

(Translation)

Role of China-appointed attesting officers
in mainland property transactions

1. A China-appointed attesting officer (“attesting officer”) must be a Hong Kong solicitor. However, the scope of business and the codes of practice of the two are different. An attesting officer shall be responsible for the certification of the authenticity of legal actions that took place in Hong Kong, as well as other legal matters or documents. Such certification shall be valid in mainland China.
2. According to the relevant rules of the Supreme People’s Court and the Ministry of Justice of the People’s Republic of China (“PRC”), any mainland businesses handled by any person, company or organization in Hong Kong that require the recognition of relevant authorities in the mainland shall be notarized by an attesting officer. Relevant documents notarized by an attesting officer shall be sent to the China Legal Service (Hong Kong) Limited Company for authentication and stamping before they become valid in mainland China.
3. When notarizing documents, an attesting officer shall abide by the rules and procedures applicable to their mainland counterparts. According to the Provisional Regulations of the PRC on Public Notarization, notarization entails the certification of the truth and legitimacy of legal actions, documents and matters in accordance with law. An attesting officer shall observe relevant Chinese laws and rules and regulations when notarizing documents for use in the mainland.
4. Services provided by an attesting officer in mainland property transactions mainly include the following:
 - 1) to vet the legality of the principal qualifications of the developer concerned, documents to be checked mainly include the developer’s business licence, the land-use certificate, the permit for construction and planning, as well as the licence for pre-sale to overseas buyers;

- 2) to draft a sale and purchase agreement duly recognized by the local notarial office in accordance with the requirements of the relevant government departments of the area in which the property is located;
 - 3) to attest to the signature of the purchaser on the sale and purchase agreement upon the authorization of the notarial office of the area in which the property is located; and
 - 4) to send the sale and purchase agreement to the China Legal Service (Hong Kong) Limited Company for authentication and stamping, in order to ensure its legality.
5. In mainland China, standard contracts (or main contracts) jointly published by the State Administration for Industry and Commerce and the Ministry of Construction are now generally used in property transactions. Taking into consideration the specific conditions and requirements of the transaction, an attesting officer responsible for the notarization of the property transaction shall draw up additional terms to supplement the main contract. Such additional terms shall also require the approval of the local notarial office before they can be inserted to the contract to be signed by the relevant parties.
6. According to the Notice Concerning the Effect of Notarial Documents in Relation to Hong Kong jointly promulgated by the Supreme People's Court and the Ministry of Justice, any sale and purchase agreement notarized by an attesting officer and duly authenticated and stamped shall be legally binding and protected by Chinese law.
7. The vendor and the purchaser shall enter into a conveyancing agreement voluntarily and both parties to the agreement shall be liable for the terms and conditions therein. An attesting officer is only tasked with the notarization of the agreement, and he shall not be held responsible for any dispute arising out of the performance of the contract by either party.
8. In the event that the developer fails to deliver the pre-sale property as agreed after an attesting officer has performed his duties, such attesting officer shall not be held responsible for the "uncompleted" property in any way. In accordance with Chinese laws and the terms and conditions of the

contract, the purchaser may institute proceedings against the developer through the people's court of the area in which the property is located, on the basis of the pre-sale agreement which has been duly notarized and attested by the attesting officer concerned.

9. Attesting officers are placed under the supervision of the Ministry of Justice of the PRC in accordance with the Measures for the Administration of China-Appointed Attesting Officers (Hong Kong). The Association of China-appointed Attesting Officers deals with matters in relation to the professional conduct of its members in accordance with its statutes. Appropriate actions will be taken against any members who are found to be in breach of their professional conduct.