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**BY FAX (28696794) AND BY POST**

27 May 2003

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

Dear Miss. Yu,

**BILLS COMMITTEE ON COMPANIES (AMENDMENT) BILL 2002**

Thank you for your letter dated 9 May 2003.

The Property Committee has considered the proposed definition of “*conditional sales agreement*” and believes that the term does cover all possible types of sale and purchase agreements of landed properties in Hong Kong despite the alleged intention not to do so.

In reality, situations can arise whereby in the primary and secondary property markets, the purchaser will be given possession of the property prior to payment of the balance purchase price. Whilst the Consent Scheme SP Agreement may seem to contain no express provision allowing for possession of the property prior to payment of the balance purchase price, it is implicit in the purchasers’ default clauses in the various proforma sale and purchase agreements used under both the Consent and Non-Consent Schemes that such a situation may arise. For your kind information, I attach the relevant default clauses extracted from the proforma agreements used in both Schemes.

Yours sincerely,

Christine W. S. Chu  
Assistant Director of Practitioners Affairs

## Consent Scheme – Sale and Purchase Agreement

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(2) The Purchaser shall raise no objection if the Vendor's interest in the Property is an equitable interest and not a legal estate.

Documents of title 13. Such of the documents of title as relate exclusively to the Property will be delivered to the Purchaser. All other documents of title in the possession of the Vendor will be retained by him and he will, if required, give to the Purchaser a covenant for the safe custody, production and delivery of copies thereof at the expense of the Purchaser.

Costs and disbursements of Agreement 14. (1) Subject to the provisions of Clause 11(1)(c), all legal costs of and incidental to the preparation, completion, stamping and registration of this Agreement and the subsequent Assignment to the Purchaser shall be borne and paid by the \*Purchaser/Vendor.

\*Delete as appropriate

Stamp duty etc. (2) All stamp duty and registration fees payable on this Agreement (if any) and the subsequent Assignment shall be borne and paid by the Purchaser.

(3) The professional fees for the plan to be annexed to the Assignment shall be borne and paid by the Purchaser.

~~Time of the essence 15. Time shall in every respect be of the essence of this Agreement~~

Default of Purchaser 16. (1) Should the Purchaser fail to observe or comply with any of the terms and conditions herein contained or to make the payments in accordance with Schedule 4 or any interest payable hereunder within 7 days of the due date, the Vendor may (subject to Clause 3(3)) give to the Purchaser notice in writing calling upon the Purchaser to make good his default. In the event of the Purchaser failing within 21 days from the date of service of such notice fully to make good his default, the Vendor may by a further notice in writing forthwith determine this Agreement.

## Consent Scheme – Sale and Purchase Agreement

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- (2) Upon the determination of this Agreement pursuant to sub-clause (1) :-
- (a) the sum paid by the Purchaser under item (i) of Schedule 4 by way only of deposit shall be forfeited to the Vendor; and
  - (b) where the Purchaser has entered into possession of the Property, the Vendor shall become entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser therein and to receive from the Purchaser as occupation fee a sum equal to interest at the rate of 2% per annum above the prime specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on the unpaid balance of the purchase price for the period during which the Purchaser was in occupation.
- (3) Upon determination of this Agreement under sub-clause (1) the Vendor may resell the Property either by public auction or private contract subject to such stipulations as the Vendor may think fit and any increase in price on a resale shall belong to the Vendor. On a resale, any deficiency in price shall be made good and all expenses attending such resale shall be borne by the Purchaser and such deficiency and expenses shall be recoverable by the Vendor as and for liquidated damages. Provided That the Purchaser shall not be called upon to bear such deficiency or expenses unless the Property is resold within 6 months of the determination of this Agreement.

Default of Vendor

17. In the event of the Vendor failing to complete the sale in accordance with the terms and conditions hereof, it shall not be necessary for the Purchaser to tender an Assignment to the Vendor for execution before taking proceedings to enforce specific performance of this Agreement.

**NON-CONSENT SCHEME - APPROVED FORM OF SALE AND PURCHASE AGREEMENT FOR NON-CONSENT SCHEME UNDER RULE 5C(3) OF SOLICITORS' PRACTICE RULES**

**Default of Purchaser**

16. (1) Should the Purchaser fail to observe or comply with any of the terms and conditions herein contained or to make the payments in accordance with Schedule 4 or any interest payable hereunder within 7 days of the due date, the Vendor may (subject to Clause 3(3)) give to the Purchaser notice in writing calling upon the Purchaser to make good his default. In the event of the Purchaser failing within 21 days from the date of service of such notice fully to make good his default, the Vendor may by a further notice in writing forthwith determine this Agreement.

- (2) Upon the determination of this Agreement pursuant to sub-clause (1) :-
- (a) all sums paid by the Purchaser up to 10% of the purchase price by way of deposit shall be forfeited to the Vendor;
  - (b) where the Purchaser has entered into possession of the Property, the Vendor shall become entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser therein and to receive from the Purchaser as occupation fee a sum equal to interest at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on the unpaid balance of the purchase price for the period during which the Purchaser was in occupation.

(3) Upon determination of this Agreement, the Vendor may resell the Property either by public auction or private contract subject to such stipulations as the Vendor may think fit and any increase in price on a resale shall belong to the Vendor. On a resale, any deficiency in price shall be made good and all expenses attending such resale shall be borne by the Purchaser and such deficiency and expenses shall be recoverable by the Vendor as and for liquidated damages Provided That the Purchaser shall not be called upon to bear such deficiency or expenses unless the Property is resold within 6 months of the determination of this Agreement.

**NON-CONSENT SCHEME - APPROVED FORM OF SALE AND PURCHASE AGREEMENT FOR COMPLETED DEVELOPMENT UNDER RULE 5C(4) OF SOLICITORS' PRACTICE RULES**

**Default of Purchaser**

17. (1) Should the Purchaser fail to observe or comply with any of the terms and conditions herein contained or to make the payments in accordance with Schedule 4 or any interest payable hereunder within 7 days of the due date, the Vendor may give to the Purchaser notice in writing calling upon the Purchaser to make good his default. In the event of the Purchaser failing within 21 days from the date of service of such notice fully to make good his default, the Vendor may by a further notice in writing forthwith determine this Agreement.

(2) Upon the determination of this Agreement pursuant to sub-clause (1) :-

- (a) all sums paid by the Purchaser up to 10% of the purchase price by way of deposit shall be forfeited to the Vendor; and
- (b) where the Purchaser has entered into possession of the Property, the Vendor shall become entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser therein and to receive from the Purchaser as occupation fee a sum equal to interest at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on the unpaid balance of the purchase price for the period during which the Purchaser was in occupation.

(3) Upon determination of this Agreement, the Vendor may resell the Property either by public auction or private contract subject to such stipulations as the Vendor may think fit and any increase in price on a resale shall belong to the Vendor. On a resale, any deficiency

in price shall be made good and all expenses attending such resale shall be borne by the Purchaser and such deficiency and expenses shall be recoverable by the Vendor as and for liquidated damages Provided That the Purchaser shall not be called upon to bear such deficiency or expenses unless the Property is resold within 6 months of the determination of this Agreement.

**APPROVED FORM OF AGREEMENT FOR SUB-SALE AND SUB-PURCHASE OF UNIT IN UNCOMPLETED DEVELOPMENT IN CONSENT OR NON-CONSENT SCHEME UNDER RULE 5C(5) OF SOLICITORS' PRACTICE RULES**

**Default of Purchaser**

16. (1) Should the Purchaser fail to observe or comply with any of the terms and conditions herein contained or to make the payments in accordance with Schedule 3 or any interest payable hereunder within 7 days of the due date, the Vendor may (subject to clause 3(4)) give to the Purchaser notice in writing calling upon the Purchaser to make good his default. In the event of the Purchaser failing within 21 days from the date of service of such notice fully to make good his default, the Vendor may by a further notice in writing forthwith determine this Agreement.

(2) Upon the determination of this Agreement pursuant to sub-clause (1):-

(a) all sums paid by the Purchaser up to 10% of the purchase price by way of deposit shall be forfeited to the Vendor; and

(b) where the purchaser has entered into possession of the Property, the Vendor shall become entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser therein and to receive from the Purchaser as occupation fee a sum equal to interest at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on the unpaid balance of the purchase price for the period during which the Purchaser was in occupation.

(3) Upon determination of this Agreement, the Vendor may resell the Property either by public auction or private contract subject to such stipulations as the Vendor may think fit and any increase in price on a resale shall belong to the Vendor. On a resale, any deficiency in price shall be made good and all expenses attending such resale shall be borne by the

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Purchaser and such deficiency and expenses shall be recoverable by the Vendor as and for liquidated damages Provided That the Purchaser shall not be called upon to bear such deficiency or expenses unless the Property is resold within 6 months of the determination of this Agreement.

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**NON-CONSENT SCHEME - APPROVED FORM OF AGREEMENT FOR SUB-SALE AND SUB-PURCHASE OF UNIT IN COMPLETED DEVELOPMENT UNDER RULE 5C(5) OF SOLICITORS' PRACTICE RULES**

**Default of Purchaser**

16.(1) Should the Purchaser fail to observe or comply with any of the terms and conditions herein contained or to make the payments in accordance with Schedule 3 or any interest payable hereunder within 7 days of the due date, the Vendor may (subject to clause 3(4)) give to the Purchaser notice in writing calling upon the Purchaser to make good his default. In the event of the Purchaser failing within 21 days from the date of service of such notice fully to make good his default, the Vendor may by a further notice in writing forthwith determine this Agreement.

(2) Upon the determination of this Agreement pursuant to sub-clause (1):-

- (a) all sums paid by the Purchaser up to 10% of the purchase price by way of deposit shall be forfeited to the Vendor; and
- (b) where the purchaser has entered into possession of the Property, the Vendor shall become entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser therein and to receive from the Purchaser as occupation fee a sum equal to interest at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on the unpaid balance of the purchase price for the period during which the Purchaser was in occupation.

(3) Upon determination of this Agreement, the Vendor may resell the Property either by public auction or private contract subject to such stipulations as the Vendor may think fit and any increase in price on a resale shall belong to the Vendor. On a resale, any

deficiency in price shall be made good and all expenses attending such resale shall be borne by the Purchaser and such deficiency and expenses shall be recoverable by the Vendor as and for liquidated damages Provided That the Purchaser shall not be called upon to bear such deficiency or expenses unless the Property is resold within 6 months of the determination of this Agreement.