Forum on Implementation of the Model Mortgage Origination Documents

Welcoming Remarks

by

Mr. Tony Latter, JP, Executive Director, HKMC

On behalf of the Hong Kong Mortgage Corporation, I would like to welcome you to this Forum.

2. As Convenor of the Project on Standardization of Mortgage Origination Documents in Hong Kong, the HKMC has been very 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 idea of producing a set of model mortgage origination documents stemmed from a natural desire to make an unnecessarily complicated and somewhat antiquated tool more user-friendly. As a frequent buyer of mortgage portfolios, the HKMC has had the opportunity to review the mortgage documents of all the major banks in Hong Kong. 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.

4. It is nevertheless pertinent to ask why we should bother to tinker with documents which have been in use for so long without any very obvious problems. We felt that there was a compelling case, based on the importance of these documents. After all, to the homebuyer, buying one's own residence is probably the most significant investment of a lifetime, while, to the banking industry, mortgages and property-related loans account for over 40% of assets. It is in the common interest of mortgagees and mortgagors that the latter understand their rights and obligations. Meanwhile, in the mortgage-backed securities market, standardization of the mortgage documents would remove the need for due diligence review by investors and rating agencies, a factor that has been inhibiting the development of this market.

5. We are fortunate that the banking industry and legal profession overwhelmingly shared this view. Not only that, but when the HKMC formed the Project Steering Committee in May 2000, bankers and lawyers, together with representatives of rating agencies, mortgage insurers and academia, enthusiastically answered our call for participation. What followed was a series of intensive drafting sessions over a period of some 14 months.

6. Drafting by committee is never easy, and, at the risk of offending some of the audience, it is potentially 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.

7. 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. The second 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 to cut out legalese. Moreover it was decided to produce a Chinese translation. The third principle was that any modifications to existing terms and conditions should, so far as possible, avoid undermining the efficiency of normal banking operations.

8. I would like to take this opportunity to thank the members of the Steering Committee for the enormous commitment of their time to this project and for their achievement in completing the task in a relatively short span of time. 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 Clifford Chance for preparing the Chinese translation, and the Law Drafting Division of the Department of Justice for reviewing that.

9. 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, last but not least, the regulators – we specifically requested the Hong Kong Monetary Authority to verify their compliance with the Code of Banking Practice.

10. I am happy to say that at the end of the consultative exercise, unanimous endorsement of the Model Documents was received. This has served to confirm that the Model Documents have fully encapsulated best market practice, are regarded as fair by both consumers and banks, and are legally robust as binding contracts.

11. The final, but equally important step, has been to promote the adoption of the Model Documents by the banks. One should not under-estimate the power of inertia in this regard. One of the hurdles that we need to clear is the noticeable unease of some bankers and lawyers over the use of plain English. "It's too simple", or "where's the Latin?" are among the comments that we have overheard. In addition, some banks, in particular the smaller ones, may be looking to the major ones to take the lead in adopting the Model Documents and to observe their experience, before themselves feeling confident enough to make a full commitment to them.

12. The purpose of the Forum this evening is to help dispel any remaining hesitation over the adoption of the Documents, to gain some insight into the benefits which their adoption will bring to both homebuyers and banks, and to hear something of the practical issues which banks may encounter in implementing them. We are fortunate in having a distinguished panel of speakers to guide us.

13. Before I hand over to them, let me again reiterate our thanks to the members of the Steering Committee and the Drafting Sub-Committee, and all the organizations which have helped in the preparation of the Model Documents, for their generous contribution of time and effort in this Project. The outcome ranks 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
Convenor: The Hong Kong Mortgage Corporation Limited

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