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26 September 2014

Ms Mary So  
Clerk to Bills Committee  
Legislative Affairs Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

By Fax (No. 2840 0716)

Dear Ms So,

**Bills Committee on**  
**Contracts (Rights of Third Parties) Bill**  
**Meeting with the Law Society of Hong Kong**

Further to my email dated 21 August 2014 informing the Legislative Council Secretariat about the request of the Law Society to discuss some issues on the Bill, we write to inform the Bills Committee of the following main issues discussed at the meeting with the Law Society on 4 September 2014.

- (a) **Adequacy of exclusion of the “Deed of Mutual Covenant” and “covenants relating to land” from the application of the Bill and the necessity to exclude “all land contracts” from the Bill**

The Law Society raised the issue on whether a definition of “covenants relating to land” should be provided for in the Bill.

The Administration considered that it was not necessary to include a definition of “covenants relating to land” in the Bill. As the law relating to the “Deed of Mutual Covenant (“**the DMC**”) and “covenants relating to land” was well established, the aim of the Bill was not to define “covenants relating to land” nor alter the land law’s position on this. Rather, it is intended to carve out the areas under which the existing

rules allowing third parties a right of enforceability would contradict or prejudice the principles of the Bill. The Administration had therefore taken the recommendation of the Bar Association to exclude “covenants relating to land” in addition to the DMC from the application of the Bill.

On the need to exclude “all land contracts” from the application of the Bill, the Administration explained that the Bill enabled contracting parties to confer enforceable rights on a third party if they so intended. The Bill sought to exclude certain classes of contracts where allowing third parties to claim a right of enforceability would contradict or prejudice the underlying policies of certain areas of law. It does not appear that “all land contracts” would merit such an exclusion from the application of the Bill. On the other hand, contracting parties may exclude the application of the new legislative scheme from their own land contracts if they so wish.

**(b) Contracts (Privity) Act 1982 (New Zealand) (“the NZ Act”)**

The Law Society raised the issue of whether the Bill should include a provision similar to that in the NZ Act in that any enactment requiring a contract to be in writing or evidenced in writing would not be affected by the Bill.

The Administration pointed out that Clause 5(4) of the Bill provided that the new legislative regime would not affect a right or remedy of a third party that existed or was available apart from the new legislative regime. Clause 8(2)(a) further provided that the promisor may raise by way of a defence or set-off a matter that would have been available to the promisor by way of defence or set-off if the proceedings had been brought by the promisee. As a result, it would not be necessary to include in the Bill a similar provision as that in the NZ Act and the relevant legislation in the UK also did not contain such a provision.

**(c) Section 26 of the Conveyancing and Property Ordinance (Cap. 219) (“Cap. 219”)**

The Law Society raised the issue of whether there should be a provision in the Bill to clarify that section 26 of Cap. 219 would not be affected.

The Administration explained that the purpose of the Bill was not to change or reform the effect of section 26 of Cap. 219. Furthermore, case law suggested that section 26 of Cap. 219 did not seek to override the doctrine of privity of contract. Clause 5(4) of the Bill provided that the new legislative regime did not affect the right or remedy

of a third party that existed or was available apart from the new legislative regime. Therefore, even if section 26 of Cap. 219 was to confer an enforceable right on a third party, it would continue to do so even after commencement of the new legislative regime.

**(d) Promotion of the new legislative regime**

The Law Society expressed the need for promotion of the new legislative regime to the practitioners and the general public. They suggested that this may be done in the form of FAQs and seminars.

The Administration noted the importance of promotion of the new legislative regime and expressed that they were considering what kind and extent of promotion would assist the general public in understanding the new legislative scheme, and in that regard would liaise closely with the Law Society.

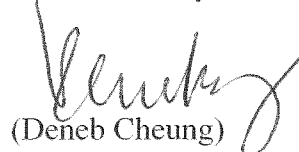
**(e) Commencement of the Ordinance**

The Law Society enquired about the timetable for the commencement of the new legislative regime after passage of the Bill and suggested allowing one year instead of 6 months' lead time as the practitioners needed more time to understand the new legislative regime and make adjustments to standard forms.

The Administration agreed to consider the feasibility of bringing the new legislative regime into operation one year after the passage of the Bill.

In light of the above, the Law Society has confirmed that they have no further comment on the Bill as read with the Committee Stage Amendments.

Yours sincerely,



(Deneb Cheung)

Senior Assistant Solicitor General

Copy: Mr Sunny CHAN, Senior Assistant Law Draftsman  
Ms Angie LI, Senior Government Counsel  
The Law Society of Hong Kong (Attn: Mr Kenneth FOK)