferee(s).

**(g) Prepayment Charges**

(i) For partial prepayment, [•]% on the prepaid amount; and

(ii) For full prepayment, the higher of [•]% on the loan amount and HK\$[•].

Partial Prepayment shall be a whole multiple of HK\$[•].

3. In respect of title deeds, please note that they:

- will be sent to you by [the Mortgagor or the Borrower] upon your request
- are already in your safe custody

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<sup>(1)</sup> The Model Mortgage Deed is in the form issued by the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong convened by The Hong Kong Mortgage Corporation Limited (the "Standardization Project Committee").

- are enclosed for your receipt and acknowledgement
- are to be collected from the [Vendor's Solicitors] / [existing Mortgagee's Solicitors] Messrs. [•]

4. On signing of the Security Documentation, please collect on our behalf of the sum of HK\$[•] being our handling charges / insurance fee / valuation fee.
5. Subject to our specific written confirmation, this instruction is only valid for [•] days from the date of this letter.
6. Please send us the following documents for our review and approval before drawdown:
  - (a) A signed solicitors' completion certificate in the form issued by the Standardization Project Committee, a copy of which is enclosed for your use. The form should be adopted by you without any modification unless such modification has first been notified by you to us and agreed by us [in writing].
  - (b)  Specimen signature and certified copy of Hong Kong Identity Card / Business Registration Certificate or other identification document of [the Mortgagor / Borrower].
    - Copy of an up-to-date land search of the Property obtained from the appropriate Land Registry.
    - Copy of a [winding up / bankruptcy] search of the Mortgagor.
    - Copy of a [winding up / bankruptcy] search of the Borrower.

## 7. Remarks

- A.  There is no potentially unduly influenced party. You act for us only but we have no objection for you to provide explanation to the Mortgagor / Borrower / Guarantor on the meaning of the terms of the Mortgage.
  - We enclose, for your reference, a copy of the Warning Notice(s) (Appendix B to the Guidance Note dated 19 May 2003\* issued by the Law Society of Hong Kong) duly signed by the  Mortgagor;  Borrower;  Guarantor.
  - Please arrange for signing of the Warning Notice(s) (Appendix B to the Guidance Note dated 19 May 2003\* issued by the Law Society of Hong Kong) by the  Mortgagor;  Borrower;  Guarantor.
- B.  There may be a potentially unduly influenced party. You act for us but you may also act for the Mortgagor/Borrower/Guarantor. Please follow the latest relevant procedures / guidelines issued by The Law Society of Hong Kong including providing relevant information and clearly advising the potentially

\* or such latest Guidance Note as issued by the Law Society of Hong Kong from time to time.

unduly influenced party the nature of the document that he/she is signing and keeping written record, in both Chinese and English (duly signed by the relevant party), of the steps taken.

- We enclose, for your reference, a copy of the Warning Notice(s) (Appendix C to the Guidance Note dated 19 May 2003\* issued by the Law Society of Hong Kong) duly signed by the  Mortgagor;  Borrower;  Guarantor.
- Please arrange for signing of the Warning Notice(s) (Appendix C to the Guidance Note dated 19 May 2003\* issued by the Law Society of Hong Kong) by the  Mortgagor;  Borrower;  Guarantor.

C.  There may be a potentially unduly influenced party, and we will provide you with information and advice as regards the potentially unduly influenced party. You are hereby requested to act for us only and please advise the Mortgagor / Borrower / Guarantor that he / she must obtain separate independent advice from a solicitor of his / her own choice.

- We enclose, for your reference, a copy of the Warning Notice(s) (Appendix B to the Guidance Note dated 19 May 2003\* issued by the Law Society of Hong Kong) duly signed by the  Mortgagor;  Borrower;  Guarantor.
- Please arrange for signing of the Warning Notice(s) (Appendix B to the Guidance Note dated 19 May 2003\* issued by the Law Society of Hong Kong) by the  Mortgagor;  Borrower;  Guarantor.

Please note that:

- Special relationship between the Mortgagor, the Borrower and the Guarantor: [•].
- We enclose for your reference, the following financial information of the Borrower: [•].

#### 8. **Others**

Please note that it is your duty to take all relevant steps and record the steps taken.

Should you have any queries, please contact our [ ] at [ ].

Yours faithfully  
For and on behalf of

[name of mortgage lender]

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\* or such latest Guidance Note as issued by the Law Society of Hong Kong from time to time.