

CB2/BC/24/00  
(LAD) CE:629-00

25 April 2002

Mrs. Percy Ma  
Clerk to Bills Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road Central  
Hong Kong

Dear Mrs. Ma,

**Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001**  
**Part VII of the Bill - Power of Court to Order Repayment of Deposit**

We refer to your letter of 4 April 2002.

We now have the benefit of reading about the discussions and views made on the matter from the papers attached to your said letter. We also note that the provision proposed to be adopted to empower the Court to order repayment has remained unchanged but there is the addition of a subsection on express prohibition against contracting out.

The Consumer Council maintains its support for giving the court power to order return of deposit to a purchaser where transactions do not proceed to completion not due to fault on the part of purchasers but because of title uncertainty brought out by requisition sustainable in law, and it would cause injustice for the purchaser to lose their deposit in the relevant circumstances. The discretion given to the Court should however be qualified rather than unfettered so that only genuinely aggrieved purchasers will resort to the redress. We believe that the sanctity of contract and the certainty of property transactions will not be affected by introduction of a discretion that is sufficiently defined.

We agree that the introduction of the intended amendment could be rendered futile if contracting-out is allowed and it is probably necessary to prohibit exclusion of the court's jurisdiction. We are however cautious of the need to balance the interests of vendors and purchasers in property transactions and a prohibition against contracting-out may put the interest of vendors at stake. The grave implication to vendors of possible tie-up of their properties and the deposits concerned even after transactions have fallen through reinforces our view that the discretion should be narrowly defined. Where possible, we suggest that the circumstances under which the discretion should not be exercised be specified so that parties in dispute will exercise prudence in considering whether to invoke or contest the exercise of the discretion. A fettered discretion may be in such terms as "where there is uncertainty as to title and the purchaser has acted with diligence, the Court may as it sees fit ..." or "the Court may, where good cause is shown, ... provided that XXX will not be considered good cause.". We trust that the Administration can come up with the appropriate drafting to cover circumstances where return of deposits is justifiable.

Please let us know if you require elaboration on the views given above.

Yours sincerely,

(LI Kai-ming)  
Acting Chief Executive

LKM//RW/rl