

香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Mrs. Percy Ma
Clerk to the Panel on
Administration of Justice and Legal Services
Legislative Council Secretariat
8 Jackson Road
Central
Hong Kong

Dear Mrs. Ma

**Consultation Paper on Proposed Amendments
to the Conveyancing Documents by Corporations (Cap.219)
Execution of Conveyancing Documents by Corporations**

We thank you for your letter of 1 February, and advise that our representatives will not be attending your panel meeting on 20 March. We would however wish to offer our comments on the consultation paper as follows:

Question 1. *Do you agree that legislation is needed?*

We agree that legislation is needed. It is important that title should not be sterilised on technical grounds. In a stable market, neither the vendor nor the purchaser would wish a transaction not to go through simply because of a technical defect in title. In a falling market, the purchaser should not be allowed to get out of a bargain merely on a technical ground.

Question 2. *Do you support the proposed section 23A(1) or a narrower version of it?*

- 2.1 We support the proposed section 23A(1). A distinction should however be drawn between documents executed before the amendment and those executed after the amendment.
- 2.2 For documents executed prior to the amendment, we consider that a remedial approach should be adopted and the proposed section 23A(1) be enacted.
- 2.3 For documents executed after the amendment we take note of the concern of the Administration. To address such concern, consideration should be given to modifying the proposed section 23A(1) so that the

presumption is limited to cases where the document was signed or purported to be signed by either a director or a secretary or other permanent officer of the corporation.

Question 3. *Do you support the proposed section 23A(2)?*

- 3.1 We support the proposed section 23A(2). A distinction should however be drawn between documents executed before the amendment and those executed after the amendment.
- 3.2 For documents executed prior to the amendment, we consider that a remedial approach should be adopted and proposed section 23A(2) be enacted.
- 3.3 For documents executed after the amendment we take note of the concern of the Administration. To address such concern, consideration should be given to modifying the proposed section 23A(2) so that the dispensation of the need to inquire is limited to cases where the document was signed or purported to be signed by either a director or a secretary or other permanent officer of the corporation.

Question 4. *Do you support the presumption suggested by the Administration, either as an alternative or as an addition to section 23A?*

- 4.1 We support the presumption suggested by the Administration but not as an alternative to section 23A.
- 4.2 We suggest that the presumption be included as an addition to section 23A but without the requirement of “beyond reasonable doubt”. In our view, the requirement of “beyond reasonable doubt” is difficult to discharge. It should be sufficient if, in the circumstances, it appears that the vendor intended to vest title in the purchaser and there is no real risk of a challenge.

Yours sincerely

Louis Loong
Secretary General