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24 January 2003

BY FAX (25099055) AND BY POST

Mrs. Percy Ma
Clerk to Panel
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

Dear Mrs. Ma,

**LEGCO PANEL ON ADMINISTRATION OF JUSTICE AND LEGAL SERVICES
MEETING ON 27 January 2003
Agenda Item VI – Conveyancing Documents Executed by Corporations**

Thank you for your letter dated 21 January 2003 to our Secretary General, Mr. Moss and the enclosed revised Section 10 of the Bill.

Regarding the revised Section 10, the Committee presumes that the proposed Section 23A(3) of the CPO is intended to ensure that the enactment of the Bill would not affect the position of parties under an existing sale and purchase agreement. This is a good point and needs to be dealt with. Otherwise a prospective purchaser could potentially be placed in an invidious position having taken a justifiable stance under the existing law in connection with the title to a property and then have the legal basis of that stance removed by the passing of the Bill. This could be particularly awkward for a purchaser if the Bill is passed on or very close to his contractual completion date and might have the effect of placing a purchaser in breach of contract.

However the Committee believes that the drafting of Sub-Clause (3) could be improved. By simply referring to "*contract for the sale of land entered into on or after the commencement of the section*" may have the effect of negating the purpose for which Sub-Clauses (1) and (2) are enacted. This is because an assignment may also be construed as a contract for sale of land. For example, an assignment executed before the commencement of the Section ("the Assignment") which is intended to be covered by

Sub-Clauses (1) and (2) will no longer benefit from those two Sub-Clauses because of the wordings of Sub-Clause (3) as the Assignment being a contract for sale of land was not entered into on or after the commencement of the Section.

We therefore propose that the drafting of the proposed Section 23A could be improved to achieve the intention of the Administration by either:

- (a) amending Sub-Section (3) so that it does not apply to any deed referred to in Sub-Sections (1) or (2); or
- (b) deleting Sub-Section (3) and amend Sub-Sections (1) and (2) as follows:
"proof of title to any land pursuant to a contract for the sale of that land entered into on or after the commencement of this section..."

Regarding next Monday's LegCo Panel meeting, I am pleased to confirm that the following members of the Property Committee will attend the meeting as the Society's representatives:-

- (a) Mr. Vincent Liang (梁雲生律師)
- (b) Mr. Peter Hung (孔憲淦律師)

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

c.c. Ms. Wendy Chow, the Chairman
Mr. Peter Aherne
Mr. Peter Hung
Mr. Vincent Liang
Miss Agnes Cheung - DOJ

