Forum on Implementation of the Model Mortgage Origination Documents
- Phase II -

Welcoming Remarks
by
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First, a very warm welcome to all of you.

2. This Forum marks the successful completion of the Project on Standardisation of Mortgage Origination Documents in Hong Kong. As Convenor of the Project, the Hong Kong Mortgage Corporation has been much heartened by the strong support of the banking industry and the legal fraternity for this important endeavour. The presence of so many senior bankers and leaders of the legal profession among us this evening is a clear demonstration of that support, not only in drafting the Model Documents but also in promoting their adoption.

3. The production of the full set of model mortgage origination documents is a result of the cumulative efforts of the banking industry and the legal profession over the past two-and-a-half years. This important initiative stems from a desire to make a set of unnecessarily complicated and somewhat antiquated documents simpler and more user-friendly.

4. As a frequent buyer of mortgage portfolios, the Mortgage Corporation has had the opportunity to review the mortgage documents of all the major banks in Hong Kong. This has not necessarily been a pleasant experience. While the key provisions of these documents are broadly similar, we have been amazed by the wide variation in drafting, the extensive use of archaic English and the lack of Chinese translation in general.

5. It is nevertheless pertinent to ask why we should have bothered to tinker with documents that have been in use for so long without any very obvious problems. We felt that there was a compelling case. These are important documents, and standardisation will bring significant benefits to homebuyers, mortgage lenders, and the secondary mortgage market.

6. Buying one's own home is probably the most important investment of a lifetime. It is important that homebuyers are able to fully understand their rights and obligations under standardised mortgage documents that reflect best market practice and have the endorsement of the relevant regulators, the legal profession and the Consumer

Council. For mortgage lenders, standardised mortgage origination documents help significantly reduce the time and resources in explaining the terms of the agreements to the borrowers and potential disputes arising from misunderstanding. For the secondary mortgage market, standardised mortgage documents help to shorten the timeframe and transaction costs for the sale and purchase of mortgage portfolios, and the issue of mortgage-backed securities, by removing the need for investors and credit rating agencies to conduct due diligence on the mortgage origination documents.

7. We are fortunate that the banking industry and the legal profession shared this view and enthusiastically answered our call to take part in the Project when we formed the Project Steering Committee in May 2000. The Steering Committee has wisely decided to take a step-by-step approach in producing the model documents. The first phase of model documents, comprising the standard model deeds appeared in November 2001. Since their launch, the documents have been adopted by 14 major mortgage banks, which together make up around 84% of the residential mortgage market.

8. Encouraged by the success of the Phase I Model Documents, the Mortgage Corporation re-convened the Steering Committee in March this year to launch Phase II of the Project that aimed to complete two important tasks. First, we aimed to produce the remaining mortgage origination documents. Secondly, and equally importantly we intended to review and bring up to date the Phase I Model Documents in light of developments in law and banking practice since their publication.

9. Drafting by committee is never easy, and, at the risk of offending some of the more learned members of the audience, it is even more difficult when the committee is composed largely of lawyers. Fortunately, however, our task was made easier by the fact that the members shared a clear consensus on three fundamental principles that should guide the Project.

10. The first principle was that the terms and conditions of the documents should strike a fair balance between the rights and obligations of the bank and the borrower. In this regard, the Steering Committee has been greatly assisted by the best market practices set out in the Code of Banking Practice developed by the banking associations and endorsed by the Hong Kong Monetary Authority. The second principle was that the documents should be easily understood by the public. In this regard, the Steering Committee made a conscious effort to draft in plain English and cut out legalese. Moreover, it was decided to produce a Chinese translation for documents which involve the homebuyers. The third principle was that any modifications to existing terms and conditions should, as far as possible, avoid undermining the efficiency of normal banking operations. The advice from the banking industry and the Consumer Council has been particularly valuable in this respect.

11. Completion of the drafting process was by no means the end of the job. The next step was to put the draft through an extensive consultation exercise with the

banking industry associations, the Consumer Council, the two associations representing the legal profession, the Land Registry and the regulators. The Model Documents in front of you have duly incorporated the valuable comments from the consulted parties.

12. The final, but equally important, step is to promote the adoption of the full set of the model documents by the banks. As I have mentioned, despite the adoption of the Phase I Model Documents by the great majority, a number of lenders are still undecided as to whether or not to adopt the model documents. One should not underestimate the power of inertia in this regard. We need to clear, in particular, two hurdles. The first one is the noticeable unease of some bankers and lawyers over the use of plain English. "It is too simple", or "where's the Latin?" are among the comments that we have overheard. The second hurdle is the "wait-and-see" attitude adopted by some banks. Some may be looking to the major banks to take the lead in adopting the documents, while others are waiting for the full set of the model documents to be published before deciding what to do next.

13. We hope that with a full set of the model mortgage origination documents now available, those undecided mortgage lenders will feel confident enough to make a full commitment to adopting the Model Documents by following the example set by some of the larger institutions. With the aim of helping them make up their minds, the Hong Kong Monetary Authority has already issued a letter to all authorized institutions advising them to adopt the Model Documents.

14. I am sure that adoption of the Model Documents will be further encouraged by the Forum this evening. We are fortunate in having a distinguished panel of speakers to guide us, and, to judge by some of the titles, a programme that promises to be entertaining as well as instructive. Before I hand over to the panel, let me take this opportunity to thank the members of the Steering Committee and the Drafting Sub-Committee for the enormous commitment they have made in time and effort and to congratulate them on their remarkable achievement of having completed the task in the short span of eight months. In addition, we are most grateful to Mr. Justice Litton for reviewing the draft documents at various stages of their preparation and for his invaluable advice and comments. We would also like to thank Mallesons Stephen Jaques for preparing the Chinese translation, and the Law Drafting Division of the Department of Justice for reviewing the Chinese version of the Model Documents. The outcome ranks high in the best Hong Kong tradition of pragmatism and efficiency, and will, I feel sure, prove to be an important milestone in the history of property transactions.

Thank you.

The Steering Committee of the Standardization Project – Phase II
Convenor: The Hong Kong Mortgage Corporation Limited

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