

By fax and by post

Your Ref. CB1/BC/14/00
Our Ref. EAA/CEO/03/017

19th May, 2003

Miss Becky Yu
Clerk to the Bills Committee
on Companies (Amendment) Bill 2002
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Miss Yu,

Companies (Amendment) Bill 2002

Thank you for your letter of 9th May 2003.

2. I am given to understand that your Committee has asked you to seek my views on the proposed definition of “conditional sales agreements” and the scope and effect of the extension of the term “loan” under section 157H of the Companies Ordinance (Cap.32) to include, inter alia, these agreements. In order to facilitate the discussion of the issues by the Bills Committee on 20 May 2003, I set out below the preliminary views of the EAA Administration based on the information provided in your letter.

3. “Conditional sales agreement” as proposed, is defined as “an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods or land) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled”. Although it is not a common practice in Hong Kong, we are aware of some property transactions in which the property developers entered into such arrangement with purchasers whereby the purchasers were given possession but legal title would only pass to them upon fulfillment of all instalment payments. In view of the current property market condition, whether developers will resort to this form of arrangement in order to boost sales has yet to be carefully surveyed. Suffice to say that it is possible that parties to a real property transaction may choose to transact on terms that may be caught by this definition.

4. We note that the proposed sections 157H(2B)(b), 157H(2B)(c)(ii), and 157H(4) involve third parties other than the company and its directors. The scope of section 157H(4) is rather wide and will presumably catch all other possible arrangements (e.g. back-to-back arrangements between companies) not covered by the other sub-sections under 157H. In order to fully assess the effect of the proposed extension, it is desirable for careful consideration to be given to various specific circumstances. In this regard, we should like to emphasize the importance of ensuring that the interest of innocent third parties would not be compromised.

Yours sincerely,

Grace Chow (Mrs)
Chief Executive Officer

cc Chairman, Estate Agents Authority

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